
(2000) 09 PAT CK 0027
In the Patna High Court
Case No : C.W.J.C. No. 5555 of 1999

Sri Kishore Singh

APPELLANT

Vs

Reserve Bank of India and Others

RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Reserve Bank of India (Staff) Regulations, 1948 — Regulation 28, 29

Citation : (2001) 3 PLJR 25

Hon'ble Judges : Shashank Kr. Singh, J;Nagendra Rai, J

Bench : Division Bench

Advocate : Narendra Prasad, for the Appellant; T.K. Jha, for the Respondent

Final Decision : Dismissed

Judgement

1. Originally the Petitioner filed a writ application challenging the office orders dated 29.12.1995 and 21.1.1999, by which Respondent No. 5, J. N. Sinha and Respondent No. 6 M.N. Ansari have been promoted on regular basis to the post of Deputy Treasurer in Officer Grade-"B" cadre of the Reserve Bank of India hereinafter referred to as "the Bank"), ignoring the rightful claim of the Petitioner. He also prayed for issuance of a writ of mandamus commanding the Respondent-Bank and its officers to promote him on the said post.

2. The Respondents filed a counter-affidavit and annexed copies of letters dated 28.3.1994 and 31.1.1996 as Annexures "D" & "E", respectively, which are letters of the Reserve Bank of India, Central Office, containing provision with regard to preparation of panel for filling up the vacancies of the post in question. Thereafter, the Petitioner filed an amendment petition challenging the aforesaid letters as ultra vires Articles 14 and 16 of the Constitution of India.

3. Firstly, we will state the facts, which are not in controversy. Respondent-Bank is a Corporation incorporated under the provisions of the Reserve Bank of India Act, 1934. The different categories of staff are employed in the Bank. Officers

classified as Class-I employees in the Bank have been divided into six categories and are designated as officers from Grades "A" to "F. The present controversy relates to the promotion to the post of Deputy Treasurer, Officer Grade "B".

4. The Petitioner was appointed as Clerk Grade-II in the Cash Department on 12.3.1963 and was confirmed in 1965 and was, thereafter, promoted to the post of Clerk Grade-I on 1.6.1970 and confirmed on 1.1.1977. Thereafter, he was promoted to the post of Assistant Treasurer Grade "A" on 1.4.1980 and confirmed on the said post on 1.4.1982. Respondents No. 5 and 6 were also appointed as Clerk Grade-II in the Cash Department in the year 1966 and they were promoted to the post of Clerk Grade-I in the year 1970. They were further promoted to the post of Assistant Treasurer Grade "A" on 26.4.1986 and 1.10.1986, respectively.

5. For promotion to the post of Deputy Treasurer, Officer Grade-B, a panel is prepared taking into consideration the anticipated vacancies. The said panel is prepared by the Committee consisting of high officials.

6. Admittedly the case of the Petitioner was considered for promotion to the post of Deputy Treasurer, Officer Grade "B" in the year 1992 and as such he was not found fit and his name was not included in the 1992 panel. The vacancies arose in 1994 also and the case of the Petitioner and that of Respondents No. 5 and 6 were considered by a Committee and Respondents No. 5 and 6 were found fit for promotion and their names were included in the panel, whereas, the Petitioner was not found fit and as such his name was not included in the panel.

7. The Petitioner filed C.W.J.C. No. 479 of 1995 challenging his non-inclusion in 1992 and 1994 panels, but this Court rejected the claim of the Appellant for inclusion of his name in 1992 panel. As the representation of the Petitioner against his supersession or non-inclusion in 1994 panel was pending, this Court directed to dispose of the same by a reasoned order. A copy of the said order has been appended as Annexure "A" to the counter-affidavit. The Petitioner preferred L.P.A. No. 1013 of 1995 against the said order. The representation filed either with regard to his supersession in 1994, was rejected by the Bank by order dated 26.9.1995 and the Petitioner filed C.W.J.C. No. 9715 of 1995. Both the L.P.A. and the writ application were heard together and were dismissed by order dated 1.10.1996, a copy of which has been annexed as Annexure 1 to the writ application. Thereafter, the Petitioner filed a SLP before the Supreme Court being CC No. 3137-38/1997, which was dismissed on 21.4.1997, a copy of which has been annexed as Annexure "B" to the counter-affidavit.

