

(2004) 09 BOM CK 0120
In the Bombay High Court
Case No : W. P. No. 2153 of 1992

Devidas Kulkarni

APPELLANT

Vs

Managing Director, State Bank of Hyderabad

RESPONDENT

Date of Decision : 07-09-2004

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (2005) 2 ALLMR 103 : (2005) 2 MhLj 73

Hon'ble Judges : V.G. Munshi, J;A.B. Naik, J

Bench : Division Bench

Advocate : R.S. Deshmukh, for the Appellant; S.R. Deshpande, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Naik, J.—On 7-9-2004, we passed operative order dismissing the petition. Now we record our reasons.

2. This petition is filed Under Article 226 of the Constitution of India, seeking following reliefs :

(A) The Hon''ble Court be pleased to issue a Writ of Certiorari or, any other writ direction or order in the nature of Writ of Certiorari, calling for the record and proceedings in the matter of denying the promotion to the petitioner including the record of service of the petitioner from the year 1984 and, particularly of the years 1985 onwards, when he was not given promotion.

(B) This Hon''ble Court be pleased to issue a Writ of Certiorari or, any other writ direction or, order in the nature of Writ of Certiorari quashing and setting aside the letter/Order dated 31st December 1991 filed at Exh. G issued by the respondent.

(C) This Hon''ble Court be pleased to issue a Writ of Mandamus or any other writ direction, or order in the nature of Writ of Mandamus, directing the respondent to

give the petitioner a deemed date of promotion in the year 1985 and further to promote him on further promotional post with all future promotional benefits attached to the post, till the decision of the writ petition.

(D) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other writ direction or order in the nature of Writ of Mandamus,

directing the respondent to pay the petitioner all the arrears including the benefits attached to the promotional posts with interest till realisation with all emoluments and benefits."

This petition was lodged in this Court on 19-4-1992 and this Court on 10-3-1993 issued Rule nisi. Immediately after Rule nisi was granted the respondent though served have not filed the reply. Accordingly, the reply came to be filed on 14-7-2003. The petitioner further filed rejoinder on 16-8-2004. Similarly, during the course of hearing the respondent bank has produced certain circulars for the perusal of this Court, to consider the submissions advanced by the respective parties, Shri Deshmukh, learned advocate appearing for the petitioner has no objection in reading those circulars in this petition.

3. The petitioner came to be appointed in the respondent bank as Typist-Clerk on 27-1-1967. At the time of appointment the petitioner had B. Sc. degree. Thereafter, the petitioner completed his L. L. B. examination and also banking examination i.e. CAIIB (I) in the year 1976. Thereafter, he was promoted as Junior Grade II on 1-8-1977. After the petitioner was promoted to that post, the post was redesignated as Officer JMGS. I on 1st October, 1979. In the year 1979 on the basis of Pillai Commission, the pay-scale of the officers and the staff of the bank was revised and enhanced. At that time, the pay-scale of the petitioner was Rs. 500-1030 and has enhanced to Rs. 700-1800/-. Till this stage, there is no dispute and nothing will turn on these aspects.

4. Accordingly to the petitioner for further promotion to the higher post there are two channels (i) post of seniority which is called seniority channel and (ii) merit channel. Accordingly by circular being circular No. PER/71 dated September 3, 1986 a policy for promotion from Officer in Grade I to MM Grade II for the year 1985 was framed and issued by the Bank. The said circular is made part of the paper book of this petition and is at page 16. The said circular also indicate that the circular so issued is ad hoc promotion policy for considering the promotions from JM Grade Scale-I to MM Grade II. As per the said circular 70% of the vacancies are to be filled in on merit channel and 30% from seniority channel. The circular makes provision for eligibility. It is the case of the petitioner that he was eligible for promotional post, he was called for examination test in the year 1984 but he was not successful. Next year i.e. in 1985 he appeared for the said examination and he was successful in passing said examination. As the petitioner has passed the said examination it is submitted that he was eligible for promotion to the post of Middle Management Grade Scale II which is next promotional post. The petitioner contended that had he was promoted in the

year 1985 in due course of time in the year 1989, he would have been promoted to the post of MM Grade III and onwards. It is contended by the petitioner that in the year 1985 he was called for interview and was one of the candidates out of 14 candidates from Marathwada area. However, the petitioner was not selected but his juniors were promoted. Petitioner contended that he was eligible for promotion from both channels i.e. merit and seniority as the petitioner was working as higher grade/officiating since 1983.

