

(1995) 03 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Appeal No. 5199 of 1993 and Civil Miscellaneous Appeal No. 8530 of 1993

Rajender Nath Chawla

APPELLANT

Vs

Chairman and Mana. Dir., P.N.B. and Others

RESPONDENT

Date of Decision : 31-03-1995

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1995) 2 AD 157 : (1995) 33 DRJ 640

Hon'ble Judges : S.D. Pandit, J;P.K. Bahri, J

Bench : Division Bench

Advocate : K.R. Nagraja, O.C. Mathur, Devinder Singh and Jasmeet Singh, for the Appellant;

Judgement

P.K. Bahri, J.

(1) The petitioner seeks quashing of the letters dated November 4, 1993 and January 13/15, 1990, as being ultra virus of the scope of promotion policy and seeks declaration that the rule which requires rural service as a pre-condition in respect of the petitioner is violative of Article 14 of the Constitution and he seeks that the petitioner be considered eligible for both Channel-I and Channel-II promotions in MMGS-II scale and respondents be required to declare the result of the petitioner accordingly and give promotion to the petitioner.

(2) Facts of the case, in brief, are that the petitioner had been selected for the post of JMGS-I through a competitive examination and had been confirmed in the said post since December 1982. The service conditions of the officers in the Punjab National Bank are governed by Punjab National Bank Officers' Service Regulations, 1979, in which, inter alia, Regulation No.17 provides "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 Government, if any".

(3) The petitioner, who has been working in the Junior Management Scale-I, is entitled to have promotion in MMGS-II. The promotion to the said grade is through two avenues, first one called Channel-I which is granted on the basis of seniority-cum-merit and the other called Channel-II which is granted on the basis of merit. The eligibility qualification for getting promotion under Channel-I is seven years of satisfactory service which is inclusive of two years service in a rural branch. The eligible officers have to undergo interview and marks are awarded and selection is made. Under Channel-II eligibility qualification is the same but the selection is made on the merit on the basis of written test and interview. The promotion policy lays down that if an officer is not selected for promotion, he will be eligible to participate in the next selection process for that post. However, if an officer is not selected in two successive selections, he will be eligible for consideration only after a gap of one selection and thereafter, for other successive selections, there will be a minimum gap of two years. It also provides if an officer refuses posting on promotion or seeks reversion after accepting the promotion, he will be debarred from appearing in the next two successive selections. By circular No.1164 dated August 3, 1989 (Annexure B), the pre-condition relating to rural service was made a post-condition i.e. officer on promotion has to be posted in rural branch for completing the required two years of rural service.

(4) The petitioner, who completed seven years service in the post of JMGS-I but has not completed requisite years of rural service, had applied for promotion in Channel-II on merit giving an undertaking that he would complete the prescribed two years rural service on promotion. The petitioner qualified and was approved for promotion vide letter dated January 9, 1990 (Annexure C). Petitioner, however, declined the promotion as he did not want to be posted in Punjab for undergoing service of two years in rural branch. Under the promotion policy the order communicated vide letter dated January 13/15, 1990, debarred the petitioner from consideration for promotion for a period of two years from the date he was to become eligible after fulfilling the promotion criteria including necessary rural branch service. The ultimate effect of this order is that the petitioner could not be considered for promotion for a minimum of four years and could be considered for promotion only if he was to have an experience of two years rural service in his present post.

(5) In terms of Regulation No.17 of the Punjab National Bank Officers' Service Regulations, 1979, the respondent-Bank formulated which is termed as "Punjab National Bank Officers' Promotion Policy, 1991" (Annexure E). The eligibility criteria for promotion to the post of MMGS-II remained the same, so also the two Channels mentioned above. Clause (ii) of paragraph Xiv provided that in case an officer refuses promotion in higher grade, he would be eligible for consideration for promotion only after a gap of two years. Two years are to be reckoned from the date of approval of the panel by the competent authority.

(6) It is the case of the petitioner that the bar of two years imposed on him was

for the period January 1990 to March 31, 1992. Reference is then made to circular letter dated March 30, 1993 (Annexure F) by which the applications were invited for promotion to MMGS-II to fill up the vacancies through Channel-I and Channel-II as per the eligibility criteria laid down under the Promotion Policy of 1991. It was mentioned in the circular that the eligibility criteria required two years of service in rural branch. However, the officers who are otherwise eligible for promotion in terms of eligibility criteria but could not complete the requisite rural experience may be considered for promotion subject to the stipulation that such officers, if approved, would be immediately posted in rural branch for requisite number of years and under no circumstances they will be allowed by the bank to shift to other areas before they complete the tenure of rural posting and the applicants were asked to furnish necessary undertakings in this regard. It was also provided that in this very circular that officers who refuse promotion under Channel-I or Channel-II after being selected, they shall not be eligible for promotion under MMGS-II under both the channels for a period of two years.

