
(1997) 11 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1740 of 1997

Lalit Kumar Arora

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 12-11-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Punjab National Bank Officers Service Regulations, 1979 — Regulation 5(2)

Citation : (1998) 118 PLR 46

Hon'ble Judges : R.L. Anand, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : H.C. Arora, for the Appellant; Namit Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioner who is working as an officer in the Junior Management Grade Scale I with the Punjab National Bank, prays for the issue of a writ in the nature of mandamus directing the respondents to grant him "one more increment.... for passing Part II of CAIIB examination with retrospective effect from 23.2.1996, with interest @ 18% per annum...." He also prays that the orders granting him only one increment and rejecting his claim for the grant of two increments, copies of which have been produced as Annexures P-2 and P.4 with the writ petition, be quashed. The undisputed facts may be briefly noticed.

2. The petitioner had joined service as a Clerk with the Respondent-Bank on March 2, 1981. While working as such, he had passed the CAIIB Part I examination on May 8, 1985. He was promoted as an Officer in the Junior Management Grade Scale I on December 8, 1986. He passed the CAIIB Part II examination on February 23, 1996. Vide order dated October 1, 1996, a copy of which has been produced as Annexure P-2 with the writ petition, the petitioner was informed that a special increment has been granted to him for passing the CAIIB Part II examination w.e.f. February 23, 1996 (wrongly typed as February 23, 1995). The petitioner represented to claim that he was entitled to the grant

of two increments as had been sanctioned in the case of Mr. Niranjana Singh who is junior to him. This representation was rejected vide order dated November 9, 1996 by which the petitioner was informed that he is entitled to only one increment. Aggrieved by the action of the respondents in granting him only one increment and in rejecting his request for the grant of two increments, the petitioner has filed the present writ petition.

3. The petitioner alleges that respondent No.4 had joined the service of the Bank as a Clerk in July 1981. He had been promoted as an officer alongwith him on December 8, 1986. However, the respondents had granted two increments to the fourth respondent for passing the CAIIB Part II examination, while only one increment had been granted to him. As a result, the fourth respondent, even though junior to the petitioner is drawing a higher pay. The petitioner alleges that this is discriminatory and violative of Articles 14 and 16 of the Constitution.

4. A written statement has been filed on behalf of the Bank and its officers viz. respondent Nos. 1 to 3. It is maintained that the action of the Bank is in conformity with the provisions of the statutory regulations and the instructions consequently, it has been prayed that the writ petition be dismissed with costs. The petitioner has filed a replication to reiterate his claim.

5. Counsel for the parties have been heard.

6. Mr. H.C. Arora, learned counsel for the petitioner has contended that the action of the respondents in granting only one increment to him while respondent No.4 who is junior to him has been granted two increments, is discriminatory and violative of Articles 14 and 16 of the Constitution. He has further contended that the action is even in violation of the circular issued by the Bank vide letter dated June 12, 1989. The claim made on behalf of the petitioner has been controverted by the counsel for the respondents.

7. It is the admitted position that the conditions of service governing the petitioner are laid down in the regulations called, "The Punjab National Bank (Officers) Service Regulations, 1979." Regulation 5(2) deals with the grant of increments etc. On account of "passing CAIIB examination..." It has not been suggested that the petitioner has not been granted increments in accordance with the provisions of the statutory regulations. Admittedly, the petitioner had passed the Part I examination in the year 1985 while he was still a member of the clerical cadre. Consequently, an increment was granted to him. He passed the Part II examination on February 23, 1996. Vide order dated October 1, 1996. He has been granted an increment with effect from the date of passing the Part II examination. It has not been alleged that this action is not in strict conformity with the provisions of the statutory regulations.

8. Mr. Arora contended that respondent No.4 had been granted two increments for passing the Part II examination while the petitioner has been granted only one increment. This, according to the learned counsel, was discriminatory and, thus, violative of Article 14 of the Constitution. Is it so ?

9. It is the admitted position that even though respondent No.4 had joined service as a clerk about four months after the petitioner in July 1981, he had passed parts I and II of the CAIIB examination prior to his promotion to the Officers' Cadre in the year 1986. Thus, the grant of an increment in his case was not governed by the provisions of the regulations applicable to the Officers but by those governing the members of the clerical cadre. It has not been suggested that respondent No.4 was granted any benefit beyond what was strictly admissible under the rules. That being so, the grievance as now sought to be made out by the petitioner is untenable. The petitioner and respondent No.4 are not similarly placed. Respondent No.4 had passed the examination earlier and was granted the increments in accordance with the rules governing him. The petitioner had passed the examination while working in the Officer's Cadre and was given the benefit according to the statutory regulations. Since the two are not similarly placed, the charge of discrimination cannot be successfully made.

10. Faced with this situation, Mr. Arora submitted that the action is violative of Article 14 as junior person has been granted higher emoluments than his senior. According to the learned counsel, the salary of a senior member of the service can never be less than that of a person junior to him.

11. This contention is wholly misconceived. A person who is directly recruited to a service is given the basic pay as admissible in the scale. Another person who is promoted later from a lower rank may get a higher pay on the basis of his pay in the subordinate service. In this situation, a junior draws more pay than his senior. However, it cannot be said that the action is violative of Article 14 of the Constitution. The fixation of pay is based on years of service and is not dependent merely on seniority. It is only when two persons are similarly situated that such a question may arise. In this context, it also deserves mention that even when two persons have joined on the same day, the junior may earn an increment while the senior may not get it on account of his failure to pass the examination. Thus, the junior would be getting a benefit as admissible under the rules. The senior person who has not passed the examination shall not be entitled to complain of violation of Article 14 merely on the ground that the junior has got an advance increment. Thus, the contention of the counsel for the petitioner that the action is violative of Article 14 on the ground that respondent No.4 is drawing more pay than him, is wholly untenable.

12. Mr. Arora also submitted that the action is not in conformity with the provisions of the circular issued by the Bank vide letter dated June 12, 1989.

13. We have perused this circular. It was issued for the purpose of clarifying the fitment formula. In view of the clear and categorical statutory provisions of the Service Regulations, the petitioner cannot really invoke this clarificatory letter to claim a wholly inadmissible benefit. In any event, the factual position has also been explained in detail by the respondents in their written statement. It has been pointed out that the petitioner's claim cannot be sustained even in view of the this clarificatory letter. It has also been pointed out that even if the petitioner

was to be deemed to have continued as a clerk till February 23, 1996, he would have reached the maximum of the scale and would have reached the maximum of the scale and would not have been entitled to the grant of two advance increments in that cadre. Consequently, he would not be entitled to claim fitment at a higher stage in the Officers' Cadre.

14. Mr. Arora referred to the decision of a Division Bench of this Court in Santosh Kumari v. State of Haryana 1997(1) RSJ 419. In this case, the question which arose for the consideration of the Bench was whether the benefit of higher scale of pay could be withdrawn merely because the employee had acquired the higher qualification before joining service? No such question arises in the present case. The above-mentioned case is of no relevant to the facts of the present dispute.

15. No other point has been urged.

16. In view of the above there is no merit in this writ petition. It is, consequently, dismissed. However, the parties are left to bear their own costs.