(2000) 12 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 235 of 2000

Sharbat Chand Jain APPELLANT

Vs

Bank of India and Others RESPONDENT

Date of Decision : 22-12-2000

Acts Referred:

Bank of India (Officers Service) Regulations, 1979 — Regulation 17
Constitution of India, 1950 — Article 14, 16, 226

Citation : (2001) 2 BomCR 590(1)

Hon'ble Judges : B.P. Singh, C.J;S. Radhakrishnan, J

Bench : Division Bench

Advocate : J.P. Cama and K.P. Anilkumar, for the Appellant; C.U. Singh, instructed by IIaresh Mehta and Co., for the Respondent

Final Decision : Allowed

Judgement

B.P. Singh, C.J.—The petitioner herein, an officer of respondent No. 1 bank, has prayed for a writ of mandamus directing the respondent-bank to open the sealed cover containing the recommendation of the D.P.C. held in May 1995 in respect of the petitioner and to declare the result. He has also prayed for a declaration that the action of respondent No. 1 in withholding the promotion of the petitioner by adhering to sealed cover procedure, and initiating disciplinary proceeding by chargesheet dated 5th January, 1998, is mala fide, illegal and without any authority of law. The petitioner has also prayed for consequential reliefs.

2. The relevant facts are that the petitioner joined the respondent bank as a clerk in the year 1965, and, in due course, was promoted to the officer cadre. The petitioner was granted promotions from time to time and in the year 1987, he was promoted to Scale IV, a senior management post. On 30th November, 1992, he was promoted to Scale V, a higher scale, as Assistant General Manager on the recommendation of the D.P.C.

3. In May 1995, the petitioner was interviewed by the Departmental Promotions Committee for promotion to Scale VI, viz. , for the post of Deputy General

Manager. The petitioner was orally informed that the recommendation of the D.P.C. had been kept in a sealed cover.

4. Since the petitioner was not granted promotion to Scale VI in view of the sealed cover procedure adopted in his case, he made representation to the then Chairman and Managing Director of the bank on 10th June, 1996, bringing to his notice the fact that the petitioner was neither under suspension, nor was he facing any disciplinary proceeding, nor was he being prosecuted on a criminal charge, and hence, the adoption of sealed cover procedure in his case was not justified, being contrary to Regulation No. 17 of the Bank''s Regulations, 1979. This was followed by another representation made by the petitioner on 19th April 1997. The petitioner had come to learn that the Board of Directors in their meeting held in the year 1993 had cleared the petitioner of the allegations made against him in the matter of sanction and disbursement of loan to the Vaid Group by the Chandni Chowk Branch, New Delhi. The petitioner made several representations thereafter, including the one made on 21st November, 1997 to the then Chairman of the bank.

5. On 15th January, 1998, charges were served upon the petitioner alleging irregularities committed by him in the matter of sanction and disbursement of loan to the Vaid Group of Industries in or about September 1988. On 2nd February, 1998, the petitioner replied to the charges levelled against him and justified his action, and further submitted that he was not posted in the Chandni Chowk Branch when the loan was actually disbursed. However, the disciplinary proceeding was not commenced, and though an Enquiry Officer was appointed on 6th August 1999, the Enquiry Officer decided to commence the proceeding from 15th/16th November, 1999. On 15th November, 1999, the petitioner was informed that the disciplinary proceeding had been adjourned, and that he would be intimated in due course of the further date fixed in the proceeding. The petitioner waited for some time and ultimately filed the instant writ petition on 1st February, 2000. Till the date of the filing of this writ petition, the disciplinary proceeding had not commenced despite several reminders addressed to the Enquiry Officer.

6. On 28th January 2000, the petitioner was informed by the bank that interview would be conducted by the D.P.C. from 5th February, 2000, and that he was required to appear before the D.P.C. for the interview on 5th February, 2000.

7. By an order dated 8th February, 2000, this Court directed that the result of the promotional interviews commenced on 5th February, 2000 will not be declared. Subsequently, by order dated 29th February, 2000, this Court directed that the procedure commenced from 5th February, 2000 shall be brought to the logical conclusion and the results should be declared, but the candidates in Scales VI and VII shall be specifically informed that in case the petitioner succeeded in this writ petition, they may be reverted, if, on opening the sealed cover, the petitioner was found to have been declared fit for promotion.

