(2003) 12 DEL CK 0061

In the Delhi High Court

Case No : Civil Writ Petition: 2184 of 2000

Jagjit Singh Chowdhary APPELLANT

Vs

Punjab and Sind Bank and Another RESPONDENT

Date of Decision : 05-12-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Criminal Procedure Code, 1973 (CrPC) — Section 161, 173

Citation : (2003) 2 ILR Delhi 589

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : G.D. Gupta, with Mr. Sanjeev Joshi, for the Appellant; Jagat Arora with Mr. M.K. Dutta, for the Respondent

Judgement

Pradeep Nandrajog, J.—Petitioner prays for the following reliefs:- i) Set aside the impugned order of reversion dated 24th April, 2000;

ii) declaring the act of the respondents in reverting the petitioner from the post of MMGS-III to the post of MMGS-II without affording any opportunity of being heard to the petitioner as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution apart from being violative of principles of natural justice as, as per the settled law by Hon''ble Supreme Court once the promotion is given, it cannot be cancelled later on without giving any opportunity of being heard to the employees concerned and the petitioner is entitled to continue to work on the post of MMGS-II with all consequential benefits;

iii) directing the respondents to allow the petitioner to continue in the post of MMGS-III with all consequential benefits.

Factual backdrop of the dispute is that in 1971, petitioner was appointed as a Clerk under Punjab & Sind Bank (hereinafter referred to as the Bank). He was promoted as Probation Officer in 1974, a post in Junior Management Grade, Scale I. In April, 1978, he was promoted as Manager, a post in grade MMGS-II.

All throughout nothing adverse was reported against him. When he was functioning as Manager in the Zonal Office, Central Zone, on 4.7.1991 he was placed under suspension on the charge that when he was holding charge of Sadar Bazar Branch at Delhi during the period 13.7.1990 to 17.5.1991, payment under 40 fixed deposits amounting to Rs. 1,04,02,010.00 were made by him in violation of order dated 15.5.1991 of the Assistant Director, Income Tax. The same attracted disciplinary action under P.S.B. Officer Employees (Discipline and Appeal) Regulations, 1981. Complaint was also made to the CBI which started investigation. Departmental proceedings were not initiated. CBI also did not file any charge sheet. According to the petitioner, the payments under the fixed deposits were released before the order dated 15.5.1991 passed by the Assistant Director, Income Tax was received in the branch and hence no case was made out. Stalemate continued. Neither was any departmental action initiated nor did the CBI file any charge-sheet. Petitioner continued under suspension. Petitioner filed a writ petition in this Court being CWP. No. 1436/96. Continued suspension was challenged. Vide order dated 15.7.1997, this Court directed the bank to consider assigning duties to the petitioner as he was under suspension for over six years without any disciplinary or criminal proceedings initiated against him. Pursuant thereto, on 28.7.1997 the bank, on a reconsideration of the matter, revoked the suspension of the petitioner. 2. On 11.8.1997, the writ petition was disposed of with the following directions:-

CW. No. 1436/96

Counsel for respondent states that suspension order has been withdrawn, petitioner has been reinstated and duties have been assigned to him. In this view of the matter, nothing survives in this petition. The same is accordingly disposed. Directions are, however, given to the respondent to consider the case of the petitioner with regard to consequential benefits including seniority and promotion.

3. CBI filed a charge-sheet in the Court of the Special Judge, CBI. Strangely, neither the documents relied upon nor statements of the witnesses recorded u/s 161 Cr.P.C. were filed with the charge-sheet. On 13.11.1997, the Special Judge, CBI passed orders consigning the case to the Record Room with liberty to the CBI to seek revival when it was in a position to file the relied upon documents and statement of witnesses or in the alternative to file fresh charge-sheet. Order dated 13.11.1997 reads as under:-

Despite number of opportunities, prosecution has failed to file relied upon documents as well as statement of witnesses recorded u/s 161 Cr.P.C. Without aforesaid documents and statements, the report U/s 173 Cr.P.C. is of no consequence. Therefore, under the circumstances, I have left with no alternative but to consign the case to record room. Prosecution may get the charge-sheet revived as and when they are in a position to file relied upon documents and statements of witnesses or in the alternative they may file fresh charge-sheet.

