
(1965) 11 CAL CK 0002
In the Calcutta High Court

Eastern Bank, Ltd.

APPELLANT

Vs

Central Government Industrial Tribunal

RESPONDENT

Date of Decision : 24-11-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1966) 1 LLJ 647

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—The petitioner carries on the business of banking inter alia at No. 14, Netaji Subhas Road, Calcutta.

2. Industrial disputes between the petitioner and its employees used to be governed by the terms of an all-India award known as " Sastri award " as modified by the Industrial Disputes (Banking Companies) Decision Act (41 of 1955). The Sastri award was replaced by a subsequent all-India award known as the " Desai award," with effect from 30 June 1962.

3. On or about 27 May 1960, the petitioner promoted three clerks in its service, namely, Bibnuti Bhusan Barman, Troilokhya Nath Guha Roy and Heramba Kumar Moitra, to the position of audit clerks. The workmen of the petitioner disputed the legality of the promotions on the theory that the promotions were opposed to the provision of the Sastri award. On that dispute being raised, there was a conciliation proceeding held between 24 and 31 May 1960 and the dispute was settled on 31 May 1960 on the following terms:

It is agreed that:

(1) The management will revise their present order of promotions in accordance with the criteria, if any, laid down by the national tribunal instituted by the Government of India, Ministry of Labour and Employment, under S.O. No. 704, dated 21 March 1960.

(2) The union agrees not to pursue the matter pending publication of the award of the said national tribunal.

After the publication of Desai award, on 30 June 1962, the petitioner did not find any modification made to the criteria regarding promotion, as in the Sastri award, and therefore did not revise the promotions already made.

4. This gave rise to a second Industrial dispute, which conciliation proceeding between 12 December 1962 and 8 March 1963 could not resolve pending conciliation, the petitioner promoted one S. P. Bose as junior officer, on 8 January 1963, and, on the very next day, confirmed the promotions of the three previously named officers and granted them the designation of staff assistants.

5. The conciliation having had failed, the respondent, Union of India, made two references to the respondent-tribunal, respectively, dated 4 May and 27 June 1963 for determination of the following issues:

(A) issue referred by order of reference,

dated 4 May 1963b2 6. Whether having regard to the provisions of Para. 529 of the award of the All India Industrial Tribunal (Bank Disputes) as modified by the decision of the Labour Appellate Tribunal in the manner referred to in Section 3 of the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955), the promotion of B. Burman, T.N. Guha Roy and H.K. Moitra as audit clerks subsequently re-designated as staff assistants-grade II- and the promotion of S. P. Bose as junior officer superseding the claims of the persons mentioned below was justified and, if not, to what relief are the superseded persons entitled ?-

(1) Manasesh Kumar Chakravorty.

(2) Sanat Kumar Mukherjee.

(3) Kanai Lal Saha.

(4) Gopi Ballav Bhadury.

(5) Santosh Kumar Banerjee.

(6) Mohan Lal Bhattacharjee.

(7) Prasanta Kumar Ghose.

(8) Lalit Kishore Dave No. 1.

(9) Benoy Bhusan Bhowmic.

(10) Jyotirmoy Deb.

(11) Sasanka Sekhar Chatterjee.

(12) Bhabesh Chandra Sett.

(13) Bharat Chandra Bose.

(14) Suhas Mittra.

(15) Bisseswar Dutta.

(16) Manoranjan Bose.

(17; Ajit Kumar Chatterjee.

(B) issue referred by the order of reference,

dated 27 June 1963

7. Whether having regard to the provisions of Para. 529 of the award of the All India Industrial Tribunal (Bank Disputes) as modified by the decision of the Labour Appellate Tribunal in the manner referred to in Section 3 of the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955), the promotion of B. Burman, T. N. Guha Roy and H. K. Moitra as audit clerks subsequently re-designated as staff assistants-grade II-and the promotion of S. P. Bose as junior officer superseding the claims of the persona mentioned below was justified and if not, to what relief are the superseded persons entitled;

(1) Sushi Krishna Ghosh.