8. It is to be stated that in both the writ applications, the Petitioner had made Respondents No. 5 and 6 as party-Respondents and challenged their empanelment for promotion to the post of Deputy Treasurer, Officer Grade-"B". In the second writ application, the Petitioner challenged the validity of Reserve Bank of India (Staff) Regulations, 1948 and the same was rejected. Respondent No. 5 was promoted in pursuance of his empanelment to the post of Deputy.

Treasurer, Officer Grade-B on 29.12.1995 and Respondent No. 6 on 21.1.1999 after one post became vacant due to voluntary; retirement of Mr. Banerjee.

9. Thereafter, the present writ application has been filed challenging the promotions of Respondents No. 5 and 6. The matter was placed before the learned Single Judge and by order dated 18.4.2000 he referred the matter to a Division Bench on the ground that as the vires of promotion/empanelment policy of the Bank has been challenged, the matter is to be heard by a Division Bench. This is how the matter has been placed before us.

10. The facts as narrated above are not in dispute and on these facts learned Counsel for the Petitioner submitted the Annexures "D" & "E" which are letters written by the Central Office of the Bank containing provision with regard to preparation of panel for promotion to the higher post are violative of Articles 14 and 16 of the Constitution of India; inasmuch as they do not show that the life of his panel is for a limited period or for a particular period, on the other hand, (sic) of the panel is for unlimited period for filling up the promotional post, which, according to the settled law, is not permissible in law. He also submitted that the promotion to the higher post is to be made on the basis of seniority cum-(sic) and in that case the Respondent (sic) cannot import assessment of (sic) merit of the officers eligible for promotion. In support of the said submission, he relied upon the judgment of the Supreme Court in B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., . He further submitted that the name of Respondent No. 6 was in the panel of 1994 and even if it is assumed that the life of the panel is prepared for promotion on yearly basis, the promotion of Respondent No. 6 on the basis of the said panel without considering the case of the Petitioner is vitiated in law.

11. learned Counsel for the Respondent-Bank submitted that the Petitioner has challenged the empanelment of Respondents No. 5 and 6 in the earlier two Writ applications. Their names were included in the panel of 1994 after consideration of their cases and that of the Petitioner by a Committee consisting of high officials and this Court as well as the Apex Court upheld the said panel and as such the Petitioner cannot be now allowed to reagitate the same matter as the same is barred by res judicata. It is further submitted that according to the policy of the Bank as contained in Annexures "D" & "E", a panel is to be prepared with regard to the anticipated vacancies on yearly basis and in case those candidates, who are empanelled but not promoted on account of non-availability of the vacancies, then their names are carried over to the next panel subject to the condition that they continue to be suitable for promotion and they will rank senior to those selected in the subsequent year. Respondent No. 6 was not appointed on the basis of 1994 panel in the year 1995 within one year and, thereafter, his name was carried over to the subsequent years. When suddenly a vacancy arose because of voluntary retirement of one officer, namely, Mr. Banerjee, then his case was considered and on his being found suitable for promotion, he was promoted to the said post in terms of the decision.

12. The R.B.I. (Staff) Regulations, 1948 contain provisions with regard to promotion etc. Regulation 29 of the same specifically deals with promotion and its validity was challenged before the Apex Court in the year 1966 In the case of All India Reserve Bank Employees Association Vs. Reserve Bank of India, and the same has been upheld. The Apex Court held that Regulations 28 and 29 of the Reserve Bank of India (Staff) Regulations, 1948 deal with seniority and promotion. Under these regulations, promotion is a matter of some discretion, seniority playing only a small part in it. The Apex Court further observed that in the matter of promotion to higher ranks, seniority and merit should ordinarily both have a part. Seniority and merit should temper each other.

13. It is an admitted position that the validity of the panel of 1994 was challenged earlier by the Petitioner in two writ applications and both the writ applications were dismissed and the order was upheld up to the Supreme Court and in that view of the matter, the Petitioner cannot be allowed to assail the basis of preparation of the panel of 1994 on any ground whatsoever as his claim is barred by principle of res-judicata. Thus, the submission of the Petitioner that the basis for preparation of the panel ignoring the concept of seniority and bringing the concept of selection process cannot be entertained in this writ application. The matter of promotion of the Petitioner was also considered on the said occasions and as such the decision relied -upon by the Petitioner has no relevancy for deciding the present case.

