
(2012) 08 DEL CK 0222
In the Delhi High Court
Case No : W.P (C) No. 4803 of 1997

Sadhu Singh Dagar

APPELLANT

Vs

The Delhi State Cooperative Bank and Others

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 08 DEL CK 0222

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : R.K. Saini and Mr. Vikram Saini, for the Appellant; Anand Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—Vide the instant petition, the petitioner seeks direction thereby quashing the impugned promotion order dated 18.09.1997 and also the direction to the respondent to promote him from the post of Accounts Officer to the post of Manager. The facts of the case, in brief, are that the petitioner was appointed as a Clerk with the respondent No.1 on 02.02.1970. Thereafter, he was promoted to the post of Accounts Officer on 27.04.1983. As per the seniority list prepared by the respondent on 01.07.1995, the petitioner stands at No. 10.

2. Mr. R.K. Saini, Id. Counsel appearing on behalf of the petitioner, submitted that vide the impugned order dated 18.09.1997, the petitioner was not promoted to the post of Manager whereas his juniors were promoted.

3. He further submitted that the petitioner was working with the bank for the last 23 years and his past service record was clean and there was no adverse remarks in his ACRs. Despite, in the seniority list, his name was at serial No.10, he was not considered for the post in question.

4. Mr. Saini has referred to the Swamy's Compilation on Seniority and Promotion in Central Government Service to the Non-Selection Method which is reproduced

as under:-

Non-Selection Method

7. Where the promotions are to be made on "non-selection" basis according to Recruitment Rules, the DPC need not make a comparative assessment of the records of officers and it should categorize the officers as "fit" or "not yet fit" for promotion on the basis of assessment of their record of service. While considering an officer "fit", guidelines in Para. 6.1.4 should be borne in mind. The officers categorized as "fit" should be placed in the panel in the order of their seniority in the grade from which promotions are to be made.

5. For the sake of convenience, Para.6.1.4 of Guidelines for DPCs is reproduced as under:-

6.1.4 Government also desires to clear the misconception about "Average" performance. While "Average" may not be taken as adverse remark in respect of an officer, at the same time, it cannot be regarded as complimentary to the officer, as "Average" performance should be regarded as routine and undistinguished. It is only performance that is above average and performance that is really noteworthy which could entitle an officer to recognition and suitable rewards in the matter of promotion.

6. Mr. Saini has submitted that the present promotion is non-selection and based on the seniority only, therefore, until the petitioner is declared unfit, his seniority cannot be ignored.

7. As the respondent raised the objection on maintainability, Id. Counsel for the petitioner has relied upon a case of M.R. Bhardwaj & Anr. vs. Delhi State Cooperative Bank Ltd. & Ors. decided on 26.08.2011 in WP(C) 4163/1992 wherein the coordinate Bench of this Court observed that the writ petitions were filed more than 18 years ago, therefore, it was not considered expedient to reject the petitions only on the ground of maintainability. After waiting for 18 years in this Court it would not be reasonable to require the petitioner to seek alternative remedies by way of civil suit.

8. The aforementioned observations of the coordinate Bench of this Court were challenged vide LPA No. 878/2011 which was, thereafter, dismissed as withdrawn keeping in view the fact that the matters were eighteen (18) years old.

9. Id. Counsel further submitted that the instant petition was filed way back in 1997. Fifteen (15) years are already over, therefore, it would not be proper to return the petition for the alternative remedy available.

10. I find force in the submissions of Id. Counsel for the petitioner, therefore, on the point of maintainability, in view of the judgment of the coordinate Bench of this Court in M.R. Bhardwaj & Anr.(supra), I am of the considered view that since 15 years have already passed, therefore, it would be expedient to decide the instant petition on merit.

11. Mr. Anand Yadav, Id. Counsel appearing on behalf of the respondents, submitted that in para 8 of the petition, the petitioner has stated as under:-

That the petitioner is working with the bank for the last 23 years and his past service record is clean. He has always discharged his duties diligently without giving any opportunity to officer of the bank to find any dereliction in petitioner's duties. That the record of the petitioner is clean and there is no adverse remark in the ACR of the petitioner. The petitioner has requisite qualification and fit for promotions according to the seniority list and recruitment rules. The petitioner made representation to the respondent No.1, but no action whatsoever was taken by the Bank.

