
(2012) 08 SC CK 0017

In the Supreme Court Of India

Case No : Civil Appeal No. 6072 of 2012 (Arising out of S.L.P. (C) No. 20296 of 2007)

Ram Ashish Dixit

APPELLANT

Vs

Chairman Purvanchal Gramin Bank Ltd. and Another

RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Gorakhpur Kshetriya Gramin Bank (Employees) Service Regulation, 1980 — Rule 17, 19

Citation : (2013) 3 AWC 2961 : (2013) 137 FLR 704 : (2013) 6 SCALE 345 : (2013) 6 SCC 309

Hon'ble Judges : Surinder Singh Nijjar, J; H.L. Gokhale, J

Bench : Division Bench

Advocate : Dhruv Mehta and Fakhruddin and Abhay Singh, Yasmin Zafar, Vipin Gupta, Rajesh Kumar, Yashraj Singh Deora, Sameer Pradeep Abhyankar, Anupama Dhruv and Sarv Mitter, for Mitter and Mitter Company, K.T. Anantharam, Vasudevan Raghavan, Gopal Krishna, M.K. Chaudhary, Raj Kishore and S.K. Verma, for the Appellant;

Final Decision : Dismissed

Judgement

1. Leave granted.

2. The Appellant herein was appointed as an officer in the Gorakhpur Kshetriya Gramin Bank on 21.12.1981. He was confirmed on the post of officer [later on designated as Junior Management Grade Scale I (JMGS-I)] in the year 1983. On 18.12.1991, a charge sheet pertaining to the period from 1984 to 1990 was prepared against him. At that time he was posted as Branch Manager, Gajpur Branch, District Gorakhpur. The charge sheet alleges that while the Appellant was posted at Bhatpur Branch and Gajpur Branch as Branch Manager, he had committed a serious irregularity in the acceptance/disbursement of loan (of a particular account holder). The gist of the charge was that he did not verify the genuineness of the claim made by the account holder for the loan in various

small amounts. The loan amount was to be used by the account holder, who was an agriculturist, for improving the agricultural facilities on his farm. On the basis of those imputations it was alleged that the Appellant has violated, Rules 17 and 19 of the Gorakhpur Kshetriya Gramin Bank (Employees) Service Regulation, 1980. It is not disputed before us that the charge sheet was served upon the Appellant on 7th January, 1982. Thereafter a regular inquiry was held against him. The inquiry officer held that the charge No. 3 was proved. Subsequently, the disciplinary authority differed with the finding recorded by the inquiry officer. The charge Nos. 1 and 2 were also held to be proved against the Appellant. At the conclusion of the disciplinary proceedings on 29th August, 1998 the disciplinary authority imposed punishment of stoppage of one increment for three years and 50% recovery of the sanctioned loan amount in case the Bank fails to recover the same from the farmer to whom the loan had been granted. It appears that in a departmental appeal filed by the Appellant, by Order dated 15th December, 1998, the appellate authority modified the order of punishment, by reducing the amount of recovery from 50% to Rs. 5,000/-. The aforesaid order was communicated to the Appellant on 7.1.1999.

3. During the aforesaid interregnum, the Appellant became eligible for promotion from the rank of Junior Management Grade-I to Middle Management Grade-II. He was duly considered for promotion by the departmental promotion committee, which was held in the year 1995. It is the pleaded case of the Respondent-Bank, in Paragraph 12 of the counter affidavit filed in the High Court (Annexure P-13 in the SLP), that the Appellant was duly considered for promotion but he could not succeed on the basis of the criteria of seniority-cum-merit. It appears that another departmental selection committee was constituted on 5th September, 1997 when the Appellant was also duly considered but not approved for promotion. This fact is also alluded to by the Appellant in his representation dated 1.9.1999 sent to the Chairman of the Gramin Bank. In this representation, he categorically states that in the promotion process held in the years 1995 and 1997 he was duly considered but not promoted.

4. On 28th March, 1998, the Bank issued Circular No. 63 prescribing certain new procedures and penalties for the officers of the Bank. The aforesaid Circular notices the earlier procedure which provided that the officers against whom disciplinary proceedings are pending or contemplated or an officer who has been punished in the recent past years or against whom there are any adverse remarks shall be unfit for promotion. It is further noticed that in spite of the aforesaid criteria, "at the time of deciding the competency of the candidates, they had been called for interview, not keeping in view the aforesaid facts. As per above, even last year, all officers were called in interview".