14. Annexure "D" is a letter dated 28.3.1994 of the Central Office of the Bank, Department of Administration, which deals with the matter with regard to promotion of Assistant Treasurer to the post of Deputy Treasurer in Officer Grade-B on day to day basis and Annexure "E" is a letter dated 31.1.1996 which deals with the preparation of panel-pure cash cadre-protection of seniority of empanelled employees. So far as Annexure "D" is concerned, it provides that the Tellers and Assistant Treasurers, who were not selected for promotion, should not be considered for promotion on the higher post of Assistant Treasurer and Deputy Treasurer, respectively even on day to day basis for a period of one year or till the preparation of the next new panel whichever is earlier. Paragraph 2 of letter dated 7.8.1993, which is available on the back of Annexure "D", however, provides that one month before the end of every panel year, a realistic assessment should be undertaken for arriving at the number of anticipated vacancies for the next panel year. On the basis of the anticipated vacancies, if no need is felt to prepare a fresh panel for want of vacancies, the matter may be referred to Central Office. Paragraph 2 of Annexure "E" provides, inter-alia, that it has been decided that the employees once empanelled will rank senior to those selected in the subsequent years. Accordingly, employees/officers who were empanelled in the year 1995 and earlier but yet to be promoted, will be senior to the employees/officers to be empanelled in the ensuing panel for the year 1996 irrespective of whether they have been promoted within the panel year or not, provided they continue to be suitable for promotion.

15. Thus, from the reading of the aforesaid two letters, it is clear that a panel is to be prepared on yearly basis after taking into consideration the anticipated vacancies and in case the employees are empanelled but not promoted for one or the other reason or are yet to be promoted, will be senior to the officers/employees to be empanelled in the next panel provided they continue to be suitable for promotion. The submission raised on behalf of the Appellant that the life of the panel is for unlimited purpose is not borne out from the aforesaid two letters (Annexures "D" & "F").

16. Once it is found that the life of the panel is only one year and, thereafter it has to be prepared afresh in terms of the provisions made therein. The preparation of the panel cannot be termed as arbitrary, unjust or unfair and, therefore, it is not violative of Articles 14 and 16 of the Constitution of India.

17. It appears from the letter dated 4.4.1997 (Annexure "H" to the counter affidavit) that the name of Respondent No. 6 who was earlier placed in 1994-95 panel was carried over on yearly basis to the next panel due to absence of vacancy up to 1997 as it was found that Respondent No. 6 continued to be suitable for promotion. It is stated in the counter-affidavit that there was no vacancy in the cadre of the Deputy Treasurer, Officer Grade-B during the panel years 1996, 1997 and 1998 and as no fresh panel was prepared. The name of Shri M.N. (sic) Assistant Treasurer, who had been earlier placed in the 1994 panel, was carried over to subsequent years as he continued to maintain the required level of efficiency and was suitable for promotion. One Binash Chandra Banerjee, Deputy Registrar, Officer Grade-B, sought voluntary retirement and retired from Bank's service in December, 1988 and, thereafter Respondent No. 6 M.N. Ansari, whose name was carried over and found fit for promotion, was promoted after due consideration for his service record, leave record and suitability of promotion. The said fact is evident from the office order dated 2.1.1999, which has been impugned, a copy of which has been appended as Annexure "I" to the counter-affidavit.

18. Thus, the grievance of the Petitioner that Respondent No. 6 was appointed on the basis of 1994 panel is against the material on the record. In terms of the policy, once a person is empanelled his name is to be carried over to the next panel and will rank senior to the person(s) subsequently included in the panel provided he maintains efficiency and continues to be suitable for promotion. Respondent No. 6's name was carried over as he was found suitable for promotion and when one vacancy arose due to voluntary retirement of one Mr. Banerjee, he was promoted to the said post and as such the promotion was wholly justified and the same cannot be assailed on the ground urged on behalf of the Petitioner. There was no occasion at all to consider the case of the Petitioner for the said vacancy and if Respondent No. 6 could not have been found fit for promotion by the time the vacancy was to be filled up then there would have been necessity of preparation of a fresh panel. In that case the Petitioner's case would have been considered.

19. For the reasons aforementioned, we find no writ in this writ application and it is, accordingly, dismissed.