
(2008) 11 GAU CK 0055
In the Gauhati High Court

Lachit Chandra Bora

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Constitution of India, 1950 — Article 13(2), 14, 16, 21, 226

State Bank of India Act, 1955 — Section 43(1)

State Bank of India General Regulations, 1955 — Regulation 55

Citation : (2009) 3 GLR 628

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Musahary, J.—Heard Mr. P.K. Roy, learned Counsel for the petitioners and Mr. L. Talukdar, learned Counsel for the respondents.

2. Both the petitioners as ex-armymen agitate a common issue namely, whether the employer, State Bank of India ("SBI") is bound to follow the special provision regarding age limit as provided under the Ex-Servicemen (Re-employment in Central Services and Posts) Rules, 1979 and appoint them to the post of Bank Guard by deducting the period of service rendered by them in the army from their actual age. Both the petitions are therefore, being heard together for disposal.

3. Briefly stated for the purpose of disposal of these petitions, the facts are these:

The petitioner in WP(C) No. 1641/06, Shri Lachit Chandra Bora was born on 16.12.1959 and enrolled in the Army on 16.12.1977 and retired on 31.12.1999 after serving for 22 years and 16 days, while the petitioner in WHO No. 1642/06, Shri Babul Bora was born on 1.10.1959 and enrolled in the Army on 6.8.1977 and retired on 1.5.1997 after serving for 19 years and 6 months. The petitioners were sponsored by the Zila Sainik Board for appointment to the post of Bank Guard. They were initially appointed on temporary basis to the said post on

4.8.2001 and 17.1.2004 respectively through selection process by the respondent Bank and accordingly, they have been serving at various branches of the Bank in Nagaon District of Assam. The respondent Bank vide its letter No. CM/49/171 dated 12.6.2003, asked the petitioner Shri Lachit Chandra Bora to appear in the interview on 27.6.2003 for appointment as Bank Guard cum Messenger but it did not appoint him to the said post although it appointed 3 (three) other Ex-Servicemen on regular basis. Thereafter, by a memo dated 14.10.2005 (Annexure-C to the writ petition), the respondents asked the petitioners, being sponsored by the Zila Sainik Board, to appear in the interview on 21.10.2005 for recruitment of Bank Guard in different branches of the SBI in Nagaon. The Selection Committee after the interview placed the petitioners at serial Nos. 1 and 2 respectively in the select list. The respondent No. 2, Chief Manager of SBI, Nagaon, while forwarding the said select list to the Zonal Office vide his letter dated 21.10.2005 (Annexure-D) recommended for relaxation of petitioners' upper age limit considering the fact that they were engaged in temporary capacity at different branches. In spite of their names being placed on top of the select list and being recommended by the respondent No. 2 for relaxation of upper age limit, the respondent No. 1 has denied appointment to the petitioners and is contemplating to appoint the candidates, who are placed below the petitioners in the select list. The respondent Bank refused to appoint the petitioners in view of the existing guidelines issued by its Circle Development Officer vide circular No. CSC/RES/973/97-98 dated 24.11.1997 (Annexure-F) which provides engagement of person from amongst the ex-servicemen, who are 45 years or below on the date of interview.

4. Chiefly, Mr. P.K. Roy, learned Counsel for the petitioners submits that the SBI being constituted under the Bank of India Act, 1955 and a Nationalised Bank, is guided by the directions and policies framed by the Government of India and it being a public sector undertaking, is required to act consistently with the said policy decisions/directions so framed for re-settlement of Ex-Servicemen as envisaged in the statutory rules namely, the Ex-Servicemen (Re-employment in Central Civil Service and Post) Rules 1979 (hereinafter referred to as 1979 Rules), which provides special provision for appointment to any vacancy in Central Civil Service Group "C" and "D" by condoning the upper age limit by more than 3 (three) years by way of deducting the period of service rendered by ex-armyman from his actual age. According to Mr. Roy, the provision under Rule 5 of the 1979 Rules is applicable to the petitioners' case and if it is so applied, they become eligible for appointment as Ex-serviceman.

