
(1995) 08 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition No. 598 of 1991

Uttamchand Mulchand

APPELLANT

Vs

Indian Overseas Bank and Others

RESPONDENT

Date of Decision : 19-08-1995

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 12, 19

Citation : (1996) 1 BomCR 333 : (1995) 97 BOMLR 722

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Judgement

D.R. Dhanuka, J.—This petition involves consideration of interpretation of clause 10 of "Promotion Policy for Officers" of respondent No. 1 Bank duly published by the Bank based on the guidelines issued by Government of India under the relevant service regulations and application thereof. The principal questions arising for consideration of the Court in this petition are as under :-

(1) (a) Whether with effect from 21-3-86 the petitioner was absorbed as a Law Officer by respondent No. 1 i.e., an officer in the category of specialist officers within the meaning of the said expression used in "Promotion Policy for Officers" in force at the relevant time?

(b) If so, whether the petitioner was and is liable to be promoted to the post in his field of specialisation i.e., the Law and is not liable to be transferred on promotion to the general category i.e., The Main Stream of Banking except with the consent of the Petitioner or at his opinion?

(2) (a) Whether the petitioner was appointed as an officer in the "Main Stream of Banking" throughout and was never transferred or fitted in or absorbed as a Law Officer by respondent No. 1?

(b) Whether the petitioner is not entitled to the promotion on the footing of the petitioner being a specialist officer within meaning of clause 10 of "Promotion

Policy for Officers"?

(c) Whether clause 10.4 of the above referred promotion policy is applicable only to such specialist officers who were initially appointed or recruited as specialist officers and the petitioner is therefore not covered thereunder?

2. For the purpose of considering the above referred questions in detail, it is necessary to summarise the relevant facts emerging from the record of this petition.

RELEVANT FACTS (PART I)

3. The respondent No. 1 is one of the nationalised banks and is the banking company constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act V of 1970. On 1st April 1972 the petitioner joined service with the 1st respondent bank as a clerk. On 22nd December 1976 the petitioner was promoted as "officer" in the junior management grade scale I. Sometime from the year 1982, the petitioner worked with the respondent No. 1 as an Accountant (Deputy Manager) at its Worli Branch.

4. On or about 23rd June 1983 the petitioner passed his LLB examination held by the University of Bombay in April 1983. On 1st July 1984 the petitioner was promoted to the post of an Officer in Middle Management Grade Scale II.

5. On 14th October 1983, the respondent No. 1 Bank had issued a circular to the effect that all officers with legal qualifications working in the law Departments at Central Office/Zonal/Regional offices were designated as Law Offices. The petitioner used to work in the Law Department and the petitioner had legal qualification at the material time. This circular is not directly relevant for our purpose but is mentioned in the passing.

6. Having passed his LLB examination, the petitioner was keen in being absorbed in the Legal Department of respondent No. 1. The petitioner was given "on the job training" at the Law Department, Central Office, Madras, during the months of February and March 1985. The petitioner worked in the Legal Department of respondent No. 1 at its regional office during the period 16th September 1985 upto 31st March 1986.

7. On 21st March 1986, the respondent No. 1 passed an order which reads as under :-

"We, - advise having transferred you to Z. O. Bombay as Law Officer where you should report on relive."

With effect from 1st April 1986, the petitioner started functioning as Law Officer at Zonal Office, Bombay in pursuance of the transfer order passed by respondent No. 1 on 21st March 1986.

8. On 14th May 1988, the respondent No. 1 passed another order which reads as under :

"We are glad to advise having transferred you to Regional Office Bombay (Non-Metro) as Law Officer where you should report on or before 31.5.88."

On 16th September 1987, the petitioner was declared having passed his LLM examination held by the University of Bombay.

9. On 1st January 1988, the respondent No. 1 published its "Supervisory Staff List". In the said list, wherein the petitioner was shown as "Law Officer".

10. On 14th May 1988, the Zonal Office of the respondent advised its regional office that the petitioner was posted as a Law Officer to Regional Office Bombay (Non-Metro as a separate legal cell was to be formed at the Regional Office of the Bank. By letter dated 21st May 1988, the Zonal Office of the respondent No. 1 informed the Regional manager of respondent No. 1 that the services of the petitioner should be utilised only for legal matters including filing of suits/defending suits, settlement of claims, follow up of stagnant advances/suit filed accounts, etc. There is no serious dispute between the parties in respect of the duties actually performed by the petitioner during the period commencing from 1st April 1986. The petitioner has neatly set out the duties of a Law Officer performed by the petitioner in the Law Department of respondent No. 1 during the course of years in para 2(a) of his additional affidavit with effect from 21st March 1986, the petitioner has been treated by the respondent as a "Law Officer" properly so called.

