

(2001) 01 MP CK 0032
In the Madhya Pradesh High Court
Case No : Writ Petition No. 66/98

Shyam Sharma

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 22-01-2001

Acts Referred:

Citation : (2002) 1 MPHT 510 : (2002) 1 MPJR 238 : (2001) 3 MPLJ 660

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : B.C. Jain, for the Appellant; U.K. Choukse, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.

Heard.

Petitioner filed this writ petition with the grievance that respondent Nos. 1 and 2 did not property, correctly and legally implement the scheme of grades and categorisation of posts enunciated in Chapter II of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) (hereinafter referred to as "the Act") and on account of that the petitioner has been superseded by almost all Bank Officers who were below in gradation list which was prepared by the then New Bank of India which was merged into Punjab National Bank by the provisions of the Act. Shri B.C. Jain made reference in that context to 4 grades which were indicated by Chapter II. Those four grades will have to be mentioned for the purpose of unfolding the matter for understanding:--

(a) Executive Grade

Scale VII Rs. 4100-125-4600

Scale VI Rs. 3850-125-4350.

(b) Senior Management Grade

Scale V Rs. 3375-110-3658-115-3800 Scale IV Rs. 2925-105-3450.

(c) Middle Management Grade

Scale III Rs. 2650-100-3250 Scale II Rs. 1825-100-2925

(d) Junior Management Grade

Scale I Rs. 1175-60-1475-70-1895-EB-95-2275-100-2675.

It has been provided that every officer who is governed by the scale of pay has been in force on the appointment date having been fitted into the said scale of pay in accordance with the guidelines of the Government issued under Regulation 8, shall be fitted under the scale of pay set out above in accordance with the guidelines of the Government. This is the proviso which has been addenda to Sub-regulation (1) of Regulation 4 embodied in above Chapter II. Regulations 2 to 4 speak that nothing in Sub-regulation (1) shall be construed as requiring the Bank to have at all times, officers serving in all these grades. Shri B.C. Jain submitted that in view of provisions in which Chapter II has been brought forth, it was the first duty of respondent Nos. 1 and 2 to fit in the officers in these four grades and thereafter they were to be considered for the purpose of promotion.

Shri Choukse submitted that two employees of the Bank named Shri K.B. Sharma, Accountant and Shri D.K. Bhardwaj, Accountant had submitted representation to the bank authority on 4-2-79 and 14-3-80 for the same sort of grievance and when their representations were turned down by the competent authority, they filed the writ petition before the Punjab & Haryana High Court (Single Bench). Shri Choukse submitted that when the matter was pending before the Punjab & Haryana High Court and the judgment and order passed by the Division Bench of Punjab & Haryana High Court and the matter was dealt with by the Supreme Court in Civil Appeal No. 4223/93 and by the judgment and order passed by the Supreme Court, the judgment of Division Bench of Punjab & Haryana High Court which was in favour of Shri K.B. Sharma and Shri D.K. Bhardwaj, was set aside. Shri Choukse submitted that keeping in view the doctrine of ejusdem generis, the petition of the present petitioner will have to be dismissed. Shri Choukse pointed out that Shri Shyam Sharma had submitted a representation to the competent authority and when it was rejected, he preferred an appeal to the higher competent authority and that has also been rejected. Shri Choukse again submitted that the petitioner did not implead other subordinates as parties in this petition and, therefore, nothing can be done against them without hearing them.

Shri Choukse submitted that the gradation list was prepared by respondent Nos. 1 and 2 keeping in view Regulation 4 of Chapter II of the Act and in view of that, the petitioner was called for interview and he appeared twice for the interview but could not get selected for being promoted. Shri Choukse submitted that when he participated in the said interview, he did not lodge his protest in the

terms in which he is now making the grievance before this Court. Shri Choukse submitted that now he does not have any right whatsoever to make a prayer to this Court for issuing the writ of mandamus for the purpose of promoting them.

