
(1983) 11 P&H CK 0067
In the Punjab And Haryana At Chandigarh

Punjab National Bank

APPELLANT

Vs

Vijay Kumar Kathpalia and Others

RESPONDENT

Date of Decision : 03-11-1983

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 12, 19, 7, 9
Constitution of India, 1950 — Article 14, 16

Citation : (1984) 2 ILR (P&H) 105 : (1984) 2 LLJ 436

Hon'ble Judges : S.S. Sandhawalia, C.J.; J.V. Gupta, J

Bench : Division Bench

Judgement

J.V. Gupta, J.—To understand the controversy between the parties, the brief history of the case is as follows.

2. The Punjab National Bank Limited (hereinafter called the Bank), was taken over by the Central Government under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Act 5 of 1970) (hereinafter referred to as the Act). By virtue of Sections 7, 8 and 9 read with other provisions of the Act, the control, management and administration of the Bank vested in the Central Government. There were officers of the following grades in the Bank with effect from 1st January, 1970:

"D" - Rs. 565-1130 "C" - Rs. 700-1315 "B" - Rs. 825-1490 "A" - Rs. 1150-1844

Subsequently, Grade "E" was introduced in the following scale "E" Rs. 325-640. Grades "E" and "D" generally consisted of technical officers. Sub-Accountants were also placed in Grade "D". By virtue of the settlement dated 23rd June, 1973, all Sub-Accountants were designated as Accountants and were placed in Grade "C" instead of Grade "D". Thereafter, only technical officers remained in Grades "E" and "D". Some technical officers were also in Grades "C", "B" and "A". On the basis of the Promotion Policy framed on 3rd May, 1976, Grade "E" was abolished and the same was merged with Grade "D1". Accountants came in

Grade "C" and from amongst the Accountants and other members of Grade "C" promotions were made to the posts of Assistant 5 Managers/Officers In charge, who were paid Rs. 50/- extra as duty allowance, although they were called "C" Grade Officers. From amongst the Assistant Managers/Officers In charge, promotions were made to the posts of Managers 10 Grade "B" and thereafter as Managers Grade "A". From amongst officers in Grade "D", promotions of technical officers in that Grade to Grade "C" were automatically made the moment a technical officer in Grade "D" reached the 15 basic pay of Rs. 700/- per month. In this manner, those technical officers who came in Grade "C" could be considered for further promotion to Assistant Managers/Officers In charge in the same grade and then in the higher grades, "B" 20 and "A". This continued till the Board of Directors of the Bank in consultation with the Reserve Bank of India and with the previous sanction of the Central Government made regulations in exercise of the powers conferred by Section 19 read 25 with Section 12(2) of the Act. The regulations were called Punjab National Bank (Officers) Service Regulations, 1979 (hereinafter referred to as the Regulations). These Regulations came into force on 1st July 1979. Regulation 4(1) provided four 30 Grades for Officers and specified the scales of pay which are as follows:

(a) Top executive Scale VII Rs. 3000-3500 grade Scale VI Rs. 2750-3250 (b) Senior management Scale V Rs. 2500-2700 grade Scale IV Rs. 2000-2400 (c) Middle management Scale III Rs. 1800-2250 grade Scale II Rs. 1200-2000 (d) Junior management grade Scale I Rs. 700-1800

Regulation 7 provided for the categorisation of the officers of the Bank in the new grades and scales as follows:

Posts Grade in which placed General Manager/Additional Top Executive Grade General Manager Scale VII Deputy General Top Executive Grade Managers Scale VI Assistant General Senior Management Managers Grade Scale V Regional Managers/Chiefs Senior Management at Head Office/Chief Grade Manager/Principal Staff Scale IV College Grade A Middle Management Grade Scale III. Grade B Middle Management Grade Scale II. Grade C.D.E. Junior Management Grade Scale I.

Regulation 17 provided that promotions to all grades of officers in the Bank shall be made in accordance with the policy laid down by the Board from time to time having regard to the guidelines of the Central Government, if any

Regulation 18 provided for the fixation of seniority. Clauses (2), (3) and (5) of Regulation 18 being relevant are reproduced below:

18(2). Seniority of an officer in grade or scale shall be reckoned with reference to the date of his appointment in that grade or scale. Where there are two or more officers of the same length or service in that grade or scale, their inter-se seniority shall be reckoned with reference to their seniority in the immediately preceding grade or scale or the previous cadre to which they belonged in the Bank's service. Where two or more officers have the same length of service in

such preceding grade or scale or such previous cadre, their seniority shall be determined with reference to their seniority in the immediately preceding grade or scale or cadre as the case may be.

(3) The inter-se seniority of officers directly recruited in a batch to any grade or scale shall be reckoned with reference to the rank allotted to them at the time of such recruitment.

(4)...

