

(1982) 11 KAR CK 0009
In the Karnataka High Court
Case No : WP 4700/80

Vittal Shetty, B.

APPELLANT

Vs

Indian Bank and Others

RESPONDENT

Date of Decision : 18-11-1982

Acts Referred:

Constitution of India, 1950 — Article 14

Indian Bank Officers Service Regulations, 1979 — Section 4

Citation : (1983) 1 KarLJ 545

Hon'ble Judges : M. Rama Jois, J

Judgement

1. The petitioner, who is an employee of the Indian Bank, has presented this writ petition questioning the legality of the categorisation of the officers into various cadres as a result of which he has been placed in the pay scale of Rs. 700-1,800, as also the legality of denial of further promotion to the higher grade of Rs. 1,800-2,250 after his first promotion after categorisation.

2. The facts of the case in brief are as follows:

i) The petitioner joined service of the Indian Bank Ltd. (the Bank for short) on 3-4-1968. He was confirmed in the post on 3-4-1970. The Bank was acquired by the Central Government under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (the Act for short). Consequent on the acquisition, the Bank came directly under the control of the Central Government. Hence, the Bank became a body which fell within the word "State" as defined in Art. 12 of the Constitution and therefore governed by the Fundamental Rights enshrined in Part III of the Constitution.

ii) The branches of the Bank were classified as A, B, C and D on the basis of certain discretionary powers given to the managers of the branches. All of them however were in the grade of Rs. 300-900 and could be posted to A or B or C or D grade branch. Thus, notwithstanding this classification, all the managers belonged to a single cadre on identical pay scale and their postings were interchangeable.

iii) On the basis of the recommendation of a Committee appointed by the Government of India called the Pillai Committee, Indian Bank (Officers'') Service Regulations, 1979 (Regulations for short) were promulgated. They were given effect to from 1st July, 1979. Under the Regulations the pre existing posts were categorised into four grades under Regulation 4. It reads:

"Grades and categorisation of posts

Grades and scales of pay:

4. (1) There shall be the following four grades for officers with the scale of pay specified against each of the grades:

(a) Top executive grade scale VII Rs. 3,000-125 3,500; scale VI Rs. 2,750-125-3,250.

(b) Senior management grade scale V Rs. 2,500-100-2,700; scale IV Rs. 2,000-100-2,400.

(c) Middle management grade scale III Rs. 1,800-75-2,250; scale II Rs. 1,200-70-1,550-75-2,000.

(d) Junior management grade scale I Rs. 700 40-900-50-1,100-EB-1,200-60-1,800.

(2) Nothing in sub-regulation (I) shall be construed as requiring the Bank to have at all times, officers serving in all these grades."

Under Regulation No. 7 the pre-existing cadres were fitted into the aforesaid new cadres. It reads:

"Categorisation on the appointed date:

7. Subject to the provisions of Regulation 6, the various posts of officers in the Bank on the appointed date shall be categorised as specified in the Table below:

Table

Posts: Grade in which placed:

General Manager Top Executive Grade Scale VII

Joint General Manager/Deputy General Managers Top Executive Grade Scale VI

Asst. General Managers Senior Management Grade Scale V

Chief Officers (Dept. Heads)/ Regional Managers/ Chief Managers (of Metropolitan Branches in Bombay/ Calcutta/Madras) Senior Management Grade Scale IV

Dy. Chief Officers/Area Managers/Managers of Big Branches Middle Management Grade Scale III

Inspector/Manager of Medium Sized Branches in Metropolitan and Urban Areas

Middle Management Grade Scale II

Branch Managers of other branches and all other Officers. Junior Management Grade Scale I".

Pursuant to the said regulation, the petitioner was fitted into Jr. Management Gr. Scale I with effect from 1-7-1979, i.e., in the pay scale of Rs. 700-40-900-50-1,100-EB-1,200-60-1,800. Subsequently, on 29-11-1979 the petitioner was promoted to Middle Management Gr. Scale II carrying a pay scale of Rs. 1,200-70-1,550-75-2,000.

(iv) On 4-1-1980 some of the officers who were in Middle Management Scale II (Rs. 1,200 2,000) were promoted to Scale III (Rs. 1,800-75-2,250)-vide Ext.-F. Again on 18-2-1980 another batch of 23 officers were promoted to the Middle Management Scale III. According to the petitioner, some of the persons so promoted were his juniors and this fact is not disputed by the Bank.

(v) The petitioner has presented this petition being aggrieved by his initial placement in the scale of Rs. 700-1,800 from 1-7-1979, as also by the promotion of his juniors to the grade of Rs. 1,800-2,250.