(2) Gouridas Mullick.

(3) Nanaklal Bose.

(4) Syam Lal Mullick.

(5) Saradindu Chatterji.

(6) Ajit Kumar Ghose.

(7) Sailendra N. Bhaduri.

(8) Anil Kumar Sen.

(9) Biswanath Sen.

8. By its written statement filed before the tribunal, the petitioner took up the stand that the persons promoted were best fitted for promotion and their promotion did not offend against the terms of the Sastri award. This stand was, however, disputed by the union of the petitioner's workmen in the written statement filed by them.

9. The tribunal, by its award, found:

(a) that the promotion of Bibhuti Bhusan Barman was justified;

(b) that the promotion of T. N. Guha Roy prejudiced only Gopiballav Bhaduri and M.L. Bhattacharya and not the others;

(c) that the promotion of S. P. Bose was not justified.

10. In the view taken, the tribunal made the following order:

In view of the fact that there were four vacancies of promotions including the posts to which B. B. Barman and T. N. Guha Roy have been appointed, it is directed that Gobiballav Bhaduri and M. L. Bhattacharya should be promoted in place of S. K. Maitra and S. P. Bose who should be reverted.

11. Aggrieved by the award, the petitioner moved the Court, under Article 226 of the Constitution, praying for the quashing of the award and for a mandate restraining the respondents from making the award effective and obtained this rule.

12. Now, Chap. XXVII of the Sastri award deals with rules regarding promotion, The relevant rules are contained in Paras. 528 to 531, which I set out hereunder:

528. On behalf of the employees it has been urged

(a) posts like those of jamadars and havildars should be filled by promoting other members of subordinate staff and not by direct recruitment,

(b) promotions from lower grade should be on the basis of seniority, education and special knowledge of banking,

(c) those persons of subordinate establishment who have studied up to pre-Matric class should be eligible for appointment in the lower clerical grade,

(d) appointments of supervisors, accountants and other officers should be made from among the clerks on the basis of seniority.

Some of the employees' unions such as the Central Bank Employees' Association, Bombay, Alleppey, Gonda and Madurai, want that length of service should be the sole criterion for the purpose of promotions and demand promotion to officers' cadre from clerical grades only. The imperial Bank of India, Bombay Circle Employees' Union put seniority before efficiency, education and special knowledge of banking for the purpose of promotion. Some unions have suggested that promotions should be made in consultation with them. While the banks are generally prepared to agree to seniority in service, educational qualifications and special knowledge of banking all of them being regarded as main consideration for promotion, they attach great importance to efficiency and character in this connexion, and press that it should be left to the management to give proper weights to the various factors.

529. We do not think that any hard-and fast rules can be laid down in connexion with promotions. It cannot be supported on principle. We do not think that such a consultation is likely to be helpful either. While there is no doubt that seniority in service should be one of the most important factors to be taken into account for the purpose, we are unable to agree that mere length of service alone irrespective of efficiency, educational qualifications, character and nature of responsibility required in connexion with the vacancies to be filled in should be the sole or even the main criterion for promotion. Promotion is certainly not a matter which could be made automatic and a great deal of discretion by its very

nature must rest with the management in this connexion. It is not only difficult but very undesirable to lay down any one single principle for the exercise of this discretion. In our opinion, there must be cases of employees in the banking industry as elsewhere in which efficiency of some employees does not necessarily improve with mere length of service. Nor do all employees in all cases show capacity for work involving higher responsibilities. The apprehension of the employees underlying the demand for length of service to be the sole governing factor for promotion may be due to apprehensions of nepotism and victimization of employees who take active interest in the trade union movement. No substantial proof in support of this apprehension has been laid before us, and such cases, if any, can only be dealt with in other ways or as provided by law. We, however, direct that even when direct recruitment to particular posts is decided on, deserving men already in service who come up to the required educational qualifications should also be enabled to compete for such recruitment by a reasonable relaxation of the rules relating to age and other restrictions, if any. We further direct that in the case of employees who are not found fit for promotion the decision should be borne out by service records of the employees, and that when a person senior in service is superseded it should be for good and cogent reasons. We recommend that such an employee should have the right to appeal to the General Manager or the managing director who should consider the appeal with an open mind and revise the decision if necessary, and that such appeal should not be treated as an act of indiscipline on the part of the employee by the officers under whom he may be working.

