(2002) 11 DEL CK 0080

In the Delhi High Court

Case No : C.W. No. 2424 of 1992

Dalip Singh Oberoi and Others APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 22-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226
State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 49

Citation : (2003) 103 DLT 595 : (2003) 2 LLJ 627 : (2003) 1 SLJ 229

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : R. Vasudevan, for the Appellant; Rajeev Dhavan, Senior Advocate, Sanjay Kapur and Rajiv Kapur, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The petitioner (since deceased and now represented by his legal representatives) is aggrieved by an order dismissing him from service as far back as in 1986.

2. 2. The petitioner was appointed with respondent No. 1 (hereinafter called the Bank) and confirmed as a Grade-I Officer on 1st August, 1976. When the State Bank of India (Determination of Terms and Conditions of Service) Order, 1979 came into force, the petitioner was placed in the grade of Junior Management Grade Scale-I (for short JMG Scale-I).

3. 3. While the petitioner was working as a Branch Manager in the Jwalaheri, Paschim Vihar branch of the Bank, certain irregularities came to the notice of the respondents. Accordingly, on or about 9th May, 1984 the Chief Regional Manager of the Bank asked the Audit Verification Cell to look into the irregularities. A detailed report was prepared by the Audit Verification Cell and submitted to the Chief Regional Manager on 22nd May, 1984.

4. While the report was under consideration, a Memorandum dated 24th May,

1984 was issued by the Personnel Department of the Bank to all branches and officers in the Delhi Circle relating to promotions to the Middle Management Grade Scale-II (MMG Scale-II). In terms of the Memorandum dated 24th May, 1984, it was advised that the Deputy Managing Director (Personnel and Services) had directed that 1042 officers in JMG Scale-I promoted to MMG Scale-II with effect from 1st August, 1983.

5. Paragraphs 2 and 3 of the Memorandum dated 24th May, 1984 are of some importance and they read as follows:

"2. A list of 80 officers promoted from this Circle is enclosed. However, these promotions are subject to confirmation that no disciplinary action is either pending or contemplated against any of these officers.

3. The findings in regard to suitability or otherwise of the officers mentioned in Annexure 1 to this circular have been placed in separate sealed covers pending finalisation of disciplinary proceedings/enquiry proceedings/investigations against them."

6. The petitioner was in the list of 80 officers who were promoted subject to confirmation that no disciplinary action is either pending or contemplated.

7. It appears that pursuant to the Memorandum dated 24th May, 1984, the petitioner worked (as he had apparently been doing earlier) in the promotion post of MMG Scale-II even though no other or independent promotion order was issued in this regard.

8. By a letter dated 16th June, 1984, the petitioner was informed by his Regional Manager that the Audit Verification Cell had found certain irregularities while the petitioner was working as a Manager in the Jwalaheri, Paschim Vihar branch of the Bank. The petitioner was given intimation of the irregularities brought out by the Audit Verification Cell and was asked to submit his Explanation within fifteen days from the date of receipt of the aforesaid letter dated 16th June, 1984.

9. Pending a reply to the aforesaid letter dated 16th June, 1984, the petitioner was informed by the Personnel Manager by a letter dated 23rd June, 1984 that consequent upon his promotion to MMG Scale-II, his basic salary had been fixed at Rs. 1,800/- per month with effect from 1st August, 1983. There is no dispute about the fact the petitioner was paid the arrears of the higher wages due to him.

10. It appears that till the end of July, 1984, the petitioner did not submit any reply to the Memorandum dated 16th June, 1984. In any case, the officers of the Bank examined the report of the Audit Verification Cell and a proposal was mooted to place the petitioner under suspension with immediate effect pending departmental action against him.

11. A detailed note dated 26th July, 1984 was prepared by the Regional Manager of the Bank which was considered by the Chief General Manager, the General Manager (Operations) and the Chief General Manager. All these officers

expressed their views on the document between 26th July, 1984 and 30th July, 1984. This is being mentioned because learned Counsel for the petitioner drew my attention to two handwritten comments on the aforesaid note.

12. In paragraph 6 of the note, it is stated as follows:

"Incidentally, Shri Oberoi was posted at Jwalaheri, a deposit oriented branch as he was due for line assignment. However, keeping in view his undesirable activities and tendency to finance ruthlessly without adhering to the set stipulation and thus jeopardising the Bank''s interest, Shri Oberoi has been made now innocuous. Shri S.V. Kochhar, JMGS-I is now the new Branch Manager."

