
(2014) 08 PAT CK 0068
In the Patna High Court
Case No : CWJC No. 9124 of 2012

Munindra Kumar	Vs	APPELLANT
Punjab National Bank		RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 4 PLJR 464

Hon'ble Judges : S.P. Singh, J

Bench : Single Bench

Advocate : Ratanakar Jha, Advocate for the Appellant; Kumar Priya Ranjan, Advocate for the Respondent

Judgement

S.P. Singh, J.—The petitioner seeks quashing of letter dated 4.4.2011 issued by the H.R.D. Division (Selection Cell), Punjab National Bank, Head Office-New Delhi, wherein it is stated that as the petitioner was transferred on his own request from Ara Circle to Muzaffarpur Circle on 5.9.2010, he disqualified himself for promotion to the post of JMG Scale-I for two years in view of extant provisions of Settlement arrived between All India PNB Employees Federation and Punjab National Bank Management on 13.10.2008. Before I take up the rival submissions of the parties for consideration, it would be relevant to notice the facts of the case, in brief. The petitioner joined the service of Punjab National Bank in 1992 on the post of Clerk-cum-Cashier at Tarari in the district of Bhojpur under Circle Office Ara. His wife, a Central Government employee, was posted in Muzaffarpur district. The petitioner as such made a request to the Bank in the year 1995 to transfer him to Muzaffarpur Circle. No action was taken by the Bank for about 15 years. In the year 2010, the HRD Division of Bank issued Circular No. 640, dated 21.7.2010 inviting application till 28.7.2010 from employees in Clerical cadre including Special Assistants for promotion as Officer in JMG Scale-I, whereby all such general category of employees who were in Clerical Cadre, were eligible to apply if they had passed Matriculation Examination and had completed 3 years service, as on the last date of receipt of application. The

petitioner also applied pursuant to the said circular. It is not in dispute that the petitioner fulfilled the requisite conditions and was successful in the examination. The petitioner has been denied promotion on the ground that since he has been transferred on his own request from Ara Circle to Muzaffarpur Circle on 15.9.2010, he stood debarred for a period of two years from the date of reporting at Muzaffarpur Circle and as such his name did not find in the selection result declared on 18.11.2010.

2. In order to appreciate the issue, it would be relevant to notice the settlement dated 13.10.2008 arrived at between All India PNB Employees Federation and Punjab National Bank Management, modifying some of the earlier provisions of settlement dated 1.11.1998, 30.1.1997 and 24.12.2002. Paragraphs 7(d) of the Settlement provides that an employee who has been transferred on his own request would be debarred from posting/officiating chances, as Special Assistant for two years from the date of his reporting. As per paragraph 7(f) an employee who has been debarred from officiating/posting as Special Assistant shall also be debarred from officiating/promotion as officer in JMG Scale-I. Paragraphs 7(d) and 7(f) of the said Circular is quoted herein below:--

"7(d) In case of transfer of an employee in the clerical cadre from one Group/Area of the Bank to another, he shall be debarred from posting and officiating chances as Special Assistant for two years from the date of his reporting at the transferee Group/Area.

7(f) An employee who is debarred from officiating/posting as Special Assistant shall also be debarred from officiating/promotion as officer in JMG Scale-I."

3. The case of the Bank is that the petitioner was transferred on his own request from Ara Circle to Muzaffarpur Circle on 15.9.2010 where he joined on 21.9.2010. Thus, as per circular dated 14.10.2010 (Annexure-3 to the counter affidavit), the petitioner stood debarred from posting/officiating as Special Assistant and as a consequence he debarred from officiating/promotion as Officer in JMG Scale-I. In view of the aforesaid circular, there cannot be any dispute that an employee who has been transferred on his own request cannot either officiate or be promoted as officer in JMG Scale-I. Besides this, the petitioner has an alternative remedy of appeal and he may take all these points before the Appellate Authority itself.

4. It appears that the instant writ application has been filed in the year 2012 and has been heard on earlier occasion as well, and as such at this stage, I am not inclined to relegate the matter to the Appellate Authority, more so as interpretation and scope of paras 7(d) and (f) of Circular dated 13.10.2008 is also an issue, with respect to which the stand of the parties also is at variance.