4. In the year 1999, the bank undertook the exercise of promoting eligible

officers from MMGS-II to MMGS-III. Being eligible, petitioner was considered. He was found suitable for promotion. On 28.9.1999, petitioner was communicated that he stood promoted from MMGS-II to MMGS-III w.e.f. 28.09.1999. It was intimated that petitioner would be on probation for one year, to be confirmed on satisfactory completion of the probation period.

5. It appears that when the bank decided to consider promotion of officers from MMGS-II to MMGS-III, petitioner was not being considered. Petitioner learnt of the same. He obtained copy of the order dated 13.11.1997 passed by the Special Judge, CBI and under cover of letter dated 14.9.1999 communicated the same to the bank. Taking cognizance of the same, the bank considered the name of the petitioner for promotion.

6. On 19.1.2000, the bank wrote to the petitioner as under:-

1. You had submitted a letter dated 14.9.1999 along with a copy of the order passed by the Special Judge, Shri Ajit Bhariok, dated 13.11.1997. You further stated in your letter that no CBI proceedings were pending against you. We have, however, been informed vide CBI letters dated 6.8.1998 and 26.11.1999 that the CBI proceedings are continuing and the case is fixed in the Court on 25.1.2000.

2. You were promoted on probation as a Scale III officer on 28.9.1999 and your result was not kept in sealed cover as per the promotion policy of the bank in view of the representation made by you. It now appears that the CBI proceedings relating to criminal charges are pending against you. The promotion thus given to you on 28.9.1999 could not have been given and your result should have been kept in sealed cover. You are, therefore, directed to submit your comments on the above before any further action is taken in the matter within 3 days of receipt of this letter.

7. Vide reply dated 21.1.2000, the petitioner responded as under:-

With reference to your letter No. IRC/4236/2000 dated 19.1.2000 I have to inform you that as on date my promotion from Scale II to Scale III on 28.9.1999, there was no case pending against me as per the order of Hon''ble Judge Shir Ajit Bhariok. Copy of order is enclosed herewith. Thus, no misrepresentation was made so my promotion be continued.

8. The bank, on 24.4.2000, considered the reply sent by the petitioner. Same was found to be unsatisfactory. Following order was passed:-

This is with reference to your letter dated 14.9.1999 wherein you submitted the orders of Court dated 13.11.1997. On the basis of your representation you were promoted form MMGS-II to MMGS-III vide our letter dated 28.9.99.

Please refer to our letter dated 19.1.2000 in which you were informed that your result of promotion process was not kept in sealed cover on the basis of your representation dated 14.9.99 and you were asked to clarify inter alia the position as to pendency of criminal cases. After considering you reply dated 21.1.2000, it is found that CBI proceedings relating to criminal charges were continuously pending before the date of declaration of result till now. In view of this and in terms of para 11 of Promotion Policy circulated vide Staff Circular No. 2550 dated 14.6.99 your result should have been kept under sealed cover and not declared.

Keeping in view the above, it has been decided that you will continue to work in Scale-II and your promotion vide our letter dated 28.9.99 will not be acted upon till finalization of criminal case in terms of aforesaid promotion policy.

9. The bank has a policy termed as P.S.B., Officers Promotion Policy. Clause II of the Policy stipulates:-

11. PROMOTION OF OFFICERS UNDER CLOUD:

Promotion of officers who have been charge sheeted in disciplinary/criminal proceedings and/or under suspension shall be considered in accordance with the procedure laid down by the bank from time to time in conformity with the prevalent Govt. guidelines and as approved by the CMD. The present procedure is given as per annexure.

10. Annexure referred to in Clause 11 (relevant part) reads as under:-

Where the disciplinary/court proceedings are not concluded before finalization of promotion results, it shall be withheld and kept in a sealed cover under advice to the officer concerned. On conclusion of the disciplinary/court proceedings the promotion will be considered as provided below:

i) WHERE AN OFFICER IS COMPLETELY EXONERATED:

Promotion will be given effect to from the date it was otherwise due, but for the pending disciplinary/court proceedings, no arrears of pay shall be payable for the period of notional promotion preceding the date of actual promotion i.e. for the period promotion result has been kept in a sealed cover and not given effect. Likewise, no consequential benefits of any nature whatsoever shall be given to an officer employee for the intervening period.