8. The short submission urged on behalf of the petitioner is that none of the conditions laid down in the Guidelines pursuant to Regulation 17 of the bank of India (Officers'') Service Regulations, 1979 existed justifying resort to the Sealed Cover Procedure. The petitioner was neither under suspension, nor had a charge-sheet been issued against him and a disciplinary proceedings was pending, nor was his prosecution for a criminal charge pending. In the absence of these conditions, the petitioner was entitled to be promoted to the higher grade if he was otherwise found fit for promotion by the D.P.C.

9. The respondent bank, in its affidavit-in-reply has pointed out certain facts in the light of which the bank resorted to the Sealed Cover Procedure. It is stated that while the petitioner was posted as Chief Manager at the bank''s Chandni Chowk Branch, Delhi, certain serious irregularities were committed in respect of Vaid Group of Accounts, which were reported by the Auditors some time in January, 1990. The investigation was carried out, and report submitted to the bank in December, 1990. The preliminary investigation not being comprehensive, the matter was re-investigated and a more detailed report dated 30th September, 1991 was received which disclosed that serious irregularities were committed by the Chandni Chowk Branch while sanctioning and disbursing credit facilities to three borrowers belonging to the Vaid Group between September, 1988 and October, 1989. Since fraud was suspected, the Bank lodged a criminal complaint with the C.B.I. New Delhi, on 14th December, 1992. There was undue delay by the C.B.I. in registering a regular case despite the best efforts of the Bank. Ultimately, the C.B.I. registered a regular case on 8th October, 1995 against the petitioner, one other officer of the Bank and some members of the Vaid Group. The case involved the offences of conspiracy, cheating and criminal misconduct. The Bank was compelled to await the investigation report of the C.B.I. to ascertain the exact nature of involvement of the petitioner, over and above what had been brought out in its internal investigation. However, the C.B.I. investigation was delayed and the report was not forthcoming. The Bank, therefore, initiated major penalty proceedings against the petitioner on 25th January, 1998 by issuing him a charge-sheet on that date.

10. It is not necessary to refer to the allegations made against the petitioner about his suspected involvement in connection with irregular sanctioning and disbursal of credit facilities to the Vaid Group. It is, however, stated that since, in the meantime, the petitioner became eligible for promotion from Scale V to Scale VI in 1995, he was allowed to appear in the promotion processes of May 1995, April 1996 and October 1996 for the said promotion. However, the results of the said promotion processes in respect of the petitioner were kept in sealed cover, as per the decision of the Bank''s Director''s Promotion Committee (DPC), primarily because serious irregularities were detected in which the petitioner''s involvement was apparent, as per the Bank''s internal investigation. The C.B.I. registered a regular case against the petitioner in 1996. It is explained that in view of all these facts, the Bank was unable to take any disciplinary action against the petitioner till 1998. Since the relevant documents were also seized by

the C.B.I. during their investigation, the Bank had no other option but to await the outcome of the C.B.I. investigation before taking departmental action against the petitioner. In these circumstances, the promotion of the petitioner from Scale V to Scale VI remained in sealed cover from 1995 till date.

11. From the facts stated in the affidavit-in-reply itself, it is obvious that when the case of the petitioner was being considered by the D.P.C. for promotion to Scale VI, the petitioner was neither under suspension, nor had a charge-sheet been served upon him in a disciplinary proceeding, nor was a prosecution pending against him for a criminal charge. The question, therefore, which squarely arises in these circumstances is whether the Bank was justified in keeping the result of the petitioner is a sealed cover after he was interviewed for promotion to Scale VI by the D.P.C. in May, 1995.

12. Regulation 17 of the Bank of India (Officers'') Service Regulations, 1979 reads as follows :---

"Regulation 17 --- Promotion Policy

1. 1 Provisions of Regulation 17 and the Government guidelines thereunder :--

17(1) Promotion 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.

17(2) For the avoidance of doubts, it is clarified that this regulation shall also apply to promotion of any category of employees to the Junior Management Cadre."

The relevant Guidelines which deal with promotion of officers against whom proceedings have been initiated, etc., are reproduced below :---

"9. PROMOTION OF OFFICERS AGAINST WHOM DISCIPLINARY/COURT PROCEEDINGS HAVE BEEN INITIATED/PENDING/ON WHOM PENALTY HAS BEEN IMPOSED.