(5) Nothing in this regulation shall affect the seniority amongst themselves of the officers as existing immediately prior to the appointed date.

The aforesaid provisions provided for fixation of seniority in the grade or scale with reference to the date of appointment in that grade or scale and in Clause (5), it was made clear that the regulation shall not affect the seniority amongst the officers as existed immediately prior to the appointed date and appointed date has been " fixed as 1st July, 1979.

3. On the basis of the aforesaid regulations, all the officers in grades "C and "D" were placed in the junior management grade scale I. Although regulation 7 talks of the officers in grade "E" also being placed in junior management grade scale I, but grade "E" and already been merged with grade "D" in view of the promotion policy dated 3rd May, 1976. In accordance with regulation 18 a seniority list was prepared as on 1st January, 1981. In the seniority list so prepared, the officers in erstwhile grade "D" were shown as junior to the erstwhile officers in grade "C" although all of them were placed in one seniority list consisting of officers in junior management grade scale I.

4. The six writ petitioners who filed the writ 25 petition were placed as accountants grade "C officers between the period 30th July, 1976 and 26th December, 1978. The first five writ petitioners were promoted as assistant managers on 1st July, 1981 whereas petitioner No. 6 continued to be an accountant.

5. There are two channels of promotion from junior management grade scale I to middle management grade scale II as follows: ?

(1) On the basis of seniority...60 per cent.

(2) On the basis of selection/...40 per cent written test.

Vide circular dated 25th March, 1981, the Board of Directors of the Bank framed a new promotion policy in pursuance of regulation 17, a copy of which is Annexure R-3. Clause (2) of the aforesaid policy was regarding promotion from junior management grade-1 to middle management grade II. Promotion on the basis of selectivity and seniority was again in the ratio of 40:60. For promotion by selection, the eligibility was provided as follows: ?

In terms of Regulation 18(5) of the PNB (Officers) Service Regulations, 1979,

officers promoted as Officers In charge/Assistant Managers before this Promotion Policy came into force, will rank for seniority higher than the Accountants and Technical/specialist Officers in Scale I. Officers other than the above category of Officers In charge/Assistant Managers in scale I with minimum of 7 years of satisfactory service as an officer, will be eligible:

The new policy came into force with effect from 25th March, 1981 and, therefore, all officers, who were promoted as officers in charge/assistant managers before the new policy came into force were to rank senior to the accountants and technical/specialist officers in scale I and all other officers in scale I as on 25th March, 1981, including officers in charge/assistant managers, who were promoted as such after 25th March, 1981, were made eligible for promotion on the basis of selection against 40 per cent, posts in scale II only if they had seven years satisfactory service as an officer. For selection, written test of 100 marks with 50 per cent, as qualifying marks in each of the two papers: interview of 45 marks, performance of 45 marks, marks for qualifications besides providing marks for every completed year of service were provided. Similar was the position for promotion on the basis of seniority against 60 per cent, posts. The six writ petitioners were far too junior in the seniority list for promotion to scale II on the basis of seniority against 60 per cent, posts and, therefore, the rule of minimum seven years satisfactory service as an officer, did not affect them. The Bank invited application vide circular dated 22nd May, 1981, a copy of which is Annexure P. 2 for promotion to the Middle management trade scale II to fill up the 40 per cent, quota by selection in view of the eligibility criteria laid down in the Promotion Policy dated 25th March, 5 1981. The affected officers represented against the aforesaid circular, a copy of which is Annexure P.I. When 9th August, 1981 was fixed as the date for holding the test, the six writ petitioners filed the writ petition challenging the same along with the promotion policy dated 25th March, 1981, on the grounds that the said policy was violative of Articles 14 and 16 of the Constitution, was against regulation 18(2) of the Regulations, because the writ petitioners were senior according to the seniority list prepared on 1st January, 1981, in accordance with regulation 18(2) and yet they were made ineligible whereas many juniors to them were made eligible and that the assistant 20 managers/officers in charge who were promoted as such before 25th March, 1981, were eligible though they had not put in seven year service as officers and the first five writ petitioners who were promoted as assistant managers on 1st July, 25 1981, and who had not put in seven years service as officers, were being ignored from consideration. In the return filed on behalf of the Bank, the promotion policy dated 25th March, 1981, was pleaded to be constitutional, valid and in order. 30 It was highlighted therein that the accountants were in grade "C" whereas the technical officers and agricultural officers were being placed in grades "D" and "E1 which were below grade "C" The Pillai Committee and the Study Group of 35 Bankers were of the view that the technical officers or the officers of the specialized categories who were in grades "D" and "E" were to be included in" junior management grade scale I so as to

give equal chances of promotion to those officers as well. It was also stated that in view of the above it was thought that there should be minimum seven years service experience as an officer before an officer is promoted to middle management grade scale II. The printed book containing the report of the Pillai Committee which was produced before the learned single Judge was also produced before us at the time of the hearing.