5. Additionally, Mr. Roy, learned Counsel for the petitioners submits that the benefit of the said special provision should be given to the petitioners inasmuch as they have completed more than 22 years and 19 years of service respectively in the Indian Army against the upper age limit of 25 years fixed by the respondent-Bank for such category of post and if the said period of services rendered by the petitioners are deducted, there would be no crossing of maximum age limit and they would satisfy the condition of age limit entitling

them to appointment as Bank Guard. Mr. Roy also submits that the restriction put by the respondent Bank by circular dated 24.11.1997 to appoint the ex-serviceman beyond the age of 45 years is not only arbitrary and discriminatory being against the object of providing re-employment resettlement of the ex-serviceman after their premature retirement, but also inconsistent with and in derogation of the fundamental rights guaranteed under Articles 14, 16 and 21 of the Constitution of India and as such the same should be quashed.

6. In the counter affidavit of the respondent Bank it is clarified that the petitioners were appointed as Bank Guard against leave vacancy as a measure of stop-gap arrangement being sponsored by the Zila Sainik Board as ex-Servicemen. It denied holding of any interview on 12.6.2003 and giving out any hope of service to the petitioners in the Bank. It however, admitted appointment of 3 (three) ex-servicemen against permanent vacancies on consideration of their merit in the chronological order of the panel list and on fulfillment of required criteria within the parameters of the Bank in the interview held on 27.6.2003 and not because of their longer period of temporary service in the Bank. It is also stated that the Bank has duly appointed Shri Kushal Chandra Rajbongshi and Shri Upen Chandra Saikia, whose names were placed below the petitioners at serial Nos. 3 and 4 as they fulfil the eligibility criteria of the Bank. Further, it is stated that the recommendation for relaxation of upper age limit in respect of the petitioners was turned down by the appropriate authority as there is no any provision in the Bank Rules/Circular to appoint a Bank Guard beyond the age of 45 years and no power is vested with the authority to relax the upper age limit. Moreover, it is stated in the counter affidavit that as the said recommendation is based on no guidelines/rules or circular of the Bank, the same alone cannot form the basis for petitioners' claim for relaxation of age limit.

7. Based on counter affidavit, Mr. L. Talukdar, learned Counsel for the respondents submits that the respondent-bank as a body corporate constituted under the Bank of India Act, 1955 and as a public sector Bank, it follows its own circular, rules and regulations and in the matter of re-deployment of ex-servicemen as bank guard it follows only the rules, regulations, criteria for appointment as formulated by the corporate office within the framework of the Government/RBI guidelines applicable to the entire State Bank group throughout the country. It is submitted that the respondent Bank has accordingly stipulated only one upper age limit fixed at 45 years as reflected in the circulars dated 24.11.1997 (Annexure-F to the writ petition) and dated 27.6.1991 (Annexure-1 to the counter affidavit) and as such the special provision under Rule 5 of the 1979 Rules would not be applicable mutatis mutandis to the appointment of Bank Guard. According to Mr. Talukdar, learned Counsel for the respondents, no benefit can be derived by the petitioners from the aforesaid special provisions under the 1979 Rules and no direction could be issued commanding the respondents to appoint the petitioners as Bank Guards condoning their over age. Moreover, according to Mr. Talukdar, the employees of the SBI are not civil servants of the Union of India. In this regard, he has cited the case of Baleshwar Prasad Vs.

Agent, State Bank of India, He has also cited the case of State Bank of India etc., Vs. Kashinath Kher and others, etc.,, for the purpose of showing that the SBI can formulate eligibility criteria of its own for appointment/promotion u/s 43(1) of the SBI Act, 1955 and regulation 55 of the SBI General Regulations and the operation of the Bank is regulated by the Board of Managing Directors of the Bank, which issues policy directions from time to time. The SBI, according to Mr. Talukdar is to follow such policy directions issued by the Board of Managing Directors and in the present case, the upper age limit as fixed is one of such policy directions and the respondent Bank is earnestly following and implementing the same.