530. The workmen's demand that persons who have studied up to the pre-Matric class should be eligible for promotion to appointments in the lower clerical grade is based upon the assumption that this tribunal following the Sen award will insist upon the passing of Matriculation or an examination equivalent to it as the minimum qualification. As we have not given any such direction it is not necessary to deal with this demand. It will, however, suffice to recommend that such members of the subordinate staff as are sufficiently literate and intelligent should be considered for promotion to the clerical grade.

531. As regards the demand for promotion to the supervisory and officers' grade it has been urged on behalf of the banks that it is beyond the scope of the jurisdiction of this tribunal. We do not consider it necessary to deal with the legal aspect of this question as we find that in actual practice a large number of the present officers of the bank except perhaps in the case of the exchange banks are persons who had been promoted from the clerical grade. In this connexion our attention was invited to the fact that no less than 1,004 out of 1,165 officers working in the Central Bank of India, Ltd., are persons who started their career as clerks.

In the case of the Bank of India, Ltd., the number of such officers was stated to be 149 out of 334. We were told that probationary assistants were recruited for promotion to the officers' grade and they were given intensive training in the

different departments of the bank for a period of about three years. While it is true that the percentage of officers in the exchange banka who have been promoted from the clerical cadre and who are entrusted with the work of real responsibility is comparatively small, we understand that steps are being taken to accelerate promotions from clerical grade to supervisory and officers' grades. We hope that the exchange banka also will in their own interests as well as those of their employees provide wider opportunities for promotion of the senior clerks to responsible posts.

13. Interpreting the scope and effect of Paras. 529 to 531, Sinha, J., observed as follows In Matter No. 192 of 1962 Chartered Bank v. Central Government Industrial Tribunal unreported :-

Paragraph 529 merely lays down these contentions but without providing a solution. The solutions are to be found in the subsequent paragraphs. Paragraphs 529 to 531 may be summarized as laying down the following rules regarding promotion:

- (1) Employees' union need not be consulted in connexion with promotions;
- (2) Seniority in service should be one of the most important factors to be taken into account for the purpose of promotion, but it is not the only factor to be taken into consideration. The other factors to be taken into consideration are: efficiency, educational qualifications, character and the nature of responsibility required in connexion with the vacancies to be filled in.
- (3) There is to be no such thing as an automatic promotion.
- (4) A great deal of discretion shall rest with the management in the matter of promotion. No single principle can be laid down for the exercise of this discretion.
- (5) Particular posts may be filled in by promotion or by direct recruitment where found necessary. But where direct recruitment is decided upon, deserving men already in service who come up to the required educational qualifications should also be enabled to compete such recruitment and for that purpose rules regarding age and other restrictions, if any, may be relaxed. In each competition, in the case of employees who are not found fit for promotion the decision should be based on their service records.
- (6) When a person senior in service is superseded, it should be for good and cogent reasons. In such a case, the employee superseded shall have the right to appeal to the general manager or the managing director and such appeal shall not be treated as an act of indiscipline on the part of the employee concerned.
- (7) Members of the subordinate staff as are sufficiently literate and intelligent should be considered for promotion to the clerical grade and no pre-condition of having passed the Matriculation examination or studied up to the pre-Matriculation class is necessary to be imposed.

It must be pointed out here that Para. 531 really does not lay down any rule. It

merely relates the demand for promotion to the supervisory and officer's grade.