6. After hearing, the learned single Judge came to the conclusion that though it was for the appropriate authority to lay down the criteria for initial appointment or promotion and, therefore, the rule of seven years service experience on the face of it appears to be beyond any controversy, but the facts of the case clearly go to demonstrate that seven years service experience was not the criteria as the same had the effect of excluding out of consideration the senior and probably the able persons and the promotions were sought to be made out of the junior lot which would not only be arbitrary, unjust and highly unreasonable, but also violative of Articles 14 and 16 of the Constitution. In the judgment under appeal, reference was made to *Slate of Uttar Pradesh v. Dr. M.J. Siddiqui*, 1980 Serv. LR. 868, *S.M. Pandit v. State of Gujarat* 1972-1 L.L.J. 127 and *Roshan Lal Tandon v. Union of India* 1968-1 L.L.J. 576 and certain quotations therefrom were also reproduced. According to the learned single Judge, the observations in Para 5 *Roshan Lal Tandon's* case (*supra*), were on all fours with the present case. According to the learned single Judge while the junior officers had been equated with senior officers, no rule or policy can be laid down for purposes of promotion, whether on the basis of seniority or on the basis of selectivity, by which the senior officers would become ineligible for consideration for further promotion. Thus, the promotion policy dated 25th March, 1981 (which was annexed as part of Annexure Rule 3) contained in Clause II under the heading "Process of Selection" and in first part of heading "Eligibility" to the effect that the officers promoted as officers in charge/assistant managers before the promotion policy came into force will rank senior for seniority, higher than the accountants and technical specialist officers in scale I in accordance with regulation 18(5) and was upheld, but the later part of the same which is to the following effect.?

Officers other than the above category of officers in charge/Assistant managers in . scale I with minimum 7 years of satisfactory service as an officer will be eligible:

was held to be not a good policy unless the minimum of seven years satisfactory service as an officer for the purpose of eligibility was counted from the date when the officer came in Grade "C or with effect from 1st July, 1979, when the Regulations came into force or when counted from 25th March, 1981, when the promotion policy came into force. Aggrieved against the same, the Bank has come up in the letters patent appeal.

7. Mr. H.L. Sibal, Senior Advocate, counsel-for the appellant-Bank submitted that the system of grouping may have certain drawbacks, but on that ground alone, the policy could not be struck down being violative of Articles 14 and 16 of the

Constitution. Moreover, according to the learned Counsel, the policy was framed after considering the Pillai Committee Report and the guidelines issued by the Central Government and, therefore, the same perfectly legal and 10 valid. Some hardship to some persons in pursuance thereto in regard to their promotions or selections may be there, but no policy or scheme could be foolproof. Simply because the policy does not satisfy the expectation of a few employees, it does not render the same arbitrary, irrational, perverse or mala fide. In support of this contention, the learned Counsel relied upon V.T. Khanzode and Others Vs. Reserve Bank of India and Another, , (It may be noted that this judgment was not there at the time of the decision of the writ petition by the learned single Judge as it was rendered by the Supreme Court much later.) Reference was also made to the Supreme Court decision in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, to contend that for further promotion or selection, the question of seven years experience in the Bank service was a good criteria and was so provided to achieve the larger object of looking to the expansion of banking services, particularly in the rural areas. On the other hand, Mr. Kuldip Singh, the learned Counsel for the respondents (the writ petitioners) reiterated the contentions which prevailed with the learned single Judge. 35 The learned Counsel also referred to D.S. Nakara and Others Vs. Union of India (UOI), wherein the classification of the petitioners on the basis of date of retirement for the application of the revised pension formula was held to be arbitrary and violative of Article 14.

8. After hearing the learned Counsel for the parties and going through the case law cited at the bar, we are of the considered opinion that the observations of their Lordships of the 45 Supreme Court in V.T. Khanzode's case (supra), are aptly applicable to the facts of the present case. In the said case, the challenge was to the introduction of the common seniority and inter-group mobility amongst different grades of Bank Officers of Group (Section A). Group II and Group III with retrospective effect, i.e. from 22nd May, 1974 contained in the administrative circular N0.8 dated 7th January, 1978 and office order No. 679 dated 27th April, 1978, issued by the Reserve Bank of India. In that context, it was observed in paras 32 and 40 of the judgment as follows: ?

32. This system of grouping had many draw backs bearing on the promotional opportunities of officers in the various Groups. To mention but a few, the drawbacks were:

(i) Unequal size of one group as compared to another, (ii) Unequal expansion in one group as compared to another and (iii) Earlier confirmations of officers in one group as compared to those in"another.

