
(2013) 01 DEL CK 0296

In the Delhi High Court

Case No : Regular First Appeal 314 of 2010

Nilambar Datt Sharma

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Citation : (2013) 2 AD 374

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : R.S. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—Appellant filed a suit for declaration and damages before the trial court which has been dismissed being time barred vide judgment and decree dated 17th February, 2010 which is impugned in this appeal. Arguments heard and trial court record perused.

2. Appellant alleged in the plaint that he joined the respondent no. 1 as a Clerk in the year 1962 at Amritsar. He was promoted from time to time and posted in different parts of country. In the month of December, 1989 appellant was posted as Internal Auditor at Delhi and thereafter, remained posted in Delhi on different positions and ultimately superannuated on 31st March, 2000. At that time he was posted as Branch Manager of Jamia Nagar Branch, Delhi of respondent no. 1.

3. In the year 1997 appellant was promoted to the post of Senior Manager grade with effect from 1st July, 1997 in the pay scale of Rs. 8970-230-9200-250-10450 and this decision was communicated vide letter dated 12th July, 1997. Promotion was to come into effect subject to compliance of certain conditions by the appellant which included his joining as Regional Manager, Gaya under the jurisdiction of Zonal Manager, Patna on 4th August, 1997. It was categorically stated in the letter that failure to report on the stipulated date shall be deemed as refusal of the promotion. Appellant did not join his place of posting as the

circumstances did not permit him to do so. According to him it was not in his interest to join under Mr. N.K. Jaiswal, Zonal Manager. He made representations to post him elsewhere but said request was not acceded to. It is alleged that appellant was victimized and harassed. Appellant claimed that Clause 3, as contained in the letter dated 12th July, 1997, was void ab initio and non est in the eyes of law and be declared so. It was further alleged that appellant was continuously victimized and suffered damages to the tune of crores of rupees but due to his financial predicament he was confining his claim to Rs. 10 lacs. In para 25 of the plaint, it is stated that respondent no. 2 was acting at the behest of respondent no. 3 and had even threatened the appellant with disciplinary action, inasmuch as, pension amount was not paid after his superannuation and in absence thereof, appellant's daughter had to abandon her job in USA, thus, appellant reserves his right to claim damages at an appropriate stage. During the course of hearing, it has been pointed out that the appellant has already filed a suit for recovery of damages of Rs. 1 crore, as an indigent person, which is since pending.

4. Relevant it would be to reproduce letter dated 12th July, 1997 which reads as under:-

CO:PRS:PRO:III-IV(97):97-98: 980

July 12, 1997

Shri N.D. Sharma

Jamianagar Branch

New Delhi

Dear Sir,

Further to our Circular No. CO:PRS:97-98:29 dated 03.05.1997 informing about your empanelment for promotion to Scale IV, we are pleased to inform you that, you are being promoted to Senior Management Grade Scale IV, with effect from 1/7/97 NOTIONALLY, in the pay scale of Rs. 8970-230-9200-250-10450, subject to what is stated hereinbelow:

1. You are being placed as Regional Manager, Gaya under the jurisdiction of Zonal Manager, Patna.
2. You are advised to report to the place of posting on 04.08.1997. The monetary benefits will start accruing from the date of your reporting at the advised place of posting.
3. Failure to report on the stipulated date shall be deemed as refusal of the promotion.
4. You will be on probation for a period of one year from the above date of your reporting and your confirmation will be subject to your work, conduct and attendance being found satisfactory during the probation period.

5. Your fitment in the new scale would be communicated to you in due course by the concerned authority.

Notwithstanding what is stated hereinabove, please note that your promotion is subject to Court's order, if any, in this regard.

Please sign the duplicate copy of the order in token of having accepted the communication.

The new position naturally calls for greater vision, initiative, wider perspective and dynamic leadership. I am confident you will continue to display these qualities in even greater measure and be an effective member of the Bank's Senior Management.

I wish you all success in your new assignment.

Yours faithfully

(J.J. Bhattacharjee)

GENERAL MANAGER (PRS)

5. Appellant has prayed that by way of decree of declaration clause "3" of letter dated 12th July, 1997 be held as void ab initio and be declared as a simple letter of promotion and further that the damages to the tune of Rs. 10 lacs be awarded to him.

6. A holistic reading of the plaint makes it clear that the damages claimed in this suit are consequential to the non promotion of the appellant pursuant to letter dated 12th July, 1997 on his failure to join at Gaya, inasmuch as, a separate suit for damages has been filed. The fact remains that the reliefs claimed in the suit flow from the letter dated 12th July, 1997, inasmuch as, claim of damages is consequential thereto.

7. Article 58 of the Schedule to the Limitation Act, 1963 envisages period of three years from the date when right to sue accrue for filing a suit for declaration. In the instant case, suit was filed on 31st July, 2000 praying therein that clause "3" of letter dated 12th July, 1997, be declared as null and void, thus, the right to sue first accrued on 12th July, 1997. Suit for declaration has been filed after a period of three years from the said date, thus in my view, is barred by time. Accordingly, trial court has rightly held that suit is barred by limitation. As regards claim of damages, same is consequential to the main relief of declaration and suit having been filed after three years, this relief is also barred by limitation.

8. I do not find any force in the contentions of the appellant that his representation was rejected vide letter dated 18th April, 1997, thus, limitation gets extended and suit filed on 31st July, 2000 is within limitation. Declaration has been sought in respect of letter dated 12th July, 1997 and limitation will start

from the said date and not from the date when request of the appellant to post him somewhere else was declined.

9. Indubitably, the question of limitation is a mixed question of fact and law and may require evidence and cannot be decided at the preliminary or pre trial stage. However, if there is no dispute on the material facts court can examine the question of limitation on the basis of the facts disclosed in the plaint and documents filed by the plaintiff at the pre trial stage. In Mr. V.K. Sayal Vs. Bharat Heavy Electrical Ltd. (BHEL) and Others, , a Single Judge of this Court has held thus "normally, the question of limitation is a mixed question of fact and law and therefore cannot be decided at the preliminary or pre-trial stage. However, where there is no dispute on the material facts and Court can proceed to examine the issue on the basis of the facts disclosed in the plaint and the documents filed by the plaintiff". In this case, admittedly appellant seeks declaration of clause 3 vide letter dated 12th July, 1997 as null and void, thus, cause of action first accrued in his favour to challenge the same on 12th July, 1997 and not from the date when his request for posting him elsewhere was declined.

10. Section 3 of the Limitation Act reads as under:-

Bar of Limitation.

(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

(2) For the purposes of this Act,-

(a) a suit is instituted,-

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

11. A bare perusal of aforesaid provision makes it clear that it is for the court to

see that suit is within limitation and the plea of limitation can be considered at any stage even though no defence has been set up by the respondent. In *Rajender Singh and Others Vs. Santa Singh and Others*, , Supreme Court has observed thus "Indeed, it is the duty of the court, in view of Section 3 of the Limitation Act, to apply the bar of limitation where, on patent facts, it is applicable even though not specifically pleaded.". For the foregoing reasons, I do not find any illegality or impropriety in the impugned order. Accordingly, appeal is dismissed.