1. Cases of officers to whom Sealed Cover Procedure will be applicable :

At the time of consideration of the cases of officers for promotion, details of officers in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental/ Promotion Committee ;

i) Officers under suspension ;

ii) Officers in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending ; and

iii) Officers in respect of whom prosecution for a criminal charge is pending.

2. Procedure to be followed by DPC in respect of officers under cloud;

The Departmental Promotion Committee shall assess the suitability of the officers coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the disciplinary case/ criminal prosecution pending. The assessment of the DPC, including ''Unfit'' for Promotion'', and the grading awarded by it will be kept in a sealed cover. The cover will be super scribed ''Findings regarding suitability for promotion to the grade/ post of .... in respect of Shri .... (Name of the Officer''). Not to be opened till the termination of the disciplinary case/ criminal prosecution against Shri .... The proceedings of the DPC need only contain the note. The findings are contained in the attached sealed cover. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of DPC in respect of the suitability of an officer for his promotion are kept in a sealed cover.

Procedure by subsequent DPCs:

The same procedure outlined in para 2 above will be followed by the subsequent Departmental Promotion Committees conveyed till the disciplinary case/criminal prosecution against the officer concerned is concluded."

We have no hesitation in holding that the words "Officers under cloud" in paragraph 9.2 is merely descriptive of the officers coming within the purview of the circumstances enumerated in paragraph 9.1, and cannot be read to give it a wider meaning as including even an officer not covered by paragraph 9.1.

13. A mere perusal of the relevant Guidelines would leave no room for doubt that in the absence of the specified conditions existing on the date on which the case of an employee is taken up for consideration for promotion, the Sealed Cover Procedure cannot be resorted to. In the instant case, the petitioner was not placed under suspension. If the internal investigation report disclosed the involvement of the petitioner in serious irregularities, there was nothing which prevented the Bank from placing the petitioner under suspension pending disciplinary proceeding. This was not done. The pendency of C.B.I. investigation did not inhibit the Bank from placing the petitioner under suspension if it suspected his serious involvement. Of course, the case of the petitioner is that the Board of Directors in the year 1993 had cleared the petitioner of the allegations made against him and, in fact, earlier on November 30, 1992 he had been granted promotion to Scale V from Scale IV. That, however, is not material. Admittedly, a departmental proceeding was initiated, and the charge-sheet issued on 25th January, 1998, i.e., more than 21/2 years later. The investigation of the case by the C.B.I. was pending even on the date when the affidavit-in-reply was filed and, therefore, it is not the case of the respondent Bank that a charge-sheet in a criminal prosecution had been issued to the petitioner and, therefore, a criminal prosecution was pending against him on the date of the meeting of the D.P.C., which was held to consider the case of the petitioner for promotion.

14. In Union of India Vs. K.V. Jankiraman, etc. etc., , the question arose as to when, for the purpose of Sealed Cover Procedure, the disciplinary or Court proceeding can be said to have commenced. The Court observed as follows :---

"16. On the first question, viz. as to when for the purposes of the sealed cover procedure the disciplinary/ Court proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceeding or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceeding/criminal prosecution is initiated against the employee. The Sealed Cover Procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the Sealed Cover Procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned Counsel for the appellant authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure."

We have, therefore, no hesitation in coming to the conclusion that none of the conditions mentioned in the Guidelines existed on the date on which the case of the petitioner was being considered for promotion to higher Scale VI, which could have justified resort to the Sealed Cover Procedure. The law on the subject is well-settled, and Counsel for the petitioner has relied upon several decisions of the Supreme Court. In Union of India and Others Vs. Dr. (Smt) Sudha Salhan, , the Court answered the same question, and held as follows :--

"The (same) question, however, stands concluded by a three Judge decision of this Court in Union of India v. K.V. Jankiraman (supra) in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to a higher post, such person is neither under suspension nor has any departmental proceeding been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover" procedure cannot be adopted. The recommendation of the Departmental Promotion

Committee can be placed in a "sealed cover" only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the Departmental Promotion Committee would be opened, and the recommendation would be given effect to."