A marginal handwritten comment made on 30th July, 1984 in respect of this paragraph reads as follows:

"Hell with line assignment exposure for a person of Shri Oberoi''s bad repute he has no place with Bank, least to speak of career progression."

13. Another handwritten note appearing at the end of the document reads as follows:

"Shri Oberoi stands promoted to MM II as from 1,8.1983 but his letter of promotion has been held back for the time being."

14. Pursuant to the detailed note dated 26th July, 1984 and its consideration up to 30th July, 1984, the petitioner was placed under suspension with effect from 8th August, 1984.

15. The petitioner has raised some controversy about the grade held by him at the relevant time. In the Memorandum dated 16th June, 1984 he was referred to as being in MMG Scale-II. Similarly, his salary was fixed in MMG Scale-II as intimated to him by the letter dated 23rd June, 1984 and he was described as belonging to MMG Scale-II. Even in the note dated 26th July, 1984, it is mentioned that the petitioner stands promoted to MMG Scale-II. However, in the suspension letter dated 8th August, 1984, the petitioner appears to have been referred to as belonging to JMG Scale-I. This controversy is reflected in a protest letter sent by the petitioner on 18th December, 1984 relating to his suspension where he has asked for the release of his allowances as MMG Scale-II.

16. In response to the protest letter dated 18th December, 1984, the respondents wrote to the petitioner on 29th December, 1984 stating that in view of the irregularities alleged to have been committed by him and his consequent suspension, his promotion to MMG Scale-II "cannot be released."

17. It may be mentioned that the petitioner was paid his salary for the month of June, 1984 in MMG Scale-II but thereafter, for the month of July, 1984 and for the period that he was under suspension, he was paid his salary and subsistence allowance as JMG Scale-I. The petitioner objected to this in a letter dated 9th March, 1985 wherein it was contended by him that effectively he has been reverted from MMG Scale-II to JMG Scale-I.

18. In this context, it is significant to note that the respondents have stated in their counter affidavit (which statement not been denied by the petitioner) that "after the sanction dated 30.7,1984 by the Competent Authority to initiate disciplinary proceedings against the petitioner, the recovery of the dues and salaries paid to the petitioner was made somewhere in the first week of August, 1981."

19. Be that as it may, on 26th August, 1985, a charge sheet was issued to the petitioner detailing the various charges leveled against him and proposing to hold an enquiry on allegations of misconduct committed by him. Thereafter, an enquiry was held against the petitioner (which apparently proceeded in accordance with law) and on 30th October, 1986 the Enquiry Officer submitted his report holding the petitioner guilty of the allegations made.

20. Acting upon the report of the Enquiry Officer and the other material on record, the Chief General Manager as the Disciplinary Authority of the petitioner passed an order dated 24th December, 1986 dismissing the petitioner from service in terms of Rule 49(h) of the State Bank of India (Supervising Staff) Service Rules.

21. The petitioner, feeling aggrieved by his dismissal preferred an appeal to the Local Board of the Bank. The appeal was rejected by the Deputy Managing Director (acting as the Appellate Authority) by an order dated 20th October, 1989. It was held by the Appellate Authority that the petitioner was guilty of the allegations made against him and that the punishment of dismissal was commensurate with the charges proved.

22. Feeling aggrieved by the order passed by Appellate Authority, the petitioner filed a review petition that came to be dismissed by an order dated 30th October, 1991 passed by the review committee. It was then that the petitioner preferred a writ petition under Article 226 of the Constitution on 8th May, 1992.

23. Learned Counsel for the parties were heard on 21st and 22nd October, 2002 when judgment was reserved.

24. The principal contention of learned Counsel for the petitioner was that the petitioner had in fact been promoted to MMG Scale-II as stated in the Memorandum dated 24th May, 1984. Only his actual posting was required to be effected. It was contended that the petitioner''s promotion is apparent because the petitioner was paid his salary in the promotion post for the month of June, 1984 and was also paid arrears of salary relating to the promotion post with effect from 1st August, 1983. Moreover, various documents refer to the petitioner as being in MMG Scale-II. Therefore, the petitioner cannot be dealt with as if he was not promoted at all.