RELEVANT FACTS (PART II)

11. Clause 3(j) of Indian Overseas Bank (Officers") Services Regulations 1979 defines the expression "officer" as under :

" (j) "Officer" means a person fitted into or promoted to or appointed to any of the grades specified in Regulation 4 and any other person, who immediately, prior to the appointed dated, was an officer of the bank, and shall also include any specialist or technical person as fitted or promoted or appointed and any other employee to whom any of these regulations has been made applicable under Regulation 2 :

Clause 4(1) of the said Regulations provided that there shall be the following four grades for officers with the scale of pay specified against each of the grades :-

(a) Top Executive Grades Scale VII... Scale VI.....

(b) Senior Management Grade Scale V. Scale IV....

(c) Middle Management Grade Scale III... Scale II...

(d) Junior Management Grade Scale I...

Promotion Policy for Officers classifies the officers employed with respondent No. 1 in two categories.

(a) Officers in the specialist category like Agricultural, Veterinary and Co-

operative Officers, Law Officers, Technical Officers, Engineers, Architects, Economists, Chartered Accountants, etc.

(b) Officers in the main stream of banking (General Category).

12. The petitioner participated in the promotion process pursuant to the promotion of officers in the Middle Management Grade Scale II to Officers in Middle Management Grade Scale III. The petitioner appeared for necessary interview before the competent authority for the purpose aforesaid on 10th October 1990 in pursuance of the letter issued by respondent No. 1 on 10th September 1990. The petitioner was selected for his promotion in Middle Management Grade Scale III. By letter dated 19th December 1990, the respondent No. 1 informed the petitioner that the petitioner was appointed to officiate in Middle Management Grade Scale III. By the said letter the respondent No. 1 congratulated the petitioner for his promotion. The said promotion was temporary, in the first instance. By letter dated 29th December 1990, the respondent No. 1 informed the petitioner that the petitioner was being transferred to Dhoraji Branch as Senior Manager (i.e., in the post of officer in Middle Management Grade Scale III). By the said letter, the petitioner was required to report for duty at Dhoraji on or before 31st January 1991. The petitioner protested. By letter dated 25th January 1991, the petitioner informed the respondent No. 1 that the petitioner being a Law Officer of respondent No. 1 with effect from 21st March 1986, the petitioner would not be diverted to the post in the main stream of banking and the petitioner was entitled to posting in his field of specialisation of a specialist officer subject to availability of vacancy in the field of specialists. By the said letter, the petitioner requested respondent No. 1 to post the petitioner in an appropriate post in the field of his specialisation. By letter dated 11th February 1991, the petitioner further informed the respondent No. 1 that the petitioner had not exercised any option at any point of time as contemplated under clause 10.3 of the Promotion Policy for being diverted to the main stream of banking. In the said letter the petitioner asserted that the petitioner was undoubtedly a candidate from the main stream in the beginning. That the petitioner has already been absorbed in the specialised field of law on account of his qualification, work and experience in respondent No. 1. The petitioner claimed to be eligible for the post of Deputy Chief Officer in the Legal Department, the said post being equivalent to the post of Senior Manager Scale III at Dhoraji where the petitioner was sought to be posted on promotion. By letter dated 13th February 1991, the respondent No. 1 informed the petitioner that the petitioner was required to undergo semi-urban/rural posting. By the said letter, the petitioner was informed that if the petitioner failed to report at the place of posting already communicated to the petitioner i.e., at Dhoraji Branch, the promotion of the petitioner to Grade Scale III shall be treated as cancelled. On 16th February 1991 the petitioner made a representation in the nature of an appeal to the Chairman and Managing Director of respondent No. 1 for consideration of his claim for appropriate posting in his field of specialisation. By the said letter, the respondent No. 1 was requested not to give effect to letters

dated 29.12.1990 and 13.2.1991 requiring the petitioner to report at Dhoraji Branch for the time being. By letter dated 3rd May 1991, the respondent No. 1 informed the petitioner that in view of the failure of the petitioner in reporting at Dhoraji Branch, the promotion of the petitioner to officiate in M. M. G. Scale III was cancelled. By letter dated 7th May 1991, the respondent No. 1 informed the petitioner that the petitioner should report as Deputy Manager at the Fort Branch. The said post was a post in Scale II. By letter dated 6th June 1991, the petitioner was transferred to industrial Finance branch of respondent No. 1 as Deputy manager i.e., in a post of Scale II. On 18th February 1991, the petitioner filed this petition. The petition was admitted by Daud J. by his order dated 8th March 1991. Interim relief was however declined by the Court. The petitioner filed an appeal before the Division Bench of this Court. The said appeal was unsuccessful. The petitioner has been working in the post of Deputy Manager at Industrial Finance Branch in Grade II without prejudice to his rights and contentions raised in this petition. The petitioner is recently directed to be transferred to the post of an officer in Grade II at Goa Branch of respondent No. 1. These assignments are not in cadre of "Specialist Officers" i.e., in the Legal Department of the respondents.