8. Having gone through the pleadings and having considered the submissions made by the parties, I find that the petitioners were engaged by the respondent-Bank from time to time against temporary vacancies, to be more precise, against leave vacancies, as stop gap arrangements as recommended by the concerned Zilla Sainik Board and concededly they occupy the top place in the select list prepared by the duly constituted selection board for recruitment of Bank Guards as ex-servicemen. Admittedly, they had crossed a little the age limit of 45 years as prescribed by the respondent-Bank and for this they have been denied the appointment. The basic material facts being not disputed, this Court is called upon to examine and to decide whether the 1979 Rules particularly Rule 5 under caption "Special provision regarding age limit" have any applicability to the present case so as to over come the over age and provide appointment to the petitioners condoning their age bar. For the purpose of determination of the above point, it is necessary to examine the relevant provisions of 1979 Rules. The special provisions under Rule 5 on which the petitioners' claim for appointment largely based may be quoted below:

5. Special provision regarding age-limit, - For appointment to any vacancy in Central Civil Services Group "C" and Group "D" whether reserved or not under these rules, every Ex-Serviceman who has put in not less than six months continuous service in the Armed Forces of the Union shall be allowed to deduct the period of such service from his actual age and if the resultant age does not exceed the maximum age-limit prescribed for the post or service for which he seeks appointment by more than three years, he shall be deemed to satisfy the condition regarding age-limit.

9. A plain reading of this provision makes it sufficiently clear that for the purpose of providing appointment to Groups "C" and "D" post in Central Civil Services every ex-servicemen who has put in not less than 6 (six) months continuous service in the armed forces of the Union shall be allowed to deduct the period of service from his actual age, if the resultant age does not exceed the maximum age limit prescribed for the post or service. Rule 3 provides that 1979 Rules are applicable to all the Central Civil Services and post in Groups "C" and "D" and to the post of the level of Assistant Commandant in para military forces. To quote the same;

3. Application. - This rule shall apply to all the Central Civil Services and post, Group "C" and Group "D" and to the post of the level of Assistant Commandant in all para military forces.

10. No provision has been made that this rule shall be extended to the services of the Government of India undertakings or Central Public Sector undertakings so as to include and apply the same to the respondent-Bank. The professed objective of the framers of the rules as set out in the preamble is to regulate the recruitment of Ex-Servicemen in the Central Civil Services and posts. No intention has been reflected either in the preamble or the provisions of the Rules that the public sector undertakings would be included in the ambit of this Rules. The objective of a statutory Act or Rules could be fulfilled by bringing the State and its instrumentalities within the ambit of a particular law or rules statutorily, that is to say mandatorily or by a necessary implication, means obligatorily. The 1979 Rules have not mandated the respondent-Bank to implement the objective of the Central Government in regard to re-employment of ex-servicemen by enforcing the 1979 Rules. This being the position, in my considered view, the respondent-Bank cannot be asked to enforce the 1979 Rules and appoint the petitioners as per the provisions under the said Rules.

11. It may be said that since the 1979 Rules have no application to the public sector undertaking like the respondent-Bank, it may fix an upper age limit as is done in the impugned circular dated 24.11.1997 and it is not dependent on the existence of any provision for fixing such upper age limit in the said Rules. And there would be no reason to question its authority and find fault in fixing the age limit by the respondent Bank and term the impugned circular dated 24.11.1997 as inconsistent with and inderogation of Fundamental Rights guaranteed under Articles 13(2), 14, 16 and 21 of the Constitution of India. This is because the SBI is a public sector undertaking, (an autonomous body) constituted under a statutory law having an independent authority to regulate the service of its employees including making provision of recruitment for the Ex-Servicemen by way of adopting a public policy. The impugned circular dated 24.11.1997 is a manifestation of such public policy in this regard. As a public sector undertaking under the Central Government, the SBI may have the obligation to make efforts towards implementation of the objective of re-employment of ex-servicemen by adopting its own policy decision and issuing necessary guidelines in terms of or in tune with the 1979 Rules but it does not necessarily mean that the SBI has to act as per the provision of the 1979 Rules.