* * * I must admit that the paragraphs in the Sastri award have not been really framed with a view to making each paragraph a concrete rule which could be enforced in a Court of law. Some of the paragraph merely set out the demands of the parties or reasons why such demands cannot be accepted. Some of the paragraphs merely express a pious hope, which of course, cannot be said to be rules enforceable by writ. It is however, not correct to say that the question of promotion from the clerical posts to the supervisory and officers' grade is only dealt with in Para. 531. Paragraph 529 lays down the general principles to be observed. This view is supported by a decision of the Supreme Court--Punjab National Bank v. their workmen 1961-I L.L.J. 10 at 13. Gajendragadkar, J. (as he then was), said as follows:

Paragraph 529 of the award dealt with the problem of promotions. The award stated that it was not possible to lay down any hard-and-fast rule in connexion with promotions. It rejected the suggestion of the employees' unions that they should be consulted in connexion with promotions, because it was satisfied that such suggestions were not supportable on principle. It was agreed that promotion could not be treated as a matter which could be made automatic and a great deal of discretion by its very nature must rest with the management in that connexion. Even, so, in the said paragraph the award made certain general recommendations which may be borne in mind by the management in dealing with cases of promotion.

* * * It was next urged that the provisions of Para. 529 of the Sastri award were merely recommendatory and not mandatory and could not be enforced. With the latter point the tribunal rightly disagreed.

The next fundamental mistake in the approach made by the tribunal in the Solution of the disputes referred to him, is the mistaken notion that it was primarily the duty of the tribunal itself to consider and decide the question as to whether in a given case, one employee was better suited for promotion than another. Evaluating the respective merits of the contestants, the tribunal constantly uses the expression " we find." This is not in accordance with the law on the subject. For that, it is necessary to refer back to the principles embodied in the contents of Paras. 528 to 531 of the Sastri award. In Para. 529 the contents of which have been analyzed above, it has been expressly laid down that promotion was not a matter which could be made automatic and a great deal of discretion, in its very nature, must rest with the management in this connexion and that it was not only difficult but very undesirable to lay down any single principle for the exercise of this discretion. The tribunal has entirely overlooked the proposition that the use of the discretion rested not with him, but with the employer. If the employer who is carrying on a business uses his discretion bona fide and in accordance with the principles laid down in the rules, it is not for the tribunal itself to evaluate the respective qualifications of the workmen concerned, and come to the conclusion as to whether a particular

workman was best suited for a specified job. In fact the way that the tribunal considers the evidence, and forms his own conclusions shows that he is entirely indifferent to the rights of the employer granted by the Sastri award.

14. I entirely agree with the observations made by his lordships and read Paras. 528 to 531 of the Sastri award in the same manner as his lordship has done.

* * * 15. Sri Ginwalla, learned advocate for the petitioner, took the cue from the judgment of Sinha, J., and argued a threefold proposition in condonation of the award. He argued that promotion was a managerial function, even within the limits of Paras. 528 to 531 of Sastri award, and the tribunal had no jurisdiction unduly to interfere with such managerial discretion of the petitioner. He argued in the next place, that the tribunal erred in evaluating the merits of the clerks and in directing promotion of two persons in place of two others promoted by the management. He argued lastly that the tribunal erred in proceeding on the theory that in the matter of promotion the seniormost with necessary qualification must be preferred to a junior with better qualification.

16. Since it did not amply appear from the petition on what ground the petitioner promoted H. K. Moitra and S. P. Bose in preference to Gopiballav Bhaduri (serial No. 4 in the reference before the tribunal) and M. L. Bhattacharjee (serial No. 6 in the order of reference before the tribunal), I called for a further affidavit from the petitioner. That affidavit was filed on 14 January 1965. In Para. 7 of the affidavit it is stated:

H. K. Moitra has superseded serial numbers 1 and 2, Nos, 4 to 16 and No. 18. He is a Bachelor of Commerce and has passed Part I of the Associate Indian Institute of Bankers" Examination. His educational qualifications are therefore considerably higher than those of the persons he has superseded. It is entirely incorrect to state as respondent 1 has stated in its award that the petitioner does not appear to feel that educational qualification is a factor because of which a junior man would supersede a senior man. The petitioner regards educational qualifications as a very important factor in making selections for promotion and they weigh heavily in favour of the candidate for promotion. This is particularly true in the case of those who have passed either part of the Associate Indian Institute of Bankers" Examination, as this is an examination specially designed for the purpose of testing the ability of the candidate as a banker. Only persons actually serving in banks are entitled to appear for such examination and the fact that the particular employee has taken the trouble to equip himself sufficiently for his work, to sit for and pass such an examination is regarded as a factor in his character to be taken into consideration in assessing his worth when promotion is being considered. In addition to the foregoing reasons H. K. Moitra superseded serial Nos. 1 and 2 and 4 to 16 for the same reasons as those for which they were superseded by T. K. Guha Roy. Serial No. 18 is a reliable and efficient worker but has no special merits and is not of executive calibre or suitable for appointment as an officer. Furthermore, during the course of his career he has at times exhibited laziness and lack of initiative.

In Para. 8 of the said affidavit it is farther stated:

S. P. Bose has superseded serial Nos. 1 and 2, 4 to 16, 18 and 20 to 28. He is a Bachelor of Science and has also passed Part I of the Associate Indian Institute of Bankers' Examination and his record is outstanding. Except serial No. 28 no other clerks have either records or educational qualifications that can compare those of S. P. Bose and their supersession by him is entirely justifiable. So far as serial No. 28 is concerned, he was promoted as an assistant officer by the petitioner in 1959 but such promotion was opposed by the union and the bank subsequently found it necessary as a result of such opposition to withdraw or cancel such promotion. Although therefore the petitioner considers him to be fit for appointment as an officer, it was thought that no useful purpose would be served by again promoting him in the absence of any additional circumstances justifying such promotion. With regard to the others who have been superseded by S. P. Bose, serial No. 20 is of average ability only. Serial No. 21 has a good record but is handicapped by an insufficient knowledge of English for the purpose of working as an assistant officer in the petitioner's organization and it seems likely that the highest post he can attain is that of head clerk in his department. Serial No. 22 does not show sufficient interest in his work. Number 23 is considerably below the standard of intelligence of other clerks. Serial No. 24 is only of average ability. Serial No. 25 is efficient and hard working but is too indecisive to be suitable as an assistant officer. Serial No. 26 is a good worker but his experience is limited in that he has worked mostly on machines during his career. Serial No. 27 is intelligent but devotes insufficient time to his work and certainly cannot compare with S. P. Bose in the qualities required of an assistant officer. Serial No. 29 is only of average ability and not of executive calibre or suitable for appointment as an officer.

17. It thus appears from the affidavit-in-opposition, that in ignoring the seniority of Gopiballav Bhaduri and of M. L. Bhattacharjee the petitioner took into consideration the higher educational qualification coupled with higher efficiency of H. K. Moitra and S. P. Bose. That, in my opinion, was a sound exercise of discretion by the petitioner, within the limitations of Paras. 529 to 531 of Sastri award. If the management is not to be permitted to promote outstandingly meritorious employees in preference to all others, the business itself may suffer. Therefore, the management must be conceded the liberty to utilize the best of the employees in most suitable positions, if the choice be bona fide made. The management must not be compelled to promote the oldest in service if only not specifically disqualified. The tribunal erred in taking the view:

The management has not the right to promote a junior man only on the ground that they considered him to be the fittest for the purpose. This would lead to allegations of nepotism and victimization and the rules laid down by the Sastri award want to avoid nepotism and victimization and at the same time want only fit persons should be promoted and a person who is not fit cannot claim promotion only on the ground of seniority. In my opinion, the approach of the

bank in the present case that they can appoint a person whom they considered to be the fittest is not correct. If such a right were to be accepted, it might, as I said above, lead to nepotism and the like.

18. The tribunal further erred in making its own evaluation of merits and in trying to impose that upon the petitioner in substitution of the evaluation of the merits made by the petitioner.

19. For the reasons stated above I am of the opinion that the award by the tribunal is unworthy of being sustained. I make this rule absolute and quash the award. Let a writ of certiorari issue. There will be no order as to costs.