CONSIDERATION OF RIVAL SUBMISSIONS AND FINDINGS

13. In exercise of the powers conferred by section 19 read with sub-section (2) of Section 12 of the Banking Companies (Acquisition and Transfer of Undertakings), Act 1970, the board of Directors of India Overseas Bank in consultation with the Reserve Bank of India and with previous sanction of the Central Government has framed the statutory regulations called India Overseas Bank (Officers'') Service Regulations, 1979. The said Regulations came into force on 1st July 1979. Regulation 3(j) of the said Regulations reads as under :

3. (j) "Officer" means a person fitted into or promoted to or appointed to any of the grades specified in Regulation 4 and any other person, who immediately prior to the appointed date, was an officer of the Bank, and shall also include any specialist or technical person as fitted or promoted or appointed and any other employee to whom any of these regulations has been made applicable under regulation 2;"

It is clear from the said definition that the expression "officer" as defined in the said regulations is wide enough to include any specialist or technical person fitted or promoted or appointed by the respondent No. 1 to any of the grades specified in regulation 4. The Board of Directors of respondent No. 1 has formulated its promotion policy for officers based on guidelines issued by the Government of India under the relevant regulations and has published the said policy in the form of a booklet, made available to all the officers concerned at all the branches of the bank. Clause 10 of the said promotion policy admittedly binding on both sides deals with the subject matter of promotion policy for officers in the specialist category. The post of the Law Officer is the post in the specialist category with the 1st respondent Bank. Clause 10.3 of the said policy reads as

under :

"10.3. All the specialist officers will be eligible to join the mainstream of banking on completion of 5 years of services, reckoned from the date of their initial appointment as Specialists. On their becoming so eligible, the Specialist Offices may if he so desire, apply to the General Manager (Personal) for joining the mainstream. The General Manager (Personnel) will take a decision after the candidate is interviewed by a Committee appointed by the Chairman and Managing Director. The decision will be on the basis of the candidate's merit and no right will be vested in the Specialist Officer for joining the mainstream."

Clause 10.4 of the said policy reads as under :

"10.4. In respect of those Specialist Officers who do not join the mainstream of banking, the same procedure for promotion as the one laid down for officers in the mainstream will be followed subject to the availability of vacancies in the respective fields of specialisation. The minimum length of service and the promotion process as laid down will generally be followed for these categories of officers as well, but if vacancies exist in a higher grade, the minimum length of service may be lowered as warranted by the needs of the Bank."

It is obvious from the plain reading of the above referred clauses of promotion policy that an officer in the specialist category like a chartered accountant, law officer, engineer, architect, etc., cannot be diverted to the mainstream of banking except with the consent of the Specialist Officer or at his option. If the Specialist Officer desires to exercise such option for diverting to the mainstream of banking, the Specialist Officer can exercise such option only if he falls within clause 10.3 of the above referred policy. In other words, no such option can be availed of by the specialist officer except in conformity with the provision contained in clause 10.3 of the said policy. Fair and reasonable opportunity of promotion is available to the officers in the mainstream of banking, such fair and reasonable opportunity is made available to the specialist officers also under clause 10.4 of the said policy. In case of specialist officers who do not exercise any option for diversion to the mainstream of banking under clause 10.3 of the said policy, or the specialist officers who are unable to exercise such an option by reason of being not covered under the said Act, clause 10.4 operates. In such cases, the respondent No. 1 is duty bound to consider such specialist officer for promotion in the higher post in the respective field of specialisation by following the procedure for promotion similar to the procedure laid down for officers in the mainstream. The expression "officer" used in clause 10.1 to 10.4 of the promotion policy is liable to be interpreted in light of the definition of the expression "officer" set out in clause 3(j) of the statutory service regulations called Indian Overseas Bank (Officers) Service Regulations, 1979. The definition of the expression "Officer" includes not merely the officers initially recruited as specialist officers but also subsequently absorbed, filled in or transferred to the said category.

14. With the above preface and the summary of the relevant provisions to be borne in mind, let us now turn to the submissions made by the learned counsel on either side at the bar during the course of hearing of this petition.