12. Moreover, the petitioner has reiterated the same in para 4 of the grounds also.

13. Id. Counsel has asserted that the petitioner has concealed the relevant facts from this Court, therefore, the instant petition deserves to be dismissed on this ground alone.

14. He has pointed out that, as stated in the counter affidavit, that the performance of the petitioner as Accounts Officer was never found up to the mark. Several Memos were issued to the petitioner from time to time thereby calling upon him to improve his working. Even the allegation of corruption and fraud were made against the petitioner by the constituent of respondent No.1/ Bank. A letter dated 24.10.1983 was served upon the petition thereby calling upon him to improve his working. Moreover, vide the charge sheet dated 07.07.1994, the petitioner was charge-sheeted by the respondent No.1/ Bank for committing misconduct. The petitioner had prepared various invoices purported to have been issued by M/s Shri Laxmi Electronics and on the basis thereof, advanced loans. In fact, there is no shop or establishment in the name of M/s Shri Laxmi Electronics in existence. Moreover, the petitioner did not finance any articles as mentioned in the invoices but received the cash payment from Shri Dharam Vir Dangi, who got encashed the cheques issued infavour of M/s Shri Laxmi Electronics, being its proprietor.

15. He has relied upon a judgment of this Court in the case of Dr. Namit Bhargava vs. Medical Council of India, 109(2004) Del.LT 404 in which this Court has observed as under:-

8. In all humility and with the greatest respect to the Lordships of the Apex Court, I am of the view that where a false statement has been made on oath, the Petition deserves to be dismissed. This proposition has been explicitly spelt out in several decisions where extraordinary powers, such as those contained in Article 226 of the Constitution are invoked, this would always be sufficient reason for declining to exercise jurisdiction.

16. Id. Counsel has submitted that in the writ petition the petitioner did not disclose any of his misconduct or punishment awarded to him and filed the

petition supported by an affidavit wherein he has stated that nothing material has been concealed.

17. He has further submitted that during enquiry, the petitioner was found guilty of misconduct and ultimately vide office order dated 24.02.1995, a punishment of withholding of two increments was imposed upon the petitioner. It was ordered that the petitioner shall not be entitled for the salary and allowances during the period of his suspension except the subsistence allowance that has already been paid to him.

18. Ld. Counsel has further submitted that during the relevant period, the petitioner remained under suspension, i.e., w.e.f. 22.06.1994 to 24.02.1995. Even the Reviewing Authority of the petitioner has expressed their views that the petitioner was not fit for promotion.

19. Mr. Yadav has pointed out that the petitioner has even admitted in his rejoinder in sub-para (c) of para 5 wherein he has stated that the petitioner was unnecessarily punished by the management without any fault and was made victim, but looking at the future of the family members, the petitioner did not challenge the punishment awarded to him.

20. Mr. Yadav has submitted that the name of the petitioner was considered and thereafter looking at his overall conduct and record he was not promoted.

21. Ld. Counsel has pointed out that the reliance upon the Swamy's Compilation on Seniority and Promotion in Central Government Service as mentioned above has no relevance in the present case. The respondent Bank has its own Rules and Regulations, therefore, the aforementioned Swamy's Compilation is not applicable.

22. I heard Ld. Counsel for the parties and perused the record produced by Ld. Counsel for the respondent.

23. It is not in dispute that the petitioner was at no. 10 in the seniority list dated 01.07.1995. During the relevant period, petitioner remained under suspension i.e. w.e.f 22.06.1994 to 24.02.1995. The petitioner was found guilty of misconduct and ultimately vide Office Order dated 24.02.1995, a punishment of withholding of two increments was imposed upon the petitioner.

24. Admittedly, the petitioner has not challenged the aforesaid punishment. Therefore, said punishment attained finality.

25. The settled law is that at the time of the promotion in addition to seniority, employer has to see the past conduct of the employee and his past service record.

26. As discussed in Para 16 above, his past conduct and service record have not been unblemished and at the time of promotion, his name was considered but for the reasons mentioned above, he was found not fit for the promotion.

27. In view of the above, I find no merit in the instant petition and the same is accordingly dismissed. No order as to costs.

CM. No. 8892/1997

In view of the above, instant application become infructuous and disposed of as such.