25. It is not possible to agree with learned Counsel for the petitioner. The Memorandum dated 24th May, 1984 dealt with three categories of promotees. Firstly, those officers against whom there was absolutely no allegation; secondly,

those officers against whom there was some allegation and disciplinary action was pending against them and whose names were, Therefore, placed in Annexure-1 to the Memorandum; and thirdly, the remaining officers, in respect of whom confirmation was awaited whether any disciplinary action was pending or contemplated. The petitioner was promoted subject to confirmation that no disciplinary action was either pending or contemplated against him. Quite clearly, the petitioner fell in the third category of officers and Therefore his name was included in the list of 80 officers whose promotions were subject to confirmation that no disciplinary action was either pending or contemplated.

26. The promotion of these officers was conditional as stated in the Memorandum dated 24th May, 1984. To make their promotion complete, something more was required. The additional requirement was a confirmation that no disciplinary action was pending or contemplated. Until then, the promotion of these officers including the petitioner was only tentative. Unfortunately for the petitioner, the confirmation never came since, in the meantime, the respondents took a decision on 30th July, 1984 to initiate disciplinary action against him as a result of which he was placed under suspension with effect from 8th August, 1984.

27. Notwithstanding this factual position, it was contended that the petitioner''s case would be governed by a decision of a learned Single Judge of this Court in Kul Bhusan Chopra Vs. Punjab National Bank and Others, In Chopra, Clause 12 of the Punjab National Bank Office Employees (Discipline and Appeal) Regulations, 1977 was under consideration. Clause 12(a) of the Regulations empowered the Competent Authority to place an officer under suspension where a disciplinary proceeding against him was contemplated or pending.

28. It appears to me that this decision is of no assistance to the petitioner. The question in Chopra was one of placing an officer under suspension subject to the existence of a state of affairs, namely, disciplinary proceedings being contemplated or pending against that officer. In that context, it was said in paragraph 12 of the Report as follows:

"The Regulation empowers the Competent Authority to suspend where a disciplinary proceeding against an officer is contemplated or is pending. The regulation does not empower suspension where disciplinary proceedings are merely under contemplation. Disciplinary proceedings commence with the framing of the charge sheet and culminate in the final order punishing or vindicating the officer. Disciplinary proceedings could not be contemplated unless a decision to initiate the proceedings had already been taken. The expression "is pending" also lends colour to the true meaning of the expression "contemplated", so that an officer may be suspended either where the proceedings are pending or if not pending, the decision to initiate proceedings having been taken, such proceedings are imminent and would follow as a matter of course. There would, Therefore, be no power to suspend if the decision to initiate proceedings is yet to be taken where, for example, the matter is at the preliminary enquiry or confidential enquiry or some sort of departmental investigation stages." (Emphasis given)

It was further held that:

"I am, Therefore, of the view that while suspension tinder the Regulation would be justified even though a formal charge sheet on an accusation has not been made against the delinquent officer, mere pendency of the preliminary enquiry or a confidential enquiry or a departmental investigation would not justify an order of suspension and such an order could be made only if on an application of the mind to the material, the Competent Authority has taken a decision to initiate disciplinary proceedings even though the decision may not yet have been carried out."

29. In Chopra, suspension could be resorted to if certain conditions existed. That is not the situation in the present case. The physical promotion of the petitioner could and did take place and he was given the benefits of the promotion, including arrears of salary. However, the dejure promotion was postponed to a later date and made subject to confirmation that no disciplinary action was pending or contemplated against him. In other, words, some further act was required to be performed before the petitioner''s promotion could be complete. This "further act" was confirmation that no disciplinary action was pending or contemplated against him. Eventually, confirmation was received by the Personnel Department of the respondent but that confirmation was that disciplinary action is being taken against the petitioner and that he has been placed under suspension pending the disciplinary action. Consequently, the promotion of the petitioner was not effective in law. By itself, the Memorandum dated 24th May, 1984 relied on by learned Counsel for the petitioner cannot be read as a promotion order it did not unequivocally promote the petitioner. As its language suggests, the petitioner''s promotion was subject to confirmation.

30. This position seems to have been tacitly accepted by the petitioner. Recoveries of the dues and salaries paid to the petitioner was effected by the respondents in August, 1984 without any objection from the petitioner. While this circumstance may not be conclusive of the state of mind of the petitioner, it is one of the factors to be taken into consideration for understanding how the parties understood the events as they occurred.