Repelling these submissions, Shri B.C. Jain submitted that it was the duty of respondent Nos. 1 and 2 to implement the scheme of gradation in view of Regulation 4 embodied in Chapter II of the Act and when a mistake has been committed in not implementing it in true spirit everything which has been done in pursuance of that becomes vitiated and, therefore, the petitioner is entitled to get appropriate writ from this Court. Shri Jain placed reliance on the judgment of the Supreme Court in the matter of Kashmiri Lal and Others Vs. State Bank of Patiala, for canvassing his arguments.

In the matter of Kashmiri Lal (supra) the Supreme Court observed that implementation of the scheme by the said respondent Bank under the Regulation proceeded under a misconception that the fitment contemplated by way of nationalisation of promotion when the matter was originally heard, we had pointed out to counsel for the respondent-Bank that the scheme did not provide for promotion and all that was necessary was to carry out the appropriate fitment without anything more. It is not disputed that on October 1, 1979 there were 178 posts to which fitment was to be made out of the 430 officers keeping the basis of seniority in view. It is equally not in dispute that the appellant came within the limit of 178 officers in the seniority list. As such he became entitled to the benefit of fitment right from October 1, 1979 and the respondent-Bank was obliged to give him that fitment.

When the New Bank of India was merged in the Punjab National Bank and the Act provided for grades and categorisation of posts, it was the duty of respondent Nos. 1 and 2 to treat the employees of the then New Bank of India in the way which has been provided by Regulation 4. After nationalisation of that Bank and after a Bank has been declared to have been merged into such nationalised Bank, the nationalised Bank is obliged to follow a proper and reasonable way for the purpose of fitment of the employees of such merged bank. In that process it was required to deal with the employees of the then New Bank of India which merged into Punjab National Bank in the way which has been indicated by Regulation 4.

When a bank stands merged in a nationalised Bank, such nationalised Bank has to treat such employees of merged bank at par with the employees of the nationalised Bank. Their rights cannot be curtailed, curved, restricted, abolished, submerged or washed out at their prejudice without giving them sufficient hearing and without following the rule of natural justice. In that process such nationalised Bank has to follow a reasonable approach and that reasonable approach would have been to make a list of all the employees of the then New Bank of India in such a fashion with seniority which they were possessing when the said Bank was merged in such Punjab National Bank.

When a fitment was done the same was to be done with such gradation list which was in accordance with original seniority and after that fitment only process of promotion should have been started by respondent Nos. 1 and 2. What is not proper, what is not fair, what is not legal cannot be permitted to survive even for a minute. Therefore, though the petitioner participated in those two interviews lodging the protest the said process being illegal, the said process of promotion has to be quashed by this Court and this Court has to give new directions to the respondents to implement the spirit which has been enunciated by Regulation 4 for the purpose of fitment of the employees of the then New Bank of India which merged in Punjab National Bank which was already nationalised Bank.

Thus, dismissing the objections raised by Shri Choukse for respondent Nos. 1 and 2, in respect of all those above mentioned points, this Court quashes all orders passed by respondent Nos. 1 and 2 in respect of promotions of the officers of the then New Bank of India which merged in Punjab National Bank. When that is so, there happens to be no need of impleading other junior officers as party in this writ petition. When entire process has been quashed, the things would reopen again and the process would start again treating everything at zero and making a further march from that zero starting point.

Thus, the petition stands allowed and by issuing a writ of mandamus respondent Nos. 1 and 2 are hereby directed to follow the process of fitment in the real spirit to Regulation 4 embodied in Chapter II of the Act after making such gradation list seniority-wise as it has been indicated by the judgment of the Supreme Court in Kashmiri Lal's case (*supra*). The senior persons in the gradation list should be called for interviews for the purpose of promoting the officers. It is made clear here that respondent Nos. 1 and 2 are entitled to consider their ACRs in this process of promotion available in the record of the then New Bank of India. It is hereby again clarified that while preparing the said fitment list, the name of petitioner should be shown at proper seniority which he was holding in the record of the then New Bank of India which merged into Punjab National Bank. No order as to cost.