
(1993) 11 AHC CK 0029
In the Allahabad High Court
Case No : Writ Petition No. 3988 (S/S) of 1992

K.K.Gautam

APPELLANT

Vs

State Bank of India And Another

RESPONDENT

Date of Decision : 24-11-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1993) 11 AHC CK 0029

Hon'ble Judges : D.K.Trivedi, J and Shobha Dixit, J

Final Decision : Disposed Of

Judgement

Shobha Dikshit J.

1. The short question which falls for determination in this writ petition is that where promotion is stalled because of pendency of some disciplinary proceeding, then what happens after the same are dropped? The law is well settled on this issue. As soon as the pending disciplinary proceedings are dropped, the date of promotion reverts back to the date when the original order of promotion was passed or when the immediate junior of the concerned employee was promoted. The petitioner's grievance is precisely the same i.e. that in spite of the fact that he was exonerated by the disciplinary authority of the charges levelled against him he has not been given promotion from due date.

2. The essential facts, briefly stated, are as follows :

3. The petitioner, a law graduate with certificate of Institute of Bank (hereinafter referred to as C.A.I.I.B. Part I) joined the respondent bank as Clerk on 2661967 and was confirmed on 21121967 after successfully completing the probation period. According to the petitioner as per bank's then existing promotional policy, he became eligible for promotion to the next higher post of Trainee Officer Grade I, (redesignated as J.M.G.S.I) in the year 1972 on completion of five years service as a confirmed clerk being promoted an eligible clerk had to pass a written test.

4. However for the said promotion eligible candidates had to pass a written test, but in the year 1972, No test was held by the Bank rather a charge sheet dated 2661975 was served on the petitioner on 3061975 to which he submitted a reply on 171975. According to the petitioner notwithstanding the said charge sheet he was called upon to appear in the written test for promotion to the aforesaid post of J.M.G.S.I which was to be held on 26101975. Petitioner received the intimation vide Annexure3 dated 22161975. This call letter was cancelled by the opposite parties the very next day i.e. on 23101975. The petitioner on such cancellation immediately requested the opposite parties vide his letter dated 24101975 (Annexure5) to communicate to him the reason for cancelling the call letter dated 20101975. He further stated in this letter that he apprehends that the same has been cancelled because some fresh departmental enquiry appears to be in contemplation against him as no charge sheet has been served on him till date. He made it clear to the authorities in this letter that in the event the letter of cancellation is not withdrawn and he is not permitted to appear in the test which is going to be held on 26101976 then the authorities shall be responsible for the irreparable loss which shall be caused to him and he shall be entitled to be appointed as a Trainee Officer with effect from the date the appointments take place pursuant to the aforesaid written test. This letter of the petitioner was though replied by the bank vide letter dated 25101975 but the petitioner was informed that the bank had nothing to add to the earlier letter dated 22101975 contained in Annexure3. The fact remained that the petitioner was prevented from appearing in the test which was held on 26101975.

5. According to the petitioner, he had earned the displeasure of Sri H.C. Srivastava (since deceased) who was at the relevant time officiating as Chief Manager, Lucknow Branch for not toeing his line, hence it was due to his malafides and evil designs along with one Sri R.P. Mehrotra that this call letter was recalled and a second charge sheet was served on the petitioner on 111976. Petitioner alleges that he was even assaulted physically by/at the instance of these persons for which criminal proceedings under sections 323/500/504/506 IPC had to be initiated by the petitioner. According to the petitioner, during emergency, he was detained under MISA allegedly on some false complaints made at the instance of abovenoted two senior officers for which the petitioner remained in detention for about 8 months.

6. It is at this stage that the petitioner approached this Court and filed a writ petition No. 860 of 1976 praying inter alia to quash both the charge sheet and restrain the bank authorities from proceeding against the petitioner in respect of the allegations contained in them. It was further prayed in this writ petition to quash the letter dated 23101975 by which the petitioner was disallowed to appear in the written test held for promotion as Trainee Officer and to command the opposite parties to treat the petitioner as having duly passed the written test and to appoint him on the post of Trainee Officer with effect from the date any one of his junior had been promoted. This Court while entertaining this writ petition passed an interim order dated 681976 whereby protecting the interest of

the petitioner by restraining the opposite parties from passing any final order pursuant to the two charge sheets served on the petitioner.

7. During the pendency of this writ petition, the Bank conducted promotional tests in the years 1976, 77 and 1978 but the petitioner, inspite of his repeated requests to allow him to appear in the same and to keep the result in sealed cover so that in the event departmental proceedings are dropped he can be given his due promotion, was denied all these chances for no valid reasons.