5. It is contended by the petitioner that he was not considered for promotion at the relevant time. In the year 1987 a charge-sheet was issued against the petitioner by initiating departmental proceedings being DCP/205 dated 6-2-1987. On the basis of the said charge-sheet issued, disciplinary authority completed the enquiry and the enquiry officer submitted the report to the disciplinary authority. It is not disputed before us that in the said enquiry some charges were proved and as a result of the enquiry a punishment was inflicted on him. The penalty so awarded was "reduction by three stages in the time scale". Accordingly, on October 28, 1989 the order of penalty was passed. It is to be noted at this stage as the disciplinary proceedings were in progress, the bank adopted sealed cover procedure and the petitioner was called for interview for promotion but the result was kept in sealed cover. After the penalty was imposed, the petitioner filed departmental appeal to the appellate authority and the appellate authority by the Order dated 29-3-1990 dismissed the appeal and confirmed the penalty imposed by the disciplinary authority. Shri Deshmukh, learned counsel has stated before us that the petitioner has not challenged the Order of dismissal of appeal and the order of imposing penalty and dismissing of appeal has been accepted by the petitioner. The petitioner contended that as the disciplinary enquiry was terminated finally in the year 1990 the sealed packet should have been opened and the result of the promotional Committee should have been intimated to the petitioner but for best known reasons to the respondent bank, the result of the promotional Committee was not intimated. It is contended by the petitioner that the punishment imposed was implemented and the pay-scale was reduced at one stroke. It was contended by the petitioner that the order of imposing penalty was reduction of three stages in time scale but at one stroke the order was executed and that too with retrospective effect. It is contended by the petitioner that by not awarding promotion the petitioner was punished and also by reduction of the salary as per the order in the disciplinary proceedings was also reduced. Therefore, it was submitted that it was case of double punishment. Petitioner contended that the increment was due on 1-8-1990 and it was released and his basic pay was raised to Rs. 4020/- but the result of promotional Committee for the year 1986, 1987, 1988 and 1989 were still continued to hold in sealed cover. It is the case of the petitioner that by adopting this practice the bank has victimised the petitioner and even he was not called for interview in the year 1990. It is contended that for not calling for interview in the year 1990 indirectly, the petitioner is being punished as the petitioner was not awarded promotion, the petitioner approached this Court challenging the said action as illegal,

arbitrary and in contravention of the guarantee given to the petitioner by Article 16 of the Constitution of India. It is contended that though, there were vacancies in the year 1986 and the vacancies were so notified as 60 but only 46 persons were considered for promotion. The petitioner has been denied equal opportunity and has been denied the right to claim promotion by the Bank by wrong applying of circulars issued by the Bank. The petitioner has also branded the action of the respondent as mala fide, afterthought and a cooked up story only to deprive the petitioner further promotion.

6. The Bank has filed reply affidavit denying all adverse contentions raised by the petitioner. It is contended that after the sufferance period of punishment, the petitioner came to be promoted to Middle Management Grade Scale II on 20-11-1992. The petitioner was promoted in routine course. The promotion so granted to the petitioner was effective from 1-12-1992. It is contended that the petitioner was promoted to Middle Management Grade II on 29-11-1992 and the promotional benefit to the petitioner were effective from 1-12-1992. On the basis of this fact, it was contended by the Bank that the petition has become infructuous. It is contended that the petitioner passed promotional examination in 1985 but as the petitioner failed in performance appraisal and interview test as the examination which was held in 1985 was in respect of merit channel. The petitioner appeared for examination in 1995 in the merit channel for promotion to MM Grade Scale II but the petitioner could not go through the performance appraisal and interview and therefore, he was not promoted. It is stated that the petitioner has failed in performance appraisal and interview, therefore, even though, the petitioner has passed written test. It was of no use. It is stated that the interview committee prepared list of the candidates in the Order of merit of the candidates who appeared for the interview. It is stated that the petitioner figured in that list at serial No. 151 and he secured 43.33 marks. The Committee has selected the candidates upto serial No. 119 and the last candidate who was selected secured 49.33 marks and as the petitioner has not stood in the merit, he was not selected. The bank denied that the bank has promoted the juniors in superseding the petitioner. It is contended that as the petitioner was not successful in the interview and performance appraisal, he was not selected. It is contended as the petitioner has failed in the interview test though the petitioner has passed written examination in the year 1985, the petitioner is not entitled to deem date of promotion as the petitioner was not selected by the Selection Committee. It is contended that as per the Circular dated 3rd September 1986 appeal is provided to the higher authorities against non-promotion but the petitioner has not filed appeal before the competent appellate authority and the petitioner has not filed appeal before the Executive Committee. It is contended that the petitioner was charge-sheeted and a disciplinary enquiry was in progress at the relevant time. It is contended that there were serious charges of corruption against the petitioner. It is pointed out that the petitioner has demanded amounts from the borrowers for sanction of loan. On the basis of the complaint of the borrowers, the disciplinary enquiry was initiated. It is stated

