
(1981) 03 DEL CK 0060

In the Delhi High Court

Case No : Civil Writ Petition No's. 851 and 1120 of 1970

Indian Bank

APPELLANT

Vs

R.K. Bawaja, etc.

RESPONDENT

Date of Decision : 17-03-1981

Acts Referred:

Citation : (1981) ILR Delhi 124

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Advocate : Ambrish Kumar and N.C. Sikri, for the Appellant;

Judgement

S.S. Chadha, J.

(1) This order will dispose of Civil Writs 851/70 and 1120/70 filed by the Indian Bank and Shri Chidambaram respectively under Articles 226 and 227 of the Constitution of India against the award dated February 12, 1970 passed by the Central Government Industrial Tribunal, Delhi answering a reference dated April 23, 1969 made u/s 10(d) of the Industrial Disputes Act, 1947 in respect of the following industrial dispute :

"WHETHER the action of the management of the Indian Bank limited. New Delhi, in giving officiating chances as Special Assistant/Officer to Shri V. G. Kini clerk superseding the claims of Shri N. Chidambaram Clerk-cum-Godown Keeper was justified ? If not, to what relief is the workman entitled ?"

Shri N. Chidambaram (for short Chidambaram) is an employee of the Indian Bank at New Delhi (for short the bank). Chidambaram was appointed as a clerk in the bank on May 13, 1955 and was confirmed on November 13, 1955. One Shri V.G. Kini (for short Kini) another employee of the bank was appointed on January, 8, 1955 as a clerk. There was a dispute whether his appointment ended on July 7, 1955 and he was re-appointed with effect from July 9, 1955. The Tribunal in the impugned order on the appreciation of the evidence came to the conclusion that Kini was appointed on January 8, 1955 and has been in

continuous employment since then and was confirmed on August, 1 1955. This finding is not disputed by the learned counsel for Chidambaram. Kini was entrusted by the bank with certain additional duties in leave and temporary vacancies of special assistants and in accordance with the provisions of the Bank Awards as modified by Bipartite Settlements paid the special allowance of Rs. 75.00 per month besides certain other benefits. Chidambaram felt that he had superior claim than Kini for such additional duties on the basis of Chidambaram's alleged seniority in service as compared to Kini and on the basis of the educational qualifications; Chidambaram being matriculate and Kini being non-matriculate. Chidambaram represented to the bank for being entrusted with the additional duties of the special assistant but was told that there was no legitimate basis in his grievance. Not satisfied with the answer for the bank, Chidambaram took up the case through the Indian Bank Workers Organisation and raised a dispute with the bank. The dispute was ultimately taken to conciliation under the Industrial Disputes Act, 1947 (for short the Act). A failure report was submitted by the Conciliation officer. On the consideration of the failure report and the other material, the appropriate Government made an order of reference dated April 23, 1969 u/s 10(d) of the Act for adjudication of the dispute with the term of reference extracted above.

(2) In the statement of claim on behalf of Chidambaram it was std that the bank started giving to Kini officiating chances as supervisor in leave vacancies or in temporary vacancies with effect from May, 1966 in superseding the claim of Chidambaram. Reliance was placed on the settlement, arrived at between the bank and its workmen dated July, 3, 1967 which contained the agreement for promotion to officers' cadre from the clerical staff on the criteria provided in the said settlement. Para 5 provides that the minimum qualifications for promotion without test for officers' cadre shall be S. S. L. C. completed. It was further pieced that the Shastri award provided Rs. 50 as special allowance for supervisor over and above the clerical grade; that the Desai award allowed special allowance to Rs. 65.00 and the said allowance was further raised as a result of Bipartite Settlement to Rs. 75 and that the nomenclature of supervisor was switched over to special assistants. The plea further was that the duties of the special assistants and those of officers were the same in the Banking Industry and the banks are having their own pay scale and service conditions for the officers. Chidambaram claimed the promotion on the strength of his seniority as well as his qualifications for the period for which the officiating chances to supervisory cadre were allowed to Kini and for future promotions.