8. Petitioner further alleged discrimination also besides arbitrariness and unreasonableness. According to him, the opposite parties even allowed similarly situated persons like one Sri K.K. Sharma and Sri R.B. Singh to appear in these tests provisionally and assured them fair treatment, whereas the petitioner's similar request was turned down by the opposite parties. Petitioner however continued to represent his case before the concerned authorities and it is only in the year 1979 when the Chief Manager and the disciplinary authority of the petitioner were changed that his case was favourably considered and he was permitted vide orders dated 811979 passed by the General Manager (Operations) (Annexure10) to work on he post of J.M.G.S.I but only on officiating basis. The departmental enquiries allegedly instituted against the petitioner on the basis of the foresaid two charge sheets were conducted ex parte whereby exonerating him from all the charges. This fact was communicated to the petitioner vide letter dated 12101979 which is contained in Anntxure1 to this petition. Petitioner was, meanwhile, released from jail also as soon as the emergency came to an end. Petitioner has stated in very great detail as to how he was harassed and victimised for all these years for no fault of his except that he did not oblige some of his immediate superiors. However, we need not go into these details as the persons against whom malafides are alleged are not party in this petition.

9. Reverting back to the narration of the facts as stated in the writ petition, petitioner continued to make representation after representation to the opposite parties for considering his case for promotion from the date his juniors were promoted. Pursuant to these requests, the then General Manager (Operations) allowed the petitioner to appear in the test held for promotion in the year 1979 wherein according to the petitioner though he qualified but the bank did not declare the result officially on the ground that the petitioner has since become over age, hence he is not entitled to promotion. In subsequent tests held in the years 1981 and 1982 since the bank not only again declined to permit the petitioner to appear in the test on some flimsy grounds but also withdrew the officiating powers given to him in officer's cadre, hence the petitioner moved a Misc. Application in the pending writ petition no. 860 of 1976 whereby the order of withdrawal of officiating power was stayed by this Court. It is in the year 1983 that the opposite parties at last permitted the petitioner to appear in the test. Petitioner though appeared in this test but subject to following rider put by him dated 1541983 which reads as follows :

"The Chief Manager,
State Bank of India,
Lucknow.

Sir,

Promotion to the post of Officer, JMGS1 (Accts./Cash)

With reference to your letter No. CM/29/35 M dated the 11th of April, 1993, on the above subject, I have respectfully to submit that I am prepared to appear in the ensuing written test/interview provided I am, in case of my selection, allowed my promotion with retrospective effect from 1975 when I was first deprived of taking my written test in respect of which my Writ Petition No. 860 of 1976 is pending before the Hon"ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow.

My appearance at the test and interview would also be without prejudice of my right of being promoted without any written test or interview which kindly take a note of.

Lucknow :

Dated : 15041983

Yours faithfully,

Sd/

(K.K. Gautam)

Officiating JMGS1,

State Bank of India,

Lucknow."

10. According to the petitioner, opposite parties without objecting to the aforesaid rider permitted the petitioner to appear in the test and on his being successful, promoted him to the post of J.M.G.S. but with effect from 1651983 and not with effect from 1975 which had been the claim of the petitioner throughout.

11. The aforesaid writ petition No. 860 of 1976 came up for hearing on 2571983 when the learned counsel appearing for the bank stated that since all the reliefs as prayed for in the writ petition have been given to the petitioner, the same has become infructuous. It was further stated by the opp. parties that the petitioner had been permitted to appear in the test held in the year 1983 and he has been accordingly promoted as J.M.G.S.I with effect from 1951983.

12. The petitioner though admitted the facts as stated before the Court but he claimed that the seniority should be given to him with effect from the year 1975

when he was for the first time called to appear in the said test and was prevented illegally and arbitrarily from appearing in the same. Petitioner further brought to the notice of the Court his letter dated 15/4/1983 quoted hereinabove wherein he had categorically stated that though he is prepared to appear in the test but in case he is selected, his promotion shall be with retrospective effect i.e. with effect from the year 1975 when he was first deprived of taking this written test in respect of which the said writ petition is pending.

13. This Court while considering the effect of this letter came to the inclusion that since the letter or the representation of the petitioner is still pending before the authorities, therefore, it would not be advisable to grant the relief as prayed by the petitioner but it would be proper to direct the authorities to consider petitioner's claim. With these observations, the aforesaid writ petition was disposed of vide judgment and orders dated 25/7/1983.