that petitioner came to know that complaint was filed against him by the borrowers, immediately he sanctioned loan to the borrowers. The enquiry report is produced on record by the petitioner and from that it was pointed out by the bank that the charges of corruption were true but actual acceptance of the amount was not proved. The respondent-bank therefore, submitted that the charges were serious, minor punishment was awarded because the actual receipt of the amount by the complainant was not established. It is contended that grievance made by the petitioner that he should have considered for promotion in the year 1985-86 i.e. the years prior to serving of charge-sheet on the petitioner. It was contended that in the year 1985 the petitioner appeared for interview test and succeeded in passing written examination but failed in oral interview. There was no promotional test held in the year 1986-87, therefore, there was no occasion for considering the case of the petitioner in the year 1986-87. It is stated that in the year 1988 the promotional test for JM Grade Scale I to MM Grade Scale II were held for the period 1986, 1987 and 1988. The petitioner was not called for 1988 promotional test but was called in the year 1989 and sealed cover procedure was adopted. At the end of departmental proceedings which resulted in imposing penalty in three stages in time scale, the petitioner was eligible for promotion after expiry of the penalty period which was in force till 31-7-1992 and after that period the petitioner's case was considered and accordingly, he was promoted in November 1992. It is contended that after the penalty period is over, the petitioner earned three increments which was reduced on 31-7-1990, 31-7-1991 and 31-7-1992. According to the Bank the sufferance period was upto 31-7-1992 and on 8-8-1992 he became eligible for promotion on restoration of the basic pay. It is therefore, contended that petitioner's case was considered when the sufferance period has come to an end and he was awarded promotion. Therefore, it is contended that the petitioner was not eligible for promotion upto 1992 because of pendency of disciplinary proceedings and sufferance period as per the penalty. It is contended that the action taken by the Bank was just and proper and it is exercised strictly in accordance with the provisions of the various circulars. It is contended that as per the procedure followed by the Bank the persons who fails in promotional test were not to be informed but the persons who were selected were to be duly informed by the circular. Shri Deshpande, learned counsel for the respondent has produced before us various circulars, whereby the procedure to intimate the names of selected candidates was adopted and followed. It is therefore, contended that the bank has strictly followed the circulars and regulations and the petitioner was not eligible for promotion because of departmental enquiry. The petitioner appeared for examination but in interview he was not selected, therefore the case of the petitioner was considered for promotion when the occasion arose. It is contended that the petitioner has no right to be promoted but he has only right to be considered for promotion. It is submitted that the petitioner was considered for promotion in 1985 but he was not selected. In the year 1986-87 there was no promotion Committee and at that time the departmental enquiry was in progress, the bank adopted sealed cover procedure.

It is therefore, submitted that no case is made out by the petitioner to seek the relief from this Court.

7. We heard Shri Rajendra Deshmukh, learned advocate for the petitioner and Shri. S. R. Deshpande, learned advocate for the respondent Bank. Shri Deshmukh, learned advocate submitted before us that double punishment was awarded to the petitioner as the petitioner was not called for interview when the promotion Committee was constituted. He submitted that at the same time there was reduction of pay. The reduction was made at one stroke in contravention of the Order of punishment. Shri Deshmukh, in Order to substantiate this aspect, has drawn our attention to the letter dated 21-2-1991 and submitted that if letter issued by the Regional Manager is indicative of the fact that the penalty was imposed retrospectively. To understand this contention we reproduce the letter dated 21-1-1991.

Shri D. R. Kulkarni, Officer JMGS-I, C/o State Bank of Hyderabad, Parbhani Main.

Dear Sir,

Reg : Salary Revision Stagnation increment/P. Q. A. Please refer to Head Office Cir. No. PER/90-91/5 dated the 20th April, 1990 and your application dated for sanction of stagnation increments/P. Q. A.