(7) There is some difference between the (annexure B circular dated August 3, 1989 inviting applications from) wording of the circular mentioned above while in the circular of 1989 it was mentioned that the officers who are otherwise eligible for promotion in terms of eligibility criteria but could not complete the requisite rural/some urban experience for no fault of theirs may be considered for promotion subject to stipulation that such officers if approved would be immediately posted in rural/some urban branch for requisite number of years and under no circumstances they will be allowed by the bank to shift to other areas before they complete the tenure of rural/some urban posting.

(8) The case of the petitioner is that all the officers were given relaxation with regard to acquiring the requisite rural service experience after the promotion although under the policy it was an eligibility qualification before even being considered for promotion. It is the case of the petitioner that this new policy read with the circular mentioned above, the bar which was imposed on the petitioner making him ineligible to be considered for promotion till he was to acquire the minimum qualification of rural service became ineffective and in any case the bar which could be imposed on the petitioner for declining the promotion on his refusing to go to any rural posting, could be only for two years which had expired before the selection processes for the promotions were undertaken. The petitioner admittedly qualified in the written test for the merit Channel as per letter dated June 3, 1993 (Annexure G). The petitioner had become eligible for promotion in seniority Channel-I and was called for interview as per letter dated July 23, 1993 (Annexure H) and he was duly interviewed. The results were declared on September 24, 1993 but the petitioner although was successful but did not figure in that result. The respondent had informed the petitioner that as he did not fulfill the eligibility criteria of having experience of rural branch service thus he could not be considered for promotion for any of the said two channels.

(9) Facts of the case are not, indeed, in dispute. It is admitted fact that officers

holding the post of MMGS-I are entitled to be promoted to the higher post of MMGS-II and the eligibility criteria for the said promotion is seven years service which should be inclusive of two years service in rural branch. The respondent had in 1989 relaxed this condition and allowed the officers to be considered for promotion subject to their giving undertaking that on being promoted they shall undergo the posting in a rural branch for two years and if such officer on promotion was to decline the rural posting, then he was to be debarred for two years. In 1989 policy, earlier the bar was for two successive selection years and the officers only who were not provided rural posting as eligibility criteria by the respondent and were not at fault were made eligible but in 1991 the question of officer being in fault or not was not important feature. 1991 policy made all officers eligible for being promoted not possessing the requisite experience in rural branch as they could get such experience after getting the promotion. It is also admitted fact that after 1991 policy there are officers who had declined to be posted in rural areas, still they had been given promotion and had been promoted to acquire the experience of rural service after promotion. The respondents, however, have pleaded that the bank has been interpreting this promotion policy read with circulars giving relaxation to mean that the officers who refuse promotion they have to not only debar themselves from being considered for promotion for two years from the date they had declined the promotion but they had to acquire the two years rural experience as pre-condition for being considered for promotion in future.

(10) The learned counsel for the petitioner has vehemently argued that it is true that eligibility for promotion provided for a qualification of rural service before being considered for promotion but the respondent-Bank had itself in 1989 relaxed the said pre-condition in case of such officers who could not without their own fault complete the experience of rural service and it was made clear that they can acquire the experience of rural service after promotion but he has urged that in 1991 policy the criteria has been changed by the respondent-Bank itself by laying down that in case officers had not acquired the pre-condition eligibility qualification of rural service for any reason whatsoever, still they are eligible for promotion and they could obtain the necessary rural service and acquire the qualification after getting the promotion. He has argued that the disqualification which was incurred by the petitioner in declining the promotion under the 1989 promotion policy was for only two years which expired in March 1992.

(11) He has urged that in 1993 the petitioner was similarly placed as the other officers who could not for any reason whatsoever complete the pre-condition of acquiring rural service experience and thus, the petitioner and other officers had become eligible for promotion but they were to only give undertaking that on promotion they would not refuse posting in rural area and in case of refusal they were to be again debarred from promotion for two years. He has pointed out that other officers, who had declined to be posted in rural area, have been under the 1993 policy given promotion and have been permitted to acquire requisite rural service experience after promotion. It is, thus, urged that the respondents rather

discriminated between the petitioner and other similarly placed officers by declining the promotion to the petitioner and requiring him to first obtain the rural service experience as pre-condition for being considered for promotion.

(12) He has pointed out that even the Promotion Policy 1989 clearly contemplated debarring of only two successive selection years and did not contemplate that officer suffering such a bar would not be considered for promotion unless he fulfills the pre-condition of acquiring two years rural service experience. He has urged that this interpretation being given by the respondent-Bank that bar would not be lifted till the petitioner acquired two years rural service experience as pre-condition is not in consonance with the provisions of the Promotion Policy and at any rate in view of the Promotion Policy of 1991, this bar became ineffective that the petitioner should acquire rural service experience as a pre-condition for being considered for promotion.