14. Petitioner in the aforesaid facts and circumstances alleged that it is in this process of delay, caused due to vindictiveness of the opposite parties, that thousands of petitioner's juniors have been promoted to higher grades whereas he is still officiating as M.M.G.S II and has lost four increments. Petitioner's substantive post today is only JMGS I whereas his juniors are today holding the post of S.M. Grade I. the hierarchy in service being JMGS I, MMGS II, MMGS III, SMGS IV and SMGS V (M.M. stands for middle management and S.M. stands for senior management). It is in these circumstances where the petitioner had been denied his due promotion from retrospective date and year 1975, that he had to approach this Court for the second time through the instant writ petition with the prayer to issue a writ of mandamus commanding the opposite parties to backdate the promotion of the petitioner on the post of J.M.G.S.I to 1975 when his juniors were so appointed pursuant to the examination held on 26/10/1975. He has further prayed to promote him to the next higher post of M.M.G.S.II with effect from 18/1/1981 and S M.G.S.IV with effect from 18/1/1988 and so on with all consequential benefits.

15. The writ petition has been contested by the opposite parties and a counter affidavit has been filed. The only stance taken by the opposite parties is that at the relevant time the rule in the bank was that in the event of pendency or contemplation of disciplinary proceedings against an employee, such an employee was debarred to write the promotion test, hence the petitioner was also not permitted to write the same. Regarding the allegation of denial of promotion illegally with effect from 1975 even after the petitioner passed the test in the year 1979, it has been stated by the opposite parties in the counter affidavit that since by then the petitioner had become overage hence he was not considered for promotion at all. The allegation of discrimination as alleged by the petitioner has also been denied by the opposite parties in the counter affidavit by merely saying that the cases of Sri K. K. Sharma and Sri R.B. Singh were not similar to that of the petitioner, but it has not been indicated as to in what manner their cases were different from that of the petitioner. Such denial has no

meaning in law.

16. The petitioner appeared in person and we must say that he argued his case with great ability and clarity. He drew our attention to all the relevant documents including the letters written by his superior officers recommending his case on the ground of his being very meritorious. These letters will be referred to at the relevant time.

17. The sole point which has been canvassed by the petitioner before us is that he has wrongly been denied his promotion with effect from 1975. According to him, promotion is a condition of service within the meaning of Article 309 and that is how he alleges that the equality clause of the Constitution stands violated. He claims that it was imperative that the opposite parties ought to have considered all the eligible candidates for promotion to the post of J.M.G.S.I thereby giving them equal treatment. He further argued that even assuming that his promotion was stalled because of pendency of disciplinary proceedings but then as soon as they were dropped his date of promotion should have been reverted back to the year 1975 when the test was held and his juniors were considered. He drew our attention again and again to the fact that he has been a victim of unfair and arbitrary action of some of his superior officers who were bent upon to ruin his career. The petitioner took great pains to demonstrate that their adverse attitude is writ large and need not be specifically pointed out. According to him, the whole action of the opposite parties right from day one smacks of victimisation and malafides.

18. The petitioner in support of his contention that he has been wrongly denied promotion with effect from 1975 placed heavy reliance on the admissions of the bank itself. Petitioner drew our attention to various letters written by his superior officers, specially that by Chief Manager Lucknow, Main Branch dated 12/3/1980 contained in Annexure 12 to the writ petition where there is clear admission by bank in unequivocal terms that petitioner was wrongly denied promotion with effect from 1975. The relevant paras of this letter read as under :

2. The aforesaid debarment obviously marred the career of an otherwise bright, energetic and efficient young man who, if the misfortune had not laid its ugly hand on him, could have proved an asset to the Bank. As such, having regard to the undeserved sufferings by Shri Gautam and taking his educational qualifications into account, we recommend that the request of Shri Gautam, which merits all out sympathy, be considered in the light of factual position and if due to administrative exigencies, it is not possible to promote him as Trainee Officer with retrospective effect, he may be appointed as Law Officer with immediate effect on the following considerations :

(a) Shri Gautam, who would have become officer in normal course long back had he not been deprived of the chance due to the whims of the Branch Management, possess requisite qualifications for the post.

(b) Besides, having adequate knowledge in law, he is well conversant with

Bank's routine work and has the knack of going deep into the problems that arise on account of legal complications. This is an added advantage which can be utilised in the best possible manner in the interest of the Bank.

(c) If the bank appoints him as a Law Officer, it will serve the ends of justice besides healing the injury caused to him for no fault on his part as has been proved from the judgment in his favour.