15. The learned counsel for the respondents has submitted that the petitioner is not entitled to avail of clause 10 of the promotion policy on two different grounds. The learned counsel for the respondents has submitted that the petitioner was never appointed or recruited as a law officer within the meaning of clause 10.1 of the above referred promotion policy. The learned counsel for the respondent has submitted that the petitioner always belonged to "the mainstream of banking" throughout and merely because the petitioner was posted for purpose of duties in the legal department, it would not follow that the petitioner was appointed as a law officer or as a specialist officer by respondent No. 1. The learned counsel has also submitted that the mere fact of the petitioner being designated as a law officer would not be sufficient to treat the petitioner as a law officer or as a specialist officer within the meaning of clause 10 of the above referred promotion policy. The learned counsel for the respondents has further submitted that in any event clause 10 of the promotion policy and particularly clause 10.4 of the promotion policy cannot be availed of by the petitioner as the said clauses are applicable only to such law officers who are initially recruited or appointed as law officer by respondent No. 1. The learned counsel for the petitioner has submitted that there is no warrant for interpreting clause 10 of the promotion policy in the manner suggested by the learned counsel for the respondents. The learned counsel for the petitioner has submitted that the petitioner was in fact fitted in or absorbed or transferred as a law officer by the respondent and the petitioner functioned as such during the course of years. The learned counsel for the petitioner has submitted that clause 10 including clause 10.4 of the Promotion Policy is applicable not merely to the specialist officers recruited as such at the inception but also to the specialist officers who are later on absorbed, fitted in or transferred to the post in the specialist category as such.

16. The learned counsel for the respondents is undoubtedly right in submitting that the mere fact of designation of an officer working in the Legal Department as a Law Officer without anything more would not be conclusive to treat such officer as a specialist officer within the meaning of clause 10 of the Promotion Policy. After considering the admitted documents on record and the nature of duties performed by the petitioner during the course of respondents I have reached the conclusion that the petitioner was factually and actually fitted in, absorbed or transferred in the legal department as a law officer and was treated as such for all practical purposes including for the purpose of applicability of clause 10 of the promotion policy. The petitioner had passed not merely his LL. B. examination but also his LL. M examination as already stated in the earlier paragraph of this order. The petitioner was transferred to the Zonal Office as Law Officer. The contents of order of transfer dated 31st March 1986 are certainly relevant. The petitioner is not relying merely on general circular issued by the

Bank on 14th October 1983 or the designation of officers with legal qualification as law officers. The petitioner was once again described as law officer in the transfer order dated 14th May 1988. The petitioner was described as a law officer in the "Supervisory Staff List" published on 1.1.1988. When a separate legal cell was established at Regional Office, the petitioner was transferred as a law officer to Regional Office with a specific direction that the services of the petitioner should be utilised only for the legal matters as set out in letter dated 21st May 1988 addressed by the Zonal Manager of respondent No. 1 to the Regional Manager of respondent No. 1. The petitioner performed the duties of law officer and not other duties as obvious from the uncontroverted averments made in para 2(a) of the additional affidavit in rejoinder. The petitioner was enjoined to be entrusted only with duties of law officer and with no other duties. In other words, the duties performed by the petitioner were not mixed duties i.e., duties partly as a law officer and partly as an officer looking after the duties of a Bank officer generally. After taking an overall view of the matter, I have no hesitation in reaching the conclusion that with effect from 1st April 1986 the petitioner did acquire status of a law officer with his reporting at the Zonal Office in pursuance with the order dated 21st March 1986 passed by respondent No. 1 and the subsequent orders passed by respondent No. 1 in this behalf. The respondent No. 1 has not been able to place any relevant material on record which would convince the Court that the petitioner was not fitted in, absorbed or transferred to the Legal Department as a Specialist Officer. The learned counsel for the respondents has submitted that clause 10.3 of the Promotion Policy clearly indicates that clause 10 of the said policy is applicable only to officers in specialist category who were recruited as such by the Bank from inception. It is true that clause 10.3 of the Promotion Policy provides that the specialist officers will be eligible to join the mainstream of banking on completion of five years of service reckoned from the date of the initial appointment as specialist. This clause even if liberally interpreted merely means that clause 10.3 of the said Policy prescribe a condition for exercise of option by the specialist officer for diverting himself to the mainstream of banking. Some of the specialist officers may be keen to divert themselves to the mainstream of banking, on the assumption that such officers shall have a better chance of promotion in the mainstream. If the specialist officer desire to avail of the option under clause 10.3 for diverting himself to the mainstream of banking he cannot do so unless he completes five years of service as a specialist officer, the period of five years being reckoned from the date of their initial appointment as specialists. In this case the petitioner does not desire to avail of any such option. Clause 10.1 and clause 10.4 of the Promotion Policy cannot be interpreted to mean that the specialists officers who are factually and actually fitted in, absorbed or transferred to the post of specialist officers are excluded from being categorised as or treated as specialist officers under clause 10.1 or 10.4 of the above referred Policy. In view of the above, I have no hesitation in rejecting the submission made by the learned counsel for the respondent to the effect that clauses 10 of the promotion policy cannot be availed of by the petitioner as the