15. In Bank of India and Another Vs. Degala Suryanarayana, , the Apex Court observed :---

"14. However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The Sealed Cover Procedure is now a well-established concept in service jurisprudence. The proceeding is adopted when an employee is due for promotion, increment etc. but disciplinary/ criminal proceedings are pending against him and hence the finding as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over see Union of India Vs. K.V. Jankiraman, etc. etc., . As on 1-1-1986 the only proceedings pending against the respondent were the criminal proceedings which ended in acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3-12-1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The Sealed Cover Procedure could not have been resorted to nor could the promotion in the year 1986-87 be withheld for the DE proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to to which the respondent was found entitled as on 1-1-1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1-1-1986."

16. It is not necessary to multiply authorities. The justification pleaded by the Bank is that, since the matter was being investigated, it was not possible to initiate a departmental proceeding, and obviously, a criminal prosecution could not be launched till after the C.B.I. had concluded the investigation. This plea is also squarely answered by the Apex Court in Janakiraman, as would be apparent from the passage quoted earlier in this judgment. Nothing prevented the Bank from placing the petitioner under suspension if there was a serious suspicion about his involvement in irregularities committed in the matter of grant of credit facilities to the Vaid Group. The argument, that it takes time to collect the necessary evidence, to prepare and issue charge memo, or the charge-sheet, was rejected by the Apex Court observing that the acceptance of this contention would result in injustice to the employees in many cases. Preliminary

investigations take inordinately long time, and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge memo or the charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily, it should not take time to collect the relevant evidence and finalise charges. If the charges are serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the Sealed Cover Procedure.

17. We have carefully examined the decision of the Supreme Court in Unions of India and another v. R.S. Sharma 2000(2) SLJ 8 sc relied upon by Counsel for the Bank. We find that the principle laid down in the aforesaid decision is of no avail to the Bank, since the regulations are differently worded, and the case is also distinguishable on facts. In that case, one of the grounds on which Sealed Cover Procedure could be resorted to was the pendency of the investigation on serious allegations of corruption, bribery, etc., by the C.B.I. or any other agency, departmental or otherwise. The said clause which was Clause (iv) in Office Memo dated 12th January, 1988 was deleted on 31st July, 1991, but the O.M. clarified that if any case is kept in a sealed cover on account of conditions obtainable in paragraph 2(iv) of the O.M. dated 12th January, 1988, it will be opened and if the officer be found fit and recommended by D.P.C., he will be notionally promoted, from the date his immediate junior had been promoted. However, on opening of the sealed cover, because of deletion of paragraph 2(iv), if an officer is found to have been recommended as ''unfit'' by the D.P.C., no further action would be necessary. The Court considered the Office Memorandum dated 12th January, 1988 read in the light of the Office Memorandum dated 31st July, 1991, and held that, though the case of the respondent should have succeeded if the situation which happened on 31st July, 1991 was confined to deletion of Clause (iv) of the second paragraph of the Sealed Cover Procedure. But when the same O.M. made specific mention of a clarification that the case has continued to be in the sealed cover on account of existence of any one of the remaining three conditions specified, the employee in that case could not claim that benefit. In that case, sanction had been accorded to prosecute him in an enquiry and, therefore, paragraph 7 of the Sealed Cover Procedure applied and the recommendation made by the D.P.C. in respect of the employee had to remain in the sealed cover until he was completely exonerated of the charges against him.

18. The instant case is clearly distinguishable. The question of deletion of one clause and the clarification given in another O.M. permitting the Sealed Cover Procedure in certain circumstances does not arise for our consideration. It is not disputed before us that on the relevant date, the Guidelines did not permit resort to Sealed Cover Procedure merely because a case was being investigated by the C.B.I. or any other agency, nor was there any guideline in the same terms as O.M. dated 31st July, 1991 in R.S. Sharma''s case.

19. We are, therefore, satisfied that the action of the Bank in resorting to Sealed

Cover Procedure in the instant case is illegal, and not justified by Regulation 17 and the Guidelines issued thereunder. This writ petition is, therefore, allowed to the extent that the respondent Bank is directed to open the sealed cover, and if the petitioner has been found fit by the D.P.C. for promotion, the petitioner be granted promotion from the due date with all consequential benefits. This will, however, be without prejudice to the disciplinary proceeding initiated against the petitioner which may be continued in accordance with law if not already concluded. In the circumstances of the case, we make no order as to costs.

