
(1994) 09 AHC CK 0076
In the Allahabad High Court
Case No : S.A. No. 283 of 1992

General Manager, Punjab National Bank and Others APPELLANT
Vs
Khar Bhan Ram RESPONDENT

Date of Decision : 26-09-1994

Acts Referred:

Punjab National Bank Officers Service Regulations, 1979 — Rule 16

Citation : (1995) 70 FLR 281 : (1995) 2 LLJ 93

Hon'ble Judges : S.S. Sodhi, C.J.;G.P. Mathur, J

Bench : Division Bench

Advocate : K.L. Grover, for the Appellant; G.D. Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sodhi, C.J.—The controversy here is with regard to confirmation in service on the expiry of the period of probation. It arises in the context of the termination of the service of a Management Trainee, in the Punjab National Bank, on his failure to fulfill the condition, in his letter of appointment, of passing the bank's confirmation test. The Management Trainee, on his part, asserts his right to confirmation merely upon the expiry of his period of probation regardless of the confirmation test not having been passed by him.

2. To give the relevant factual background, Khar Bhan Ram, the respondent here, was selected for appointment as Management Trainee on terms and conditions as incorporated in the letter of July 28, 1986 (Annexure-1 to the writ petition). One of the conditions there being:-

"You will be on training/probation for a period of 2 years from the date of your joining the Bank and you will be considered for confirmation in the service subject to your satisfactory report on your training, passing Bank's confirmation test and receipt of satisfactory report from the Police authorities about your character and antecedents. You may also be required to pass a test in a language other than your mother tongue before confirmation."

3. It was in pursuance of the said letter of July 28, 1986 that the respondent joined the Bank as Management Trainee on August 26, 1986.

4. There was a confirmation test held on May 29, 1988. The respondent did not qualify in this test and his period of probation was consequently extended to August 25, 1989 and he was given one more chance to qualify in the confirmation, test to be held on October 1, 1989. This was conveyed to him by the letter of August 22, 1989 (Annexure-2 to the writ petition).

5. The respondent again did not qualify in the confirmation test, which was held on October 1, 1989. The competent authority, however, decided to give him one last and final opportunity to qualify this test to be held some time in 1990. The period of probation was on this account extended to December 31, 1990. This was duly conveyed to the respondent by the letter of February 13, 1990 (Annexure-3 to the writ petition). Later respondent was, by the letter of July 21, 1990 (Annexure-4 to the writ petition), informed that the confirmation test would be held on August 19, 1990 but he again did not qualify and it is this that led to the appointment of the respondent being terminated by the letter of November 8, 1990 (Annexure-5 to the writ petition).

6. It will be seen that as per the terms of his appointment, the confirmation in service, of the respondent, was dependent upon the successful completion of his probation and passing of the Bank's confirmation test. Three opportunities were afforded to the respondent to pass this test but he was unable to do so. It was, when faced with this situation, that the contention was raised that mere expiry of the period of probation rendered it incumbent upon the Punjab National Bank to confirm the respondent in service and further that the period of probation could not have been extended by more than one year after the initial period of probation of two years. This contention prevailed with the learned Single Judge. We cannot but, with respect, observe that the learned Single Judge, fell gravely in error in holding so. The two judicial precedents, which had been relied upon in this behalf, are clearly distinguishable from the instant case. What was held in *The State of Punjab v. Dharam Singh* 1968 (17) FLR 9 (SC) , was that where the service rules fixed a period of probation, beyond which it could not be extended and an employee is permitted to continue beyond such period without being confirmed in service, he cannot be deemed to continue as on probation thereafter. It is, in such a situation, permissible to draw the inference that he has been confirmed. This was the rule, which was followed in *Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others*, , too.

7. It may be mentioned here that both *Dharam Sigh* and *Om Prakash*'s cases (supra) were later distinguished by the Supreme Court in *Municipal Corporation, Raipur Vs. Ashok Kumar Misra*, , where the facts were somewhat similar as here in that the relevant service rules, besides requiring successful completion of probation for confirmation in service, also laid down, as an essential pre-condition, the passing of the departmental test. It was held that mere expiry of the period of probation did not automatically have the effect of deemed

confirmation. Both the earlier judgments of the Supreme Court in Dharam Singh and Om Prakash cases (*supra*) were noticed and distinguished. Seen in this light, there can be no escape from the conclusion that in the circumstances here, mere expiry of the period of probation, without the respondent having qualified in the confirmation test, did not entitle him to confirmation in service.

8. As a measure of last resort, counsel for the respondent sought to contend that passing of the Bank's confirmation test was not a requirement prescribed by the Punjab National Bank (Officers) Service Regulations, 1979 and, therefore, the failure of the respondent to qualify in such test could not justify denying him confirmation in service. This again is a contention wholly devoid of merit. Rule 16 of Chapter IV of the relevant Regulations clearly prescribes satisfactory completion of training as an essential prerequisite for confirmation in service. The Bank's confirmation test would clearly fall within the ambit of this requirement.

9. Such being the situation and the circumstances, the inevitable conclusion is that the respondent Khar Bhan Ram was not entitled to confirmation in service and the termination of his services suffered from no legal infirmity. The judgment of the Learned Single Judge is consequently hereby set aside and this Special Appeal is hereby accepted. In the circumstances, however, there will be no order as to costs.