31. It is not possible to read too much into the fact that in some documents the petitioner was referred to as being in MMG Scale-II. The fact that the petitioner worked as MMG Scale-II and received his salary for one month and arrears for the previous period as MMG Scale-II should be sufficient for the purposes of the contention of learned Counsel for the petitioner. Therefore, whether he is described as JMG Scale-I or MMG Scale-II is a relatively minor issue. One of the reasons for saying this is the fact that in his suspension letter dated 8th August, 1984 the petitioner has been described as belonging to JMG Scale-I. How the petitioner is described in a few documents here or there does not really help in

resolving the controversy. The meat of the matter is whether the petitioner was promoted as MMG Scale-II or worked in that capacity pending formal orders of promotion. I have answered this question against the petitioner and in favor of the respondents for the reasons already indicated.

32. It was then sought to be contended that the promotion of the petitioner could not be withheld or that the decision conveyed to the petitioner by the respondents letter dated 29th December, 1984 that his promotion to MMG Scale-II "cannot be released" is erroneous and amounts to the imposition of a punishment on the petitioner.

33. I am afraid this is a misreading of the relevant State Bank of India (Supervising Staff) Service Rules. No doubt Rule 49(c) thereof provides that withholding of a promotional is a minor penalty. But, Explanation (iv) to Rule 49 cannot be overlooked and this reads as follows:

"Explanation--The following shall not amount to a penalty within the meaning of this rule;

(i) to (iii) xxxxxxxxxxxxxxxx

(iv) reversing or postponing the promotion of an employee for reasons like completion of certain requirements for promotion or pendency of disciplinary proceedings;

(v) to (xi) xxxxxxxxxxxxxxxxx"

Quite clearly the withholding or postponement of the petitioner''s promotion pending completion of certain requirements cannot be said to be punitive in any manner whatsoever.

34. Reliance placed by learned Counsel for the petitioner on New Bank of India Vs. N.P. Sehgal and Another, is, with respect, misplaced. In Sehgal, respondent No. 1 was promoted while disciplinary proceedings contemplated against him were in abeyance. The contention of respondent No. 1 was that "by reason of the promotion granted to him from Scale-II to Scale-III on July 17, 1984 as aforestated, which was after the irregularities and misconduct alleged against him had been committed and in view of the said promotion the appellant must be deemed to have condoned the earlier misconduct, if any, of respondent No. 1; and thereafter it was not open to the appellant to take any action against respondent No. 1 in respect of the said misconduct." This contention was considered by the Supreme Court in the context of Clause (9) of the Promotion Policy of the appellant Bank, and rejected in paragraph 7 of the Report in the following words:

"On a plain regarding of this clause it is clear that even if disciplinary action is in process against an officer of the appellant Bank, that would not entitle the appellant Bank to exclude from consideration for promotion the officer concerned if he is otherwise entitled to be so considered, The only right given to the appellant in such cases is that, in case such an officer is otherwise found fit for promotion and selected for promotion, that promotion can be withheld until the officer is exonerated from the charges. It is significant that the said clause goes to state that in case such an officer is exonerated from the charges, promotion will have to be given effect to from the date on which it would have been otherwise effective but for the disciplinary action. This rule gives rise to the implication that till disciplinary action is in process or initiated, the officer concerned, against whom allegations of misconduct might be made, can neither be excluded from consideration for promotion if he is entitled to be considered otherwise nor can the promotion be denied to him/''

35. In the present case, the respondents have done precisely what was indicated by the Supreme Court in the above passage. The petitioner was considered for promotion and was also placed in the promotion post, but the promotion order was withheld pending confirmation that no disciplinary action was contemplated or pending. Since such a confirmation was not forthcoming or possible the promotion of the petitioner was not unconditionally effectuated. No fault can be found with the procedure adopted by the respondents.

36. Learned Counsel for the parties were agreed that if it is held that the petitioner was not promoted to MMG Scale-II then his Disciplinary Authority would be the Chief General Manager of the Bank. The doubt raised by learned Counsel for the petitioner was about who is the Appellate Authority.

37. Admittedly, the appeal was preferred by the petitioner to the Local Board of the Bank and it was rejected by the Deputy Managing Director by an order dated 20th October, 1989.