2. Consequent upon revision in scales, your pay will be revised as Under :

-----	with effect from	Old Scale	New
Scale -----	1-11-1987	Rs. 2,675	Rs. 4,020
1-8-1988	Rs. 2,675 + 100	Rs. 4,140	1-8-1989
Rs. 2,675 + 100	Rs. 4,260	1-11-1989	Rs. 2,375 + 100
Rs. 3,900	1-8-1990	Rs. 4,020	-----

3. Your next increment will be due on 1-8-1991.

Penalty of deduction of 3 stages in the time scale vide D. P. C. letter No. 924 dated 28-10-1989.

Yours Faithfully, Sd/- Regional Manager."

Shri Deshmukh, learned advocate has contended that the Bank should have disclosed the result of the promotional Committee, immediately after termination of the disciplinary proceedings as the Bank has followed the sealed cover procedure for the years 1986, 1987, 1988 and 1989. Therefore, he submitted that in spite of this procedure which was followed, still for the year 1990 he was not called for interview which according to the learned counsel amounts to double punishment. Shri Deshmukh, therefore, submitted that officers at the helm of affairs and the incharge officers acted in such a fashion to see that the petitioner is deprived of his rightful claim of promotion. Shri Deshmukh, learned advocate submitted that the result of the promotion Committee was not intimated to the petitioner, therefore, the petitioner was deprived of filing appeal

as per the Circular dated 3rd September, 1986. Shri Deshmukh, pointed out that in fact, the petitioner has submitted the appeal but till this date, the petitioner was not intimated the fate of his appeal. Shri Deshmukh, therefore, submitted that a method is adopted by the officers of the Bank to cause prejudice to the petitioner. Therefore, he submitted that the respondent be directed to open the sealed cover and declare result of the promotion and if he found eligible the petitioner be given deemed date of promotion.

9. Per contra, Shri Deshpande, learned advocate for the respondent Bank justified the action of the Bank. He submitted that the punishment which was imposed was not implemented retrospectively but punishment was imposed in terms of the order passed by the disciplinary authority. Shri Deshpande, submitted that on 1-8-1986 the basic pay as per the old scale of the petitioner was Rs. 2,575/- and as per revision with effect from 1-11-1987 it was Rs. 3,900/-. The same pay-scale continued upto 1-8-1987 and 1-11-1987 and as per the new scale as per Pay Fixation Rs. 4,020/-. On 1-8-1988 it was Rs. 4,140/-. On 1-8-1989 the pay of the petitioner was Rs. 4,260/-. As per the punishment which was inflicted on 29-8-1989 the pay-scale was fixed at Rs. 3,900/- by reduction of pay by 3 stages. Thereafter, from 1-8-1990 the petitioner was brought back to his original revised scale of Rs. 4,020/-. On 1-8-1991 the pay was Rs. 4,190/- and on 1-8-1992 it was Rs. 4,260/- which was his basic pay. Shri Deshpande, learned advocate pointed out that the petitioner was intimated by the bank vide letter dated 31-12-1991, thereby pointing out that he will be debarred from promotion until his salary is restored to the stage at which he was in time scale at the time of awarding penalty. It is stated that the petitioner's basic pay was restored on 1-8-1992 and on restoration of the pay-scale, the petitioner was assured that he will be called for promotion to MMGS-II for the year 1982. Shri Deshpande, submitted that after this period was over, the petitioner was considered for promotion and accordingly, as a matter of fact, the petitioner was promoted vide Order dated 20-11-1992 with effect from 1-12-1992. Therefore, he contended that on the face of the record which is produced the contentions of mala fides, arbitrariness as contended by the petitioner cannot be accepted. Therefore, Shri Deshpande, further pointed out that on 16-12-1988 circular No. 44/88 was issued for promotion from Junior Management Grade Scale I to Middle Management Grade II. The vacancies for the year 1986 were 60 in seniority channel and 60 in merit channel. The interviews were held and 46 officers were promoted but the petitioner was not promoted. He submitted that the candidates who were selected were intimated by the said circular. As the petitioner did not figure, we will have to be presumed that the petitioner was not selected and petitioner should have filed appeal against that action but petitioner has not done it. Shri Deshpande, also produced before us the list of the candidates who have promoted in seniority channel MMGS II for the year 1986, the petitioner's name figured in that list and the date of promotion was mentioned as 1-12-1992. Having perused the documents produced before us we are satisfied that the contentions of the petitioner are ill-founded. We have also of the opinion that the