(3) In the statement of objections filed by the bank, it was stated that Kini was entrusted, whenever required, temporarily with certain work for which period only he was paid the allowance payable as per the provisions of the awards and that Kini was never appointed as special assistant or asked to officiate as a special assistant. A plea was taken that the reference to the agreement dated July 3, 1967 is wholly irrelevant as the same relates to the promotion of an employees from clerical cadre to officers cadre.

(4) The tribunal in the impugned award upon a proper assessment of the documentary evidence came to the conclusion that Kini was senior to Chidambaram as Kini was appointed on January 1, 1955 and confirmed on August 1, 1955 whereas Chidambaram was appointed on May 13, 1955 and was confirmed on November 13, 1955. An observation was made that there was no super cession of the Chidambaram and so the provisions of the Shastri award as modified by the Dssai award were not violated. The tribunal, however, held that Kini was non-matriculate and, Therefore, the additional duties should have been entrusted to Chidambaram in accordance with the provisions of settlement dated July, 3, 1967. The action of the bank was held as not justified and the deference was answered in favor of Chidambaram. As regard the reliefs, it was directed that in future whenever officiating chance for the special assistant/officer or supervisor arose, Chidambaram should be given Preference to Kini till the later passes the test provided in the agreement. Chidambaram was held entitled to the allowances which he would have earned had he been entrusted with the duties during the period when Kini was entrusted with the duties. The bank filed devil writ No. 851/70 impugning the award. Chidambaram filed civil writ No. 1120/70 impugning the finding in the award which held Kini as senior to Chidambaram and for quashing the finding that there was no super cession of the senior man.

(5) After Rule nisi was issued in both the writ petitions, the operations of the award was stayed at the instance of the bank conditional on the bank depositing in the Court the allowances to which Chidambaram was held entitled by the Tribunal. The amount so deposited was allowed to be withdrawn by Chidambaram on furnishing security to the satisfaction of the Registrar of this Court. About Rs. 3000 was deposited and had been withdrawn by Chidambaram under the orders of this Court.

(6) The main submission of Shri Ambrish Kumar, the learned counsel for the bank, is that Chidambaram proceeds on the assumption of certain facts which are not inexistence. Chidambaram challenges the action of the bank in entrusting certain additional duties to Kini as a. special assistant by ignoring the preferential claim of Chidambaram who alleges himself to be senior and further the entrustment of the additional duties to Kini in the vacancies in the post of special assistant is alleged to be in violation of para 529 of the Shastri Award and the Desai Award and the settlement-dated July .3, 1967. Reliance was placed by Chidambaram before the Tribunal on the settlement dated July, 3, 1967 arrived at between the bank and its employees. In respect of direct recruitment of officers and promotion of clerical staff to the officers cadre. The counsel urges that the Tribunal has misconstrued the settlement. The memorandum of settlement dated July 3, 1967, lays down the conditions for promotion of clerical staff to officers cadre. 75 per cent of the vacancies in the officers' cadre are to be filled by promotion. No person is eligible for promotion to the officers cadre if he is aged over 52 years on the date of that settlement. A clerk who has been awarded any punishment for mis-conduct and/or against whom disciplinary

proceedings are pending is not eligible for promotion. The promotion is on All India basis on the basis of seniority determined in the manner provided therein. The minimum qualification for promotion without test to the officers' cadre is S. S. L. C. completed. The counsel for the bank does not dispute the settlement or the conditions for promotions to the officers cadre. He says what was submitted before the Tribunal was that Kini was never appointed as a supervisor or an officer but was entrusted with the additional duties of special assistant, whenever there was a leave vacancy or a temporary vacancy. It is urged that the Tribunal in the impugned award has not at all adverted to the provisions of the bipartite agreement dated October 19, 1966 and has returned a finding which is wholly perverse. The counsel states at the Bar that he is not asking this Court to call upon Chidambaram to refund the allowances which he has already withdrawn under the orders of the Court but would like this Court to decide the question of law raised in the terms of preference which was required to be answered by the Tribunal.