38. Learned Counsel for the respondents has drawn my attention to a Memorandum dated 29th March, 1989. This Memorandum deals with the delegation of powers of the Appellate Authority from the Local Board to the Deputy Managing Director. Paragraphs 3 and 4 of the Memorandum read as follows:

"It will be observed that the Local Board is the Appellate Authority in respect of the appeals preferred by Officers in JMGS-I and MMGS-II against the order of major penalty. In some cases the appeals are required to be dealt with very promptly in view of Court orders etc. In some cases the appointment of Local Board Members by the Government/Reserve Bank of India has been delayed. As a result, the required strength of the Local Board is not available. Although, the Chief General Manager is an ex-office member of the Local Board, he has to, in accordance with the principle of natural justice, abstain from the meeting of the Local Board while considering appeals against major penalty as he was the authority who passed the order of penalty. As a result the necessary quorum for the Local Board Meeting for considering the appeals is at times not available........Further, the Local Board u/s 21B of the State Bank of India Act, 1955 is required to consider and examine various important matters relating to business transactions and other function of the Bank in its areas of operation. We are of the view that the Local Board need not be burdened with consideration of appeals in Disciplinary cases and this function in respect of officers in JMGS-I and MMGS-II as well can be delegated to the Bank''s executives, as has been done in respect of higher grades of officers up to SMGS-V. In the above backdrop, we have examined the matter and recommend that the Deputy Managing Director (Personnel and Systems) may be designated as the Appellate Authority in respect of the appeals preferred by officers in JMGS-I and MMGS-II serving in a Circle against the orders of major penalty."

39. Pursuant to the above Memorandum dated 29th March, 1989, the following decision was communicated to all the concerned authorities on 8th April, 1989.

"The Executive Committee of the Central Board at its meeting held today has decided that the Deputy Managing Director (Personnel and Systems) will be the Appellate Authority in respect of the appeals preferred by officers in JMGS-I and MMGS-II serving in a Circle against the orders of major penalty. Other structure mentioned in the above referred latters and our letter No. PA/ CIR/185 dated December 1, 1988 will remain unchanged. A copy of our Memorandum dated March 29, 1989, put up to the Executive Committee of the Central Board and approved by it at its meeting held today is enclosed for your information and record. All such appeals may, Therefore, be sent to this office for appropriate action."

It is quite clear from the above decision that the Deputy Managing Director was competent and authorized to deal with the appeal filed by the petitioner, when it was rejected on 20th October, 1989.

40. Learned Counsel for the petitioner contended that the marginal hand written comments made on the note dated 26th July, 1984 prepared by the Regional Manager of the Bank indicates that a decision had already been taken to dispense with the services of the petitioner.

41. It is true that the comments concerning the petitioner are a little strongly worded, but these comments were made in the context of suspending the petitioner pending departmental action. This is clear from a reading of the proposal contained in the aforesaid note. Paragraph 8 of this note reads as follows:

"In the wake of the foregoing and also the fact that Shri Oberoi has been deliberately flouting the instructions from this office for obvious reasons thus damaging the Bank''s interests we propose that Shri Oberoi be placed under suspension with immediate effect pending departmental action against him."

The disciplinary enquiry against the petitioner was initiated thereafter.

42. The petitioner was given an adequate opportunity to defend himself in the disciplinary inquiry. Indeed, no grievance was made by learned Counsel for the petitioner that there was any procedural infirmity in the departmental inquiry or

that there was any violation of the principles of natural justice. This being so, it cannot be accepted that the marginal comments made in the note dated 26th July, 1984 had influenced the subsequent course of events. Moreover, it may be recalled that the inquiry report was submitted over two years later on 30th October, 1986.

The decision to dismiss the petitioner was taken by the Disciplinary Authority a few months later and the rejection of the appeal of the petitioner was in October, 1989. Surely, the marginal comments on the note dated 26th July, 1984 could not have had such an overwhelming impact as suggested by learned Counsel.

43. It was finally suggested by learned Counsel for the petitioner that the Appellate Authority had not applied its mind while rejecting the petitioner''s appeal. Nothing specific was pointed out in support of this contention. Even otherwise, a perusal of the order dated 20th October, 1989 shows that it is a speaking order which contains the allegations against the petitioner and discussion of the pleas raised by the petitioner and the reasons for the rejection thereof.

44. Considering all the submissions made by learned Counsel for the petitioner, I regret my inability to agree with him on any of the grounds urged by him. Accordingly, the writ petition is dismissed.