5. The petitioner is said to be transferred on 15.9.2010 on his own request, and as such he was not selected for promotion to the post of JMG Scale-I. It is also not in dispute that the said ground was the only reason for denying promotion to the petitioner. According to the respondents, the petitioner had not withdrawn his

request for transfer from Ara Circle to Muzaffarpur Circle made in the year 1995 which remained pending all this time.

6. It is further stand of the Bank, that till 2008, three tier administrative set up was in operation in the respondent Bank. In the year 2008, 3-tier administrative set up was constituted, whereby Zonal Offices were abolished and Circle Offices were constituted. According to Bank, as petitioner did not withdraw his request, it would be deemed that the petitioner's request for transfer subsisted and the transfer order, though effected even 15 years thereafter, would be construed to be made on his request. According to Bank, both Circle Offices at Ara as well as Muzaffarpur had come now under the administrative control of Head Office. The transfer request of the petitioner still reflected in the transfer roster maintained at the Head Office. The submission of the respondents look attractive at the first blush, but on going deep into the matter, one would find that the plea taken by the respondent Bank is unreasonable and violative of Articles 14 and 16 of the Constitution.

7. It is true that the petitioner had made request for transfer in the year 1995 from Ara Circle to Muzaffarpur Circle. However, the aforesaid request went unheeded for full long 15 years and as rightly submitted by learned counsel for the petitioner, such transfer request had become stale and story of a past. It is relevant to point out that after 2008, the employee seeking transfer from one circle to another circle are required to make a request with the Headquarter through appropriate channel, which alone is competent to approve such request transfer. Thus, the petitioner has every reason to believe that in view of change of administrative set up in 2008, his old request had become a matter of past.

8. Besides this, J further find that the respondent Bank vide circular No. 640 dated 21.7.2008 had initiated a process of selection in JMG Scale-I, for which 28.7.2010 was the last date for receipt of the application. The petitioner duly submitted his application within the aforesaid date and appeared in the examination on 22.8.2010. After 23 days of appearing in the written examination, he was transferred on 15.9.2010 said to be made on the basis of his request made 15 years back, in the year 1995. Till the last date of receipt of the application, even as per respondents, it cannot be denied that he was not eligible for promotion to the post of JMG Scale-I, provided he cleared the examination. There was no dispute that he was successful in the examination. However, much after issuance of advertisement dated 21.7.2010 and even after last date of receipt of the application on 28.7.2010 as well as written examination held on 22.8.2010, the petitioner was transferred to Muzaffarpur Circle which became a ground for the respondents to deny the promotion in view of 2008 circular dated 14.10.2008 contained in Annexure-3 particularly paragraphs 7(d) and 7(f). The petitioner who was eligible on the last date of receipt of the application in JMG Scale-I, now became ineligible, as he has been, subsequently transferred on 15.9.2010, much after he had even appeared in written examination. If the transfer order could have awaited publication of

result, as it has done all these 15 years, the same would have saved him from being debarred. The petitioner was an office bearer and his transfer at this crucial juncture may make us ponder, whether everything was fair?

9. Furthermore, if the stand of respondents is accepted and conceded, it would amount to stretching the provisions contained in paragraphs 7(d) and 7(f) too far, to make it unreasonable. If a person is transferred on his own request after 15 years of its making, the same cannot be treated as transfer on request in absence of any reiteration of such request. It is very much probable that the grounds which may have promoted an employee to seek transfer 15 years ago, may not subsist on account of lapse of such long time.

10. I find that the provisions of Paras 7(d) and 7(f) of 2008 circular, on the basis of which the petitioner has been transferred after 15 years on request would not be applicable in his case and as such the impugned order dated 4.4.2011 debarring the petitioner for promotion in JMG Scale-I is quashed and the respondents are directed to consider the case of the petitioner in JMG Scale-I without delay. It would be open for the respondents to recall the transfer order dated 15.9.2010 or issue a fresh transfer order, if they so find it appropriate. In the result, this writ application stands allowed.