(7) On the other hand the submission of Shri N.C. Sikri, the learned counsel for Chidambaram, is that the bank gave temporary promotion to Kini in the post of special assistant, which post is a superior post to that held by a clerk. As Kini could not be promoted to an officers cadre because he was non-matriculate, it would be wholly inequitable to allow Kini to officiate against the post of special assistant or even to be entrusted with the additional duties of special assistant. He contends that if a person cannot be promoted to the officers cadre, then it would not be right, just and fair to allow him the additional duties of special assistant in preference to the claim of Chidambaram who was duly qualified for promotion. The counsel further submits that the case which is now being made by the counsel for the petitioner, was never crystalised in these words either in the Conciliation Proceedings or before the Tribunal. This is clear from the terms of the reference -which had mentioned the dispute of officiating chances as special assistant/officer. In support of civil writ No. 1120/70, Shri Sikri contends that the award is in excess of the Jurisdiction as the question of seniority was not an industrial dispute which arose in those proceedings or even never incidentally arose for answer of the reference. According to the counsel the seniority for promotion is not only dependent on the length of service but is also to be determined on the criteria laid down in para 4 of the memorandum of settlement dated July, 3, 1967. In other words, it is to be calculated on the basis of length of service and educational qualifications as provided therein. The counsel submits that that part of the Award in any base is entitled to be quashed.

(8) The appropriate Government has made the order of reference u/s 10(d) of the Act. u/s 10(4) of the Act, the Tribunal is enjoined to confine its adjudication to the points of dispute referred to and to matters incidental thereto. The perimeter of the scope of the adjudication is circumscribed. The order of reference crystallised the dispute between the bank and Chidambaram in giving officiating chances to Kini. It however mentions the officiating chances as special assistant/officer superseding the claim of Chidambaram. The language applied in

the order of reference is slightly ambiguous: The inaccuracy of the language applied in the order of reference should, however, make no difference to the jurisdiction of the Tribunal to proceed with the reference and adjudicate upon it by interpreting and finding out the real dispute referred to it. When the order of reference is slightly vague, it is open to the Tribunal to look into the statement of claim and counterclaim and other circumstances to cull out there from and determine the real nature of the dispute. The Tribunal has not tried to find out the nature of the real dispute between the parties and proceeded to give his award on a mis-construction of the term of reference. The circumstances of the case could be seen from the statement of claim and the written statement filed before the Tribunal to find out as to how the industrial dispute had arisen. Chidambaram had claimed that the bank started giving to Kini officiating chances as supervisor in leave vacancy or in temporary vacancies with effect from May, 1966 in superseding the claim of Chidambaram. This is so stated in the statement of claim dated May 13, 1969 filed by Chidambaram before the Tribunal. In the subsequent paragraphs it is stated that the duties of the special assistant and those of officers are the same in banking industry and a special allowance of Rs. 75 was payable as a result of Bipartite settlement but the nomenclature of supervisor was switched over to special assistants. The relief claimed was for a direction that .all officiating chances to supervisory cadre be allowed to Chidambaram. The bank, however, did not admit it as a promotion, to the post of special assistant but claimed as an entrustment of the additional duties of a higher nature to a clerk by paying a special allowance. The tribunal ought to have considered whether Kini was appointed on a supervisory post or an officer or as a supervisor or was he asked to do additional clerical duties for which he was paid as per the provisions of the Bank award. This was the real dispute between the parties which was incorporated in the term of the reference and had to be answered by the Tribunal. The Tribunal had to answer whether the post of special assistant was a supervisory post or a post in the officers cadre or was it merely a post which could be held by a clerk for performing additional duties as a special assistant. The Tribunal does not answer this question. If it is the case of a promotion to an officers cadre, then there can be no doubt that whether it was temporary promotion, ad hoc promotion, stop-gap arrangement or leave vacancy or officiating promotion, it could only be given to a clerk if the minimum qualifications for promotion without test to the officers cadre were possessed by that official. Kini was a non-matriculate and could not be promoted without test to the officers" cadre. To that extent the finding in the award of the Tribunal is, perfectly correct. The Tribunal, however, does not pronounce upon the nature of the additional duties or the functions entrusted to a clerk of a special assistant. He merely proceeds to say that Kini was appointed as supervisor and, Therefore, the action of the bank is not justified. If the duties of a supervisor or the post of supervisor is taken by Tribunal as equivalent to the officers cadre, then again the Tribunal is right, but the special assistant is not a post in the officers cadre. The duties of special assistant which Kini was sometimes asked to discharge in addition to his own clerical duties are purely