procedure of sealed cover in case of petitioner was just and proper and in consonance with the circular. We have perused those circulars produced on record by the petitioner. Document at page 22 deals with the sealed cover vacancy procedure. Shri Deshpande, pointed out that clauses 4 and 7 of the said circular permits the Bank to follow the said procedure. It is accepted that the sealed cover procedure was followed but on conclusion of enquiry it was found that the petitioner was not selected for promotion. This contention of Shri Deshpande, is required to be accepted. One more aspect can be considered by us that the charges leveled against the petitioner in the departmental enquiry were of serious nature. The enquiry Officer has recorded a finding that the Bank has proved that the petitioner has demanded illegal gratification but it could not be established actual receipt of the amount by the petitioner. Shri Deshpande, submitted that the borrowers complained to the Bank about the attitude of the petitioner for non-releasing the loan and not-permitting to withdraw the loan amount. On receipt of the complaint when the preliminary enquiry was conducted, the petitioner immediately released the loan. It will be relevant for us to consider that aspect also. From the appellate order which is produced on record, we have noticed that charges were serious and that charges were proved but the punishment by reduction of three stages in time scale from Rs. 2,675 to Rs. 2,375/- was passed. In our opinion, therefore, the bank was justified in following the procedure of sealed cover. What we have noticed that the petitioner was considered for promotion by the Promotional Committee but ultimately, the petitioner did not pass oral test conducted at that time.

10. Shri Deshpande, learned advocate relied on three judgments of the Apex Court first judgment which is relied on by Shri Deshpande is in respect of Chairman, State Bank of India and Ors. v. Golak Bihari Dehury reported in, (1996) 7 SCC 63 . Shri Deshpande, contended that non-considering for promotion during the currency of penalty of reduction of basic pay is not violative of Article 16 of the Constitution of India. He submitted that it is not disputed by the petitioner that departmental enquiry was conducted and penalty was imposed and during sufferance period of three years the petitioner was not considered for promotion. For this contention he placed reliance on Golak Dehury's case (supra). The facts in that case were also in respect of a bank employee and we now refer to the facts :

Shri Golak was employed in Junior Management Grade Scale I with the State Bank of India. Disciplinary proceedings were initiated against him and as a result of disciplinary proceedings, the disciplinary authority on 12-5-1987 imposed penalty of reduction of basic pay by three stages. The appellate authority by the Order dated 23-7-1989 modified the order of punishment by imposing reduction of basic pay by one stage only but reviewing authority by the Order dated 29-3-1990 set aside the Order passed by the appellate authority and restored the punishment that was imposed by the disciplinary authority. The punishment so awarded was operative till 12-5-1990. In the meanwhile, promotions were made to Middle Management Grade Scale II with effect from 1-8-1986. Shri

Dehury was not considered for promotion in view of the debarment policy which was followed by the Bank. Then a writ petition was filed in the High Court challenging the punishment inflicted by the disciplinary authority. Shri Dehury succeeded in the High Court and the High Court has held that non-consideration of the respondent for promotion to MMGS-II during the period of punishment was operative and in violation of the right guaranteed under Article 16 of the Constitution of India. Accordingly, the order of the High Court impugned the order of punishment passed against the respondent in disciplinary proceedings did not in any disentitle him from being considered for promotion to MMGS-II with effect from 1-8-1986 if he was otherwise eligible for being considered. The Bank approached the Apex Court. Before the Apex Court only question which was considered was whether in pursuance of debarred policy laid down by the Bank, the respondent has been rightly excluded for consideration on account of penalty of reduction of pay being operative when such promotion came up for consideration. While considering this question the Apex Court held thus:

This question has been considered by this Court in *Union of India v. K. Krishnan*. In- that case the punishment of withholding of increment in salary for a period of one year and six months had been imposed on the employee and as a result of the said penalty the employee, who was successful at the test for promotion prior to the imposition of penalty, was not promoted in view of Rule 157 of the Post and Telegraph Manual - Vol. III which provided that even where the competent authority considers the candidate fit for promotion in spite of punishment in a departmental proceeding the promotion shall not be given effect to during the currency of the penalty; This Court, after referring to the said Rule, has observed : (SCC p. 52, para 4)

We have considered the matter closely and in our opinion the view taken by the Tribunal both in the impugned judgment and in the earlier decisions holding that as a result of the provisions of Rule 157 forbidding the promotion of a State employee during the currency of the penalty results in a second punishment, is not correct. There is only one punishment visiting the respondent as a result of the conclusion reached in the disciplinary proceeding leading to the withholding of increment, and the denial of promotion during the currency of the penalty is merely a consequential result thereof. The view that a government servant for the reason that he is suffering a penalty or a disciplinary proceeding cannot at the same time be promoted to a higher cadre is a logical one and no exception can be taken to Rule 157. It is not correct to assume that Rule 157 by including the aforementioned provision is subjecting the government servant concerned to double jeopardy. We do not find any merit in the argument that

there is no justification or rationale behind this policy; nor do we see any reason to condemn it as unjustified, arbitrary and violative of Articles 14 and 16 of the Constitution of India. On the other hand, to punish a servant and at the same time to promote him during the currency of punishment may justifiably be termed as self-contradictory."