12. The well settled position is that the public authorities must have the liberty and freedom in framing policies and the courts are ille-quipped to interfere with such policy matters. Once it is found that the fixation of maximum age bar in the matter of re-employment of ex-servicemen is a policy decision of a statutory body which comes within the meaning of "State" under Article 3 of the Constitution of India, the court has to exercise judicial restraint. The Apex Court in the case of Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttranchal and Others,

observed that in complex socio, economic and commercial matters, decisions have to be taken by Governmental authorities keeping in view several factors and it is not possible for courts to consider competing claims and conflicting interest and to conclude which way the balance tilted. It was however, held that every action of a public authority must be based on utmost good faith and genuine satisfaction and ought to be supported by reason and rational. In the cases in hand, the reemployment of ex-servicemen is a socio economic issue which is required to be addressed by all the authorities concerned. The respondent-Bank has recognized this issue and issued the impugned circular dated 24.11.1997 and it is now courts duty to examine as to whether the said circular is issued on utmost good faith supported by good reason and rational. It is already Discussed that there is no provision in the 1979 Rules mandating the public sector undertaking like the SBI to formulate scheme for re-employment of ex-servicemen in terms of special provision u/s 5 of the 1979 Rules yet, there is an immediate response from the respondent Bank and it has formulated its" own scheme for reemployment of ex-servicemen in the post of Bank Guard, maybe with a little departure from the said 1979 rules in regard to age limit. As for myself and perhaps nobody should have any reason to cast doubt on the good faith and bona fide action of the respondent Bank. A selection was made after conducting interview from amongst the ex-servicemen candidates recommended by the Zila Sainik Board but for their over age the petitioners would have been appointed. The next ex-servicemen candidates from the said select list were necessarily offered appointment and averments have been made by the respondents to that effect in their counter affidavit.

13. The Apex Court in the case of C.V. Raman Vs. Management of Bank of India and Another, held that the Central Government has deep and pervasive control over the SBI and other Nationalised Bank but at the same time, it is held that they are establishment under the Central Government. It is also held that a Department of the Government, strictly speaking, is a part of the Government and the Nationalised Bank are different entities as corporate bodies for certain purpose. The SBI has been constituted u/s 3 of the SBI Act 1955 to carry on the business of Banking and other business in accordance with the provision of the Act and for the purpose of taking over the undertaking of the Imperial Bank. u/s 43 of the said Act, the SBI has been vested with power to appoint such number of officers, advisors and employees as it considers necessary or desirable for the efficient performance of its function and determine the terms and conditions of their appointment in service. From this provision under the said Act, it is clear that the SBI being an establishment under the Central Government have the freedom or at least the autonomy in the matter of day-to-day administration and recruitment promotion and control of its staff. It may be gainsaid that as an establishment under the Central Government, the SBI is to implement the policies and programmes of the Central Government but it may formulate its own process and procedure independently. This is how the respondent-Bank as a corporate body has issued the impugned circular dated 24.11.1997, bona fide as

empowered u/s 43 of the SBI Act, 1955, which cannot be termed as illegal, arbitrary and violative of Articles 13(2), 14, 16 and 21 of the Constitution of India.

14. That apart, there is little scope for interference by a writ court with the eligibility condition in regard to age limit fixed by the appointing authority for recruitment to a post. In this regard, I may appropriately refer to the view taken by the Apex Court in the case of Dr. Ami Lal Bhat Vs. State of Rajasthan and others, . Rather I quote para 5 for better appreciation:

5....Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post is in the discretion of the rule making authority or the employer as the case may be. One must accept that "such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as the cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable....

15. It may not be out of place to note another aspect of the matter that there are some more candidates from the ex-servicemen similarly recommended and selected by the Selection Committee who are comparatively younger in age with required experience. The employer Bank would definitely like to exercise its preference over the younger and energetic candidates for taking longer service in the interest of the Bank. In my considered view, no fault can be ascribed to the respondent Bank in rejecting the petitioners' candidature on ground of their over age and making preferential appointment as has been done by appointing the other candidates from the select list. Had the respondent Bank appointed any candidate outside the select list, it would have been viewed seriously attributing to arbitrariness and illegality. The petitioners have already served the nation in the army selflessly for a pretty long period of time and it is now time for them to make way for youngsters to render some more service in the Bank for the nation.

16. As what has been Discussed above, I am afraid the petitioners have been able to make out a case for interference under Article 226 of the Constitution of India and to issue any writ or direction to the SBI to appoint them as Bank Guards holding the appointment of other candidates as arbitrary and illegal. The petition is devoid of merit and liable to be dismissed. Accordingly, it is dismissed but without any order as to costs.