(d) No wonder, the Court, where his writ petition is pending, may enjoin upon the Bank to give him promotion from the date he was debarred. If it happens so, it will definitely be disgraceful for the bank. In case the bank decides to appoint him as Law Officer, we may impress upon him to withdraw the Court's case."

However, inspite of the aforesaid strong recommendations, petitioner's adverseries ensured that he be not given his due. However, the petitioner continued to fight for his legal rights by sending representation after representation. Another Chief Manager Sri R.N. Gosain vide his letter dated 21/9/83 contained in Annexure 18 again recommended the case of the petitioner very strongly in following words :

"2. I have gone into the matter at some length and find that he has been a victim of excesses, even his most unwarranted implication into MISA lodging for about 10 months severe rigours as would be evident from the affidavit filed by Shri A.K. Rastogi, I. A. S., District Magistrate, Lucknow in Criminal Court. He was also proceeded against in two enquiries held exparte and exonerated, being not found guilty from all the charges without any stigma These unfounded enquiries were evidently the sole reason of his deprivation from taking promotional test/interview for the post of Trainee Officer in 1975 and thereafter and his reasonable request of allowing him to take the test/interview and keep the result in a sealed cover was also declined. Keeping in view his alround ability, I am confident, had Shri Gautam not been implicated in the above said episode and allowed to appear in the Trainee Officer's promotional test/interview in 1975, he would have definitely been selected.

3. The work, conduct and performance of Shri Gautam have been excellent throughout as would be borne out from his service record and the recommendations of my predecessors vide his Special Letter No. GMO/CM/40/537 dated 12/3/80 a photo state copy of which is enclosed for convenient reference. He has also been officiating as an officer for almost all this time giving ample proof of his alround efficiency.

4. Now that he has already qualified in the examination and interview, and appointed as an officer, it is only reasonable that he is given his due seniority and the accruing benefits as per the orders of the Hon'ble High Court. This will also be in conformity with what had been conveyed to him vide our Special Letter Me. GMO/CM/40/668 dated 31/3/80 moreso, when as a matter of policy and practice, we have been allowing backdated seniority etc. to the suffering incumbents for delayed recommendations or otherwise or on compassionate

grounds to meet the excesses, Shri Gautam could also be accommodated accordingly and his grievances redressed, thus to bury deep this unhappy and unwarranted episode.

5. Apart from the fact that Shri Gautam was entitled to his backdated promotion from 1975 with consequential benefits as already shown above, the matter is now concluded by the categorical statement of the Bank's counsel before the Hon'ble High Court and the judgment and order dated 25/1/1983 disposing of Shri Gautam's writ petition no. 860 of 1976. The Hon'ble High Court has already taken cognizance of Shri Gautam's rider dated 15/4/1983 and in view of the fact that he was permitted to appear in the examination and interview with that rider, there appears to be no justification for the Bank to disallow Shri Gautam his claim for retrospective promotion etc, as such, I recommend that appropriate orders may kindly be issued without any further delay which will also close a long standing issue of the Bank."

19 Chief Regional Manager vide his letter dated 8/7/1986 contained in Annexure 22 again reiterated the aforementioned recommendations by saying that bank is under legal obligation to give him seniority with retrospective effect.

20. In the light of aforesaid recommendations the petitioner contended that he has wrongly been denied promotion with effect from 1975. Nonpassing of the qualifying examination in the year 1975 cannot be held against the petitioner as there was no fault of the petitioner in not appearing in the examination. It was the bank which prevented the petitioner from appearing in the examination on the ground of pendency of some disciplinary proceeding which ultimately failed hence it cannot operate to his prejudice by refusing promotion with effect from that year.

21. It has next been contended by the petitioner that once a categorical statement by the counsel for the opposite parties appearing before this Court in writ petition No. 860 of 1976 was made "all the reliefs 1, 2, 3 and 4 have been allowed and nothing subsists for consideration" and thereafter the petitioner appeared in the written test subject to the rider dated 15/4/1983 which was accepted by the bank, hence the opposite parties are estopped from not giving him due promotion with effect from 1975.