8. Similarly, in *Union of India v. K. V. Jankiraman*, this Court has laid down (SCC p. 123, para 29)

An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct.

9. Having regard to the law laid down in the aforesaid decisions, we are of the view that the action of the appellant-bank in not considering the respondent for promotion to MMGS-II during the currency of the penalty of reduction in basic pay that was imposed on him cannot be held to be violative of his right guaranteed under Article 16 of the Constitution of India and the High Court was not justified in interfering with the said decision of the appellant-Bank on that ground. The directions given by the High Court for considering the case of the respondent for promotion to MMGS-II with effect from 1-8-1986 cannot be sustained and are, therefore, set aside. The appeal is allowed accordingly. No costs."

The second judgment which is relied on by Shri Deshpande, is in case of *Union of India Vs. K.V. Jankiraman, etc. etc.*, . The judgment of Jankiraman has been considered by the Apex Court in *Golak Bihari Dehury (supra)*. Therefore, it is not necessary for us to give detail reference to the said judgment. The last judgment which is relied on by Shri Deshpande, is in case of *The Oriental Insurance Co. Ltd. and Another Vs. Gokulprasad Maniklal Agarwal and Another*, The Apex Court in case of Gokulprasad as considering the provisions of General Insurance (Conduct, Discipline and Appeal) Rules, 1975. Few facts to be noted which emerged in the judgment of the Apex Court:

3. The respondent Gokulprasad Maniklal Agrawal was working as an Assistant Administrative Officer with the appellant Insurance Company. He challenged the initiation of disciplinary proceedings against him by the appellant by filing Writ Petition No. 2128 of 1984 in the High Court of Bombay. While the departmental proceedings were pending a promotion list for the Western Zone for promotion to the post of Administrative Officer was published by the appellant on 8-2-1988. The

respondent's name appeared at serial No. 1. Instead of promoting him, by letter dated 22-2-1988, the respondent was informed by the appellant that as the disciplinary proceedings were pending against him his promotion to the rank of Administrative Officer has been kept in abeyance till the result of the enquiry.

4. The disciplinary proceedings ended with an Order dated 19-11-1993 whereby the respondent was awarded penalty of reduction in basic pay by one stage in the timescale of pay on permanent basis. The respondent feeling aggrieved by the letter dated 22-2-1988 and the order of punishment dated 19-11-1993, amended the writ petition and challenged the said letter and order also. The High Court considered the punishment imposed upon the respondent as a minor penalty and held that imposition of such a minor penalty could not come in the way of promotion. Taking this view the High Court allowed the writ petition and quashed the letter/decision dated 22-2-1988."

The Apex Court after considering the provisions of the said Rules has observed thus :

8. As departmental proceedings for a major penalty were started against the respondent, the appellant was justified in not promoting him till the enquiry was over. The learned counsel for the appellant pointed out to us that soon after the order of punishment was passed, the case of the respondent was again considered by the Promotion Committee. He was considered for the succeeding years also but was not found fit for promotion on merits. The Promotion Committee for the year 1999-2000 having found him fit he has now been promoted to the higher post.

9. In our opinion the High Court was not right in setting aside the decision of the appellant as contained in the letter dated 22-2-1988 and allowing the petition filed by the respondent. We accordingly allow these appeals, set aside the judgments of the High Court in Writ Petition No. 2128 of 1984 and Miscellaneous Civil Application No. 429 of 1998 and dismiss the writ petition filed by the respondents."

Applying the law declared by the Apex Court, considering the circular referred to above and the facts that are brought on record, we are of the view that this is not a case of double penalty as contended by the petitioner's counsel. We are not in agreement of the learned counsel that the penalty was imposed retrospectively. Considering the circulars issued by the Bank to which we have referred to above, in our opinion, no case is made out to grant relief to the petitioner as prayed in the petition. It is brought on record that the petitioner on completion of sufferance period was promoted from 1-12-1992. In view of the above discussion, we see no substance in the petition. Petition dismissed. Rule discharged. No Order as to costs.