(13) On the other hand, the learned counsel for the respondents has argued that eligibility criteria for promotion has remained unchanged throughout and respondent-Bank has given relaxation in 1989 making it clear that on obtaining such relaxation, if an officer on promotion declined the promotion he was to be debarred from consideration for two years and would be not considered for promotion till he acquired eligibility condition as a pre-condition for being considered for promotion. He has referred to a circular dated September 29, 1989 (Annexure R/1) in this connection. He has also pointed out that there has occurred no change in the promotion policy which was prevalent in 1989 and then in 1991. He has pointed out that there are many more officers who on promotion had declined to serve in rural branch and they had been made ineligible to be considered for promotion till they acquired the rural service experience as a pre- condition.

(14) The question which arises for consideration is whether reading the 1991 Promotion Policy Along with the circular of 1993, could it be said that relaxation being given for being considered for promotion even though officers had not acquired two years rural service experience is available to the petitioner or not ? If we peruse the Policy of 1991 Along with the circular issued in 1993 (Annexures E & F), it becomes evident that there has taken place a change in the wording of the promotion policy from the wording of the circular issued in 1989. In 1989 when relaxation was given for acquiring the rural service experience after promotion, it was made clear that such relaxation would be available to such officers who could not acquire the rural service experience without their fault. These words are not there in the circular of 1993 which makes it clear that the officers who were otherwise eligible for promotion in terms of eligibility criteria but could not complete requisite rural service experience may be considered for promotion subject to the stipulation that such officers, if approved, would be immediately posted in rural branches for requisite number of years. The wording of the above mentioned circular makes it clear now that even though the officers had declined the rural posting, may be on promotion or may be before

promotion, even then they can be considered eligible with the aforesaid stipulation of acquiring the requisite rural experience after promotion.

(15) It is really irrational to hold that if an officer had incurred the debar on declining promotion once then even though he had become ineligible for being considered for promotion for two years because of his refusal to accept such promotion and posting in rural branch, still such officer would not be covered by the circular of 1993 because the aforesaid wording of the circular does not make such an officer ineligible. After declining promotion and after undergoing the bar of two years, such an officer like the petitioner in our view would stand in the same position as other officers of MMGS-II who even though had declined rural posting, still they have been made eligible for promotion and have been granted promotion with a stipulation to undergo requisite rural experience after promotion. We do not find any difference between the officers who had declined promotion and had suffered the bar of two years being of different class than the officers who had not declined promotion but had been declining to be posted in rural branches. They had been made eligible by circular of 1993, similarly the officers of the type of petitioner should have been also made eligible in view of the wording of the circular dated March 30, 1993.

(16) The learned counsel for the petitioner has brought to our notice the promotion policy for officers of the Indian Overseas Bank where the eligibility for promotion is similar as in the present case and the promotion policy provides that the eligibility of two years rural service experience can be acquired after promotion and on officer declining promotion he is to be debarred from consideration for promotion for two years. The Indian Overseas Bank is also a nationalised bank and is governed by the same guidelines of the Central Government which are also applicable to the Punjab National Bank-respondent.

(17) The whole object of the requisite eligibility criteria of two years rural branch service is that the officers should come forward for manning vast expanding banking activities in rural areas of the country. This object is sought to be achieved by denying promotion to the officer who decline rural posting. When the relaxation has been given for acquiring such qualification after promotion, such relaxation should be available to all officers.

(18) We are, thus, of the opinion that after the petitioner had undergone the debar of two years on his declining promotion, he stood in the same position as other officers of MMGS-II and to insist that petitioner should initially acquire two years rural service experience as a pre-condition is not, in our view, in consonance with the 1991 policy read with the circular of 1993 and it also does not achieve the objective of encouraging officers to man the rural branches.. The petitioner has to be treated in the same class as other officers of MMGS-II for being considered for promotion in terms of Promotion Policy 1991 as relaxed by circular of 1993. In case the respondent-Bank wanted that the person declining promotion and becoming ineligible for consideration for two years should not be covered by the said relaxation mentioned in circular 1993, then the wording

would have been different making it clear that officers declining promotion would be debarred from consideration on promotion in future for all times till they acquired eligible qualification of rural service experience as a pre-condition for being considered for promotion. That is not the wording. The respondent-Bank cannot add anything more to the circular of 1993 or to the Promotion Policy of 1991 by unnecessarily placing the officers similarly placed as petitioner in any disadvantageous position. By treating the petitioner as a different class from the other officers of MMGS-II in considering them eligible for promotion, the respondent had, in our view, acted in violation of Article 14 of the Constitution.

(19) We, thus, hold that the petitioner became again eligible for promotion on the expiry of two years bar on March 31, 1992 and was eligible to be considered for promotion under the Promotion Policy of 1991 read with circular of 1993 and was not required to obtain the two years rural service experience as a pre-condition for being considered for promotion to the higher post of MMGS Grade-I.

(20) We allow the petition and make the rule absolute and quash the impugned letter and require the respondents to declare the result of the petitioner and if he has qualified in both the channels, he should be given promotion in the channel which is more beneficial to him otherwise in the channel he is qualified. The petitioner shall be bound by the terms of promotion given in the Promotion Policy 1991 read with circular of 1993. In view of the peculiar facts, we leave the parties to bear their own costs.