petitioner was not initially appointed as a specialist. The petitioner was undoubtedly appointed initially as a clerk. The petitioner acquired higher qualifications in the field of law. The petitioner passed the necessary examination. The petitioner was given the necessary training. The petitioner worked in the Legal Department on having acquired the status of a specialist officer as obvious from the documents and the facts referred to here in above. In this view of the matter, I have reached the conclusion that the petitioner would not be posted to a post in the main stream of banking but the petitioner was liable to be posed to the higher post in Scale III in his field of specialisation, on availability of vacancy in such field i.e., in the Legal Department.

17. It is not disputed and it is not disputable that Middle Management Grade Scale III is applicable to the officers in the general category i.e., in the mainstream of banking as well as to the officers in specialised category and the procedure prescribed for promotion to either of the two categories is identical. Having regard to the totality of facts and documents which have come on record, I hold that the petitioner is liable to be treated as promoted to middle Management Grade Scale III, and the petitioner need not go through the process of promotion in this behalf once again. The learned counsel for the petitioner has submitted that during the course of interview questions were asked to the petitioner only on the subject of law for the purpose of considering his suitability for promotion in Middle Management Scale III. The petitioner was already working in the Legal Department as a Law Officer for several years. It is unfortunate that the disputes and differences arose between the parties soon after the selection of the petitioner for the promotional post. The respondent No. 1 insisted on the petitioner being promoted in a post in mainstream of banking in MMG Scale III. The petitioner insisted that if posted in the promotional post of an officer in MMG Scale III in his field of specialisation i.e., the Legal Department. By reason of this difference of opinion, the petitioner was required to file this petition which is now being decided after few years due to the backlog of cases in the Court.

18. In my opinion, the petitioner has failed to produce clear date on the record of this petition proving that the vacancy of promotional post was available in MMG Scale III in the field of his specialisation at the time when the petitioner was sought to be posted in the Middle Management Grade Scale III at Dhoraji as Senior Manager. The petitioner has submitted that one Mr. Piramanayajan was posted in Scale III as Law Officer in Zonal Office in Bombay and the petitioner ought to have been posted as such. In answer to the query of the Court the learned counsel for the petitioner informs the Court that the said officer was a law officer working with the Bank of Tamil Nadu and was posted in Scale III as Law Officer in the Zonal Office of the respondent No. 1 on the said bank being amalgamated with respondent No. 1. It is not known as to what were the qualifications of the said officer and from what date he was posted in the said post. The petitioner is liable to be posted in the promotional post as law officer only from the date of availability of such post hereafter. It is open to the

respondent to give deemed date of promotion, if deemed fit.

19. After taking an overall view of all the facts and circumstances of the case and after considering the submissions made on both sides at the Bar, I have reached the conclusion that the petitioner is entitled to obtain the following reliefs.

(a) Prayer (a), (b) (1) and (b) (2) are granted. The petitioner stands promoted to the promotional post of specialist officer in the Middle Management Grade Scale III. The petitioner shall be posted in a suitable promotional post in MMG Scale III in the Legal Department of respondent No. 1 at the first available opportunity in the first available vacancy hereafter. The petitioner through his learned counsel makes it clear that the petitioner is willing to be transferred and posted at any of the offices of respondent No. 1 as is permissible under the Regulations. The submission made by the petitioner through his learned counsel across the bar for directing the respondent to pay differential amount in respect of the salary payable to the officers in Middle Management Grade Scale III and Middle Management Grade Scale II for the period commencing from December 1990 or from February 1991 is rejected. The respondent No. 1 is directed to file an affidavit in this Court within four weeks from today indicating the date when the vacancy in respect of such promotional post in the Legal Department of the respondent No. 1 is likely to arise so that the petitioner is not kept under suspense.

(b) The petition is finally disposed of in terms aforesaid.

(c) Having regard to the facts and circumstances of the case, there shall be no order as to costs.

(d) For the limited purpose of taking the affidavit of respondent No. 1 on record in terms aforesaid, the petition is directed to be listed on 25/9/1995. Further consequential directions reserved.

(e) Issue of certified copy expedited.