22. The first argument of the petitioner has been opposed by the opposite parties only on the ground that they were justified in preventing him from appearing in the test as the relevant service rules of the bank at that time so provided i.e. in the event major penalty proceedings are contemplated against an employee, he had to be debarred from writing the test. However, neither any such rule has been quoted in the counteraffidavit filed on their behalf nor it has been placed before us during the course of the arguments. When it was put to the learned senior counsel appearing for the opposite parties as to what would be the consequence of the exoneration of the employee of the charges levelled against him, the learned senior counsel failed to give any answer, far from being a

satisfactory answer. We, therefore, reject this plea finding no force in it and we hold that the petitioner was wrongly and illegally prevented from appearing in the test held on 26/10/1975. We also have no hesitation in holding that the plea which the opposite parties took for not permitting the petitioner to appear in the written test in the year 1979 on the ground of his becoming overage was nothing but a lame excuse as they themselves subsequently permitted the petitioner to appear in the written test in the year 1983 and that too without raising the said plea. The opposite parties also failed to show as to how the cases of Sri K.K. Sharma, Sri R.B. Singh and Sri A.K. Chatterjee etc. are different from the case of the petitioner and why the petitioner could also not be permitted to appear in the test provisionally like them or given backdated seniority. In fact, the petitioner in the rejoinder affidavit has referred to many more instances where the bank itself has resorted to sealcover procedure but it declined to follow the same for the petitioner thereby discriminating against him.

23. We need not draw support from the averments made by the petitioner in the rejoinder affidavit because the senior officers of the bank in their letters recommended promotion of the petitioner with effect from 1975 have themselves in very clear and unequivocal terms stated that as a matter of policy and practice bank has been allowing back dated seniority etc. in cases where promotions of employees have been wrongly withheld and the bank was under legal obligation to give seniority to the petitioner with retrospective date.

24 The learned counsel for the bank also could not repel the argument of the petitioner that once the bank admitted before this Court in earlier proceedings that all the reliefs have been given to the petitioner by the bank and the condition imposed by him from appearing in the test dated 15/4/1983 was impliedly accepted, hence the authorities now cannot resile from that situation. Mere statement in the counter affidavit that the writ petition was since dismissed, therefore, petitioner is not entitled to backdated seniority in our opinion is without any force. This Court in its judgment dated 25/7/1983 while recording the statement of the counsel for the petitioner did not issue the mandamus fixing 1975 as the year of promotion because of pendency of the representation and the letter addressed by the petitioner dated 15/4/1983 addressed to the bank. Admittedly, the bank neither decided the representation nor rejected the aforesaid letter containing the condition imposed by the petitioner for appearing in the test. Therefore, now to say that it was improper for the petitioner to put such condition in the letter is without any substance. We reject this plea also as it is clearly an afterthought.

25. In service jurisprudence next below rule is the guiding principle in the matter of promotion. Whenever an employee is passed over by his juniors due to some administrative error or pendency of disciplinary proceedings, his seniority has to be restored back visavis his juniors as soon as the error is detected or such an employee is exonerated of the charges. Hon"ble Supreme Court of India had the occasion to reiterate this principle again in the matter of Arun Kumar Chatterjee

v. South Eastern Railway and others reported in 1985 (2) SCC 451 and while dealing with somewhat similar situation of denial of correct seniority held as follows :

"We find no justification for the attitude adopted by the Railway Administration in depriving the appellant of his legitimate rights. Loss of seniority of a government servant with consequent loss of promotional prospects, higher pay and emoluments is a matter of serious consequence to him. When the appellant by his representations drew the attention of the departmental authorities to the injustice done to him, it was their duty to have rectified the mistake and refixed the seniority of the appellant.

26. After hearing both the parties at great length, petitioner in person and opposite parties represented through a senior counsel and perusing the record, we are of the confirmed view that the opposite parties failed to consider the representation of the petitioner in the light of the recommendations made by their own senior officers to give the petitioner promotion with effect from 1975 with open mind and in accordance with the practice and policy of the bank itself as well as the settled position of law. Thus, there has been a clear violation of equality clause contained in Articles 14 and 16 of the Constitution of India. We hold that after exoneration from the alleged charges, bank ought to have restored the statusquo ante regarding promotion of the petitioner to the post of J.M.G.S.I (redesignated). It is indeed regrettable that the subordinate official has been treated by his superiors in such a callous manner. We have no doubt whatsoever that the petitioner has been a victim of most unfair and arbitrary action and had been made to suffer for no fault of his for all these years. His agony, therefore, must come to an end without any further delay.

27. In these circumstances, this writ petition succeeds and deserves to to be allowed. A writ of mandamus is hereby issued directing the opposite parties to treat the petitioner as having duly passed the written test held on 26101975 and treat him appointed on the redesignated post of J.M.G.S.I with effect from 1975 from the date any of his junior was so promoted/appointed with all the consequential benefits including further promotions to all the next higher posts. Opposite parties are further directed to implement this order forthwith and in any event not later than one month from the date a certified copy of this judgment and order is produced before them.

28. We impose costs on the opposite parties which is assessed at Rs. 3000/.