40 It is clear from this narration of historical events that the various departments of the Reserve Bank were grouped and regrouped from time to time. Such adjustments in the administrative affairs of the Bank are a necessary sequel to the growing demands of new situations which are bound to arise in any developing economy. The group system has never been a closed or static chapter

and it is wrong to think that the officers of the various groups were kept, as it were, in quarantine. The group system has been a continuous process of trial and error and the impugned scheme of inter-group mobility has emerged as the best solution out of the experience of the past". Combined seniority has been recommended by two special committees whose reports reflect the expertise and objectivity which was brought to bear on their sensitive task. It is clear that inter-group mobility and common seniority are a safe and sound solution to the conflicting demands of officers belonging to group I on one hand and those of groups II and III on the other. Private interest of employees of public undertaking cannot override public interest and an effort has to be made to harmonize the two considerations. No scheme governing service matters can be foolproof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will, of course, render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these. Vested interests are prone to hold on to their acquisitions and we understand the feelings of group I officers who have to surrender a part of the benefits which had accrued to them in a water-tight system of grouping. Combined seniority is indispensable for the smooth functioning of the 5 Bank and no organisation can function smoothly if one section of its officers has an unfair advantage over others in matters of promotional opportunities. The reports of the Cadre Review Committee and the There is Committee show that combined seniority has emerged as the most acceptable solution as a matter of administrative, historical and functional necessity. We see no justification for undoing what these committees have achieved after an objective and integral examination of the whole issue. We may mention that the conclusion to which these committees came were considered by the Bank when Shri M. Narasimhan, later India's Executive Director in the World Bank, was the Governor and it was after Dr. I.G. Patel, formerly Secretary, Economic Affairs, Government of India and Deputy Administrator, United Nations Development Programme, took over as Governor in December 1977 that the final decision was taken by the Central Board to introduce inter-group mobility and combined seniority.

In the present case as well, the policy has been framed by the Bank after considering the Pillai Committee Report and the guidelines provided by the Central Government, and, therefore, we see no justification in interfering with that policy. We do not find that the said policy is violative of Articles 14 and 16 of the Constitution, as contended by the learned Counsel for the respondents and as held by the learned single Judge as it can neither be said to be arbitrary, irrational or perverse. It may be that it causes some hardship to the writ petitioners but that by itself does not justify invoking Articles 14 and 16 of the Constitution. After clubbing "C and "D" grades into junior management grade, all are equal as regards the said grade and further promotion to the middle management grade is equally available to all the officers of that grade. In its

applicability, if certain officers who were in grade "C earlier may be prejudiced to some extent that does not mean that the policy as such was violative of Articles 14 and 16 of the Constitution. As observed by the Supreme Court in V.T. Kharuode's case (supra), no scheme or policy governing service matters can be foolproof and some section or the other of the employees is bound to feel aggrieved on the score of its expectations being falsified or remaining unfulfilled. In this view of the matter, we are inclined to hold that the policy as framed by the Bank was not at all violative of Articles 14 and 16 of the Constitution, as found by the learned single Judge.

9. Since the learned Counsel for the respondents (writ petitioners) strongly relied upon the decision of the Supreme Court in Roshan Lal Tandon's case (supra), it may suffice to notice that the said decision was considered by the Supreme Court in Trihki Nath Khosa's case (supra) in para 48 whereof it was held: ?

There is an aspect of Roshan Lal's case (supra), which may not be ignored. The Union of India had contended by its counter-affidavit therein that the reorganisation of the service was made with a view to obtaining a better and more technically trained class of train examiners which had become necessary on account of the acquisition of modern types of rolling stock, complicated designs of carriages and wagons and greater speed of trains under the dieselisation and electrification programmes. This contention, though mentioned in the affidavit, was not placed before the Court as is transparent from the judgment. What its impact would have been on the ultimate conclusion need not be speculated, for it is enough for understanding the true ratio of the judgment to say that the case was decided on the sole-basis that persons recruited from different sources were classified according as whether they were appointed directly or by promotion. That is why the key passage cited by us from the judgment winds up by saying that the case falls within the principle...of the decision...in Mervyn Coutindo and Others Vs. Collector of Customs, Bombay and Others, .

10. In any case, in our judgment, in determining whether a particular policy or scheme is violative of Article 14 of the Constitution or not, the historical background under which it was framed and the object which was sought to be achieved are to be kept in mind. For that purpose it being a policy matter, the opinion of the experts in that field is ordinarily to be respected and the Courts will be reluctant to interfere with such a matter.

11. There is always room for improvement in any human approach and a better policy could have been framed, but that by itself is no ground to invoke Articles 14 and 16 of the Constitution.

12. As a result of the above discussion, this appeal succeeds and is allowed. The order of the learned single Judge is set aside and the writ petition is dismissed with no order as to costs.

S.S. Sandhawalia, C.J.:

I agree