clerical duties as deposed on the record before the Tribunal. They are not the duties of superior post. Para 5.282 of the Desai award had dealt with the special allowance payable to workman. This was modified by Bipartite Settlements dated October, 19, 1966. This settlement has been relied upon by Chidambaram himself in the writ petition before me. Para 5.2 of the Bipartite Settlements provides for the categories of workmen the method of granting special allowance and it mentions the category of workmen including special assistants. The workmen are entitled to a special allowance of Rs. 75 in A class banks. The special allowance prescribed is intended to compensate a workman for performance and discharge of certain additional duties and functions and it is to be distinguished from a case of promotion. Para 5.8 provides that a workman will be entitled to a special allowance if he is required to perform duty/duties and/or undertake the responsibilities listed against the category, irrespective of his designation/nomenclature or any general authority vested in him. The inference that can be drawn is that the workman retains his own post and designation when performing the additional duties of special assistants. Para 5.14 makes it abundantly clear that the duties and responsibilities now agreed to for special assistants shall not be regarded as a supervisory duties and the employees required to perform these duties and discharge these responsibilities shall be regarded as "Workman" for all purposes irrespective of their emoluments, designations or nomenclatures in different banks. It is, Therefore, clear that Kini when asked to perform the additional duties of a special assistant, was not promoted to any supervisory post or to any officers cadre. There is no restriction under the settlements that a non-matriculate cannot be entrusted with the additional duties of a special assistant. The persons possessing higher qualifications can have no better claim merely on the strength of better qualifications. The requirement is only of the essential minimum qualifications and if a person possesses higher qualifications then it may be a circumstance which may be reconsidered in his favor by the bank at the time of entrusting of additional duties. But it is different to say in law that a matriculate must be given preference to a non-matriculate. I, Therefore, find clear error apparent on the face of the Award dated February 12, 1970 when the Tribunal held that the entrustment of the additional duties of special assistant amounts to a promotion to a supervisory or an officers cadre. The whole approach of the Tribunal is contrary to well established principles of law in not going to the real nature of the dispute as indicated earlier and determining the scope of the term of reference.

(9) The question of inter-se-seniority of Chidambaram and Kini was not included in the terms of reference. In adjudicating upon an industrial dispute, the Tribunal can only look at the order of reference itself and then adjudicate the subject matter of the reference. The Tribunal is not free to enlarge the scope of the reference. The settlement dated July 30, 1967 lays down that the seniority for purpose of promotion has to be fixed on the basis of length of service and educational qualifications as laid down in para II(3) therein. Therefore, any observation by the Tribunal cannot be construed as a determination of any

dispute on the inter-se-seniority for the purpose of promotion. To that extent civil writ 1120/70 succeeds. It will be open to the bank to consider the question of inter-se-seniority or the seniority of Chidambaram afresh on the basis of the settlement dated July, 3, 1967 which lays down the weightage to be given to the length of service and to the educational qualifications possessed by individuals.

(10) I also record the statement of Shri Ambrish Kumar, learned counsel for the petitioner, that the bank is not claiming any refund of the amount which has already been withdrawn by Chidambaram in pursuance of the interim orders passed in this case.

(11) For the above reasons, both the writ petitions succeed to the extent indicated above. The award dated February 12, 1970 is set aside. On the facts and circumstances I make no orders as to costs.