CLARIFICATION

a) ''Complete exoneration'' means that the employee is not found blame worthy i.e. nor even censured as per Regulation 4(a) of the Punjab & Sind Bank Officers Employees (D & A) Regulation, 1981; where in a court case the employee is acquitted on technical grounds or on the basis of benefit of doubt and/or if it proposed to either go in appeal to a higher court or hold a departmental enquiry after the court proceedings, the employee will not be deemed to have been completely exonerated.

b) Officer who have been found suitable for promotion but whose promotion has been withheld and kept in sealed cover pending conclusion of the departmental/ court proceedings need not participate in the promotion process of the following year(s) if they so desire.

11. Admittedly, when order dated 28.9.1999 was passed promoting petitioner to MMGS-III, proceedings before the Special Judge, CBI remained consigned to the record room and the Court had not taken cognizance of the charge-sheet. Even when order dated 24.4.2000 was passed, same position continued. Position continues to be the same till date. CBI attempted to get the proceedings revived but failed to do so as relied upon documents were not filed. On 11.7.2001, Special Judge, CBI again consigned the file to the record room.

12. Contention of the petitioner is that sealed cover procedure could be resorted to only when disciplinary or court proceedings are pending. Court proceedings commence only when the court takes cognizance of the charge-sheet. This was how the bank understood its policy. Order dated 13.7.1997 passed by the Special Judge was in the knowledge of the bank. It was fully aware that the CBI had filed the charge-sheet but cognizance thereof was not taken by the Special Judge, CBI. Being in the knowledge of the said fact, the bank had knowingly not kept the recommendation qua the petitioner in a sealed cover. In any case, submitted Mr. G.D. Gupta, learned Senior Counsel for the petitioner that at no point did the petitioner provide any false information. The bank was, therefore, not justified in back tracking. Per contra Mr. Jagat Arora, learned Counsel for the bank urged the Court that the bank''s view was correct. Since CBI had submitted a report u/s 173 Cr.P.C. to the Special Judge, criminal proceedings were pending, justifying resort to sealed cover procedure. Counsel contended that merely because the bank acted erroneously at the first occasion did not mean that the bank had no right to correct its view.

13. Question which needs to be answered is when do the regulations of the bank empower it to take recourse to sealed cover when court proceedings are pending.

14. At first blush, one would rush to answer the same by prying into the Code of Criminal Procedure. The Code refers to filing of a charge-sheet and taking cognizance thereof and issuance of process against the accused. I need not go into the same. We are concerned here with the right of an employee to have the recommendation to promote him to be given effect to vis-a-vis the right of the management to put in abeyance said decision.

15. The Hon''ble Supreme Court in the judgment reported as Union of India Vs. K.V. Jankiraman, etc. etc., while dealing with the memorandum issued by the Government of India relating to sealed cover procedure held:

On the first question, viz., as to when for the purpose of the sealed cover procedure the disciplinary/criminal proceedings, can be said to have commence, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employees that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover proceedings is to be resorted to only after the charge-memo/charge sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned Counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of purity of administration to reward the employee with a promotion, increments etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily, it would not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

(1) Consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2) ....

(3) ....

(4) The sealed cover procedure can be resorted only after a charge-memo is served on the concerned official or the charge-sheet filed before the criminal court and not before;

There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be read to mean that the promotion etc cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employees. Thus read, there is no inconsistency in the two conclusions.

We, therefore, repeal the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal.

(Emphasis mine)

16. The underlined portion of the decision of the Hon''ble Supreme Court in K.V. Jankiraman case (supra), bring out that issuance of a charge-memo/charge-

sheet is the sine qua non for resorting to sealed cover procedure. On facts, what we have at hand is that for an alleged lapse pertaining to the year 1991, the CBI completed investigation in 1997 and filed the charge-sheet. The Special Judge, CBI did not take cognizance of the same as relied upon documents and statements recorded u/s 161 Cr.P.C. were not filed. File stands consigned to the record room. Attempt to revive the proceedings has failed. CBI Special Court has yet to take cognizance of the charge-sheet. All these facts were known to the bank when it gave effect to the decision to promote the petitioner. No new fact has emerged. There is no concealment of fact or misrepresentation by the petitioner. The action of the respondent bank, therefore, does not meet the requirement of law. Same is quashed. Impugned order dated 24.4.2000 is quashed. Mandamus is issued to the bank to restore the petitioner to MMGS-III with retrospective effect i.e. from the date when petitioner was reverted to lower grade. Arrears, if any, be paid within six weeks from the date of order. If not paid within six weeks, the same shall carry interest at the rate of 9% per annum from the date of this order till the date of payment. Petitioner would be entitled to increments. No costs.