5. The Circular further provides that henceforth the departmental promotion committee shall follow the sealed cover procedure which is applicable in the sponsor Bank. It is clarified that "this procedure will be applicable to the earlier sealed cover results and the results to be kept in sealed covers in future." The

Circular further provides that where on completion of disciplinary proceedings, an officer is punished with stoppage of increments or promotions, in such cases, officer will not be eligible to be considered for promotion till after the rigor of punishment is over. As noticed earlier, the Appellant was duly considered for promotion in the year 1995 and he was not found fit for promotion. In the year 1997, although he was considered for promotion but his result was kept in a sealed cover. In the meantime, the Appellant was punished by Order dated 29th August, 1998. Apprehending that the Bank may not consider him for promotion, the Appellant submitted a representation on 19th May, 1999. However, it is a matter of record that the Appellant was actually considered for promotion in the departmental promotion committee which was held on 31st August, 1999. The sealed cover procedure having been opened and the Appellant having been punished on the basis of the charge sheet, the Appellant in view of the Circular No. 63 dated 28.3.1998 was not promoted in the year 1999 also. It was at that stage when the Appellant filed Civil Misc. Writ Petition No. 38084 of 1999 in the High Court of Judicature at Allahabad against the action taken by the Bank.

6. In the writ petition, the Appellant had claimed writ in the nature of certiorari quashing the orders dated 31.8.1999 and 2.9.1999 whereby he was informed that he has not been promoted. The Appellant also sought a writ in the nature of Mandamus directing the Respondent to open the sealed cover result adopted in the year 1997. He made an alternative prayer that the Petitioner be considered for promotion in the departmental promotion committee which was to be held on 6th September, 1999. The aforesaid prayers, however, have been rejected by the High Court in the impugned judgment and order dated 13th June, 2007.

7. Learned Counsel for the Appellant submitted that the Appellant ought to have been promoted firstly in the year 1995 as at that time, sealed cover procedure was not even followed by the Bank. In any event, the Appellant ought to have been promoted in the year 1997 when the Bank kept his result in a sealed cover without any legal justification. Even if the Appellant was not to be promoted in the year 1995 or 1997, the name of the Petitioner could not have been ignored in the year 1998 as by that time, the Bank had itself decided to impose only minor punishment of "stoppage of one increment" though it was for a period of three years. Having chosen to punish the Appellant by imposition of a minor penalty of stoppage of one increment, the stoppage of promotion of the Appellant amounts to double punishment. Consequently, the action of the Respondents is violative of Article 14/Article 16 of the Constitution of India. Learned Counsel further submitted that the Petitioner is entitled to promotion from the back date i.e. 1997 when the result of the consideration of the departmental promotion committee was illegally kept in a sealed cover.

8. Mr. Dhruv Mehta, learned senior counsel and Mr. Rajesh Kumar, Learned Counsel appearing for the Respondent Bank have submitted that the Appellant was all along facing the departmental proceedings whilst his case for promotion, along with other eligible officers in his category, was being considered for

promotion in the years 1995, 1997 and 1999. The Appellant having been duly considered in the years 1995 and 1997 can have no legitimate grievance to complain of any departmental action by the Respondent Bank. It is further submitted that subsequently, the Appellant having been found guilty by the inquiry officer and having been punished, the Appellant cannot complain that his non-promotion would amount to a double punishment. The Respondent places reliance on the judgment of this Court in the case of Union of India and others versus K.V. Jankiraman and others reported in 1991 (4) SCC 109 , wherein it is clearly held that non promotion of an officer on the basis of the record, by taking into consideration the punishments imposed for a misconduct, cannot be described/categorized as a second punishment.

9. We have considered the submissions made by the learned Counsel.

10. In the facts of this case, it would not be possible to agree with the Appellant that the action of the Bank is either arbitrary or without legal sanction. The Appellant did not have any right to be promoted automatically on completion of minimum length of service. He had to be declared suitable for promotion on the criteria applicable. At this stage, we may usefully refer to the observations made by this Court in Paragraph 29 of the judgment in Union of India and Ors. v. K.V. Jankiraman and Ors. (supra) wherein it is observed as follows:

On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct.

11. In our opinion, the aforesaid observations are fully applicable to the facts and circumstances of this case.

12. The criteria for promotion from Junior Management Grade-I to Middle Management Grade-II is on the basis of the seniority-cum-merit. Clearly therefore, the fact that the Appellant has been punished for a misconduct, the same would form a part of his record of service which would be taken into

consideration whilst adjudging his suitability on the criteria of seniority-cum-merit. If on such assessment of his record of service the Appellant is not promoted, it cannot be said to be by way of punishment. It is a non-promotion on account of the Appellant not reaching a suitable standard to be promoted on the basis of the criteria. In view of the above, we find no merit in the civil appeal. The same is, accordingly, dismissed.