3. The petitioner's contentions are:

(i) The fitment of the petitioner in the Jr. Management Scale I at Rs. 700-1,800 with effect from 1-7-79 was discriminatory;

(ii) The petitioner has been discriminated in the matter of promotion to the grade of Rs. 1,800-2,250, in that he was denied promotion and his juniors were preferred for promotion on 4-1-1980 and 18-2-1980.

4. (i) Statement of objections has been filed on behalf of the Bank. Sri S.G. Sundaraswamy, learned counsel for the Bank, has also addressed his arguments. The objection raised by the petitioner for his fitment in the pay-scale of Rs. 700-1,800 is resisted on the ground that by the mere fact that the petitioner happened to be working as Manager of "A" grade branch immediately prior to 1-7-1979, did not entitle him to claim fitment into the higher cadre. In support of this submission, reliance is placed on sub-regulation (4) of Regulation 8.

(ii) The contention of the petitioner that he has been, discriminated against in the matter of promotion to the grade of Rs. 1,800-2,250 is resisted on the ground that the petitioner had not acquired eligibility for promotion and did not earn sufficient marks for being selected, as he had worked for a shorter period as Manager of "A" and "B" grade branches, compared to the longer period of service rendered by his juniors in A grade and B grade branches and therefore there was no substance in his second contention.

5. As I shall presently show, the ground on which the first contention of the petitioner is resisted by the Bank, if accepted, is sufficient to accept the second contention urged for the petitioner and to reject the objection raised thereto by the Bank.

6. (i) As far as the first ground is concerned, the basis for the contention was that from some time prior to 1-7-1979 the petitioner was working in A Gr. Branch and, therefore, he should have been placed in a higher pay scale and his placement in the grade of Rs. 700-1,800 along with those who were working in B, C and D Gr, Branches was discriminatory, as unequals were treated equally.

(ii) It is not disputed that all branch Managers, irrespective of the fact, whether they were working in A or B or C or D grade branch, were in the grade of Rs. 300-900. All of them were placed, in the grade of Rs. 700 1,800 with effect from 1-7-1979. Therefore, I do not find any substance in the contention of the petitioner that because he happened to be working in A Gr. branch on 1-7-1979, he should have been fitted into a higher post. Apart from this, sub-regulation (4) of Regulation 8 on which the Bank relies furnishes the answer to the contention. It reads:

"(4) Where in the course of the aforesaid scheme of fitment, officers have to be fitted in two different scales depending on whether they are located in the Head Office or in the field or metropolitan areas or other areas, the mere fact that on the appointed date they happen to be posted at a particular place or office shall not by itself entitle them to a fitment in a particular grade and the Bank may make suitable changes in placements so as to fit them in an appropriate grade, having due regard to their "inter se" seniority".

The above clause makes it clear that merely because a person was working at a particular branch or office, it does not give him any advantage in the matter of fitment and that the fitment had to be done on the basis of the grade actually held by the officers. As all the officers belonging to the pay scale of Rs. 300 900 have been fitted into the Jr. Management Scale I (Rs. 700-1,800) there is no basis for the first contention of the petitioner. Hence, I reject the first contention.

7. The second contention of the petitioner is, that after his promotion to the grade of Rs. 1,200-2,000 and also of his juniors, on 4-1-1980 and again on 18-2-1980 a number of officers were promoted to the grade of Rs. 1,800 2,250 and many of them were his juniors. All the officers promoted on those two dates have been impleaded as respondents. But no statement of objection has been filed by any one of them.

8. Sri S.G. Sundaraswamy, learned counsel appearing for the Bank, did not dispute that some of the persons promoted on 4-1-1980 and 18-2-1980 were juniors to the petitioner. He, however, submitted that there has been no discrimination made against the petitioner in the matter of consideration of his case for promotion. In support of his submission he stated as follows: The Management of the Bank had laid down the criteria for consideration of the cases of the officers in the grade of Rs. 1,200-2,000 (Middle Management Gr. Scale II) to the grade of Rs. 1,800-2,250 (Middle Management grade-Scale III) and the cases of all the officers have been considered applying the criteria so prescribed. As far as the consideration of the cases of officers for promotion made on

4-1-1980 is concerned, the case of the petitioner was not considered as he did not satisfy the condition of eligibility prescribed, viz., 3 years" service as Manager of A or B Gr, branch. As far as the promotions made on 18-2-1980 is concerned, the aforesaid condition of eligibility was relaxed to two years as sufficient number of officers who had put in 3 years of service in A or B Gr. branch were not available. As a result, the case of the petitioner was considered. But as the officers who were juniors to the petitioner secured more marks, awarded on the basis of the criteria evolved by the Bank, they came to be promoted and, therefore, the petitioner can have no grievance as regards the selections and appointments made on 4-1-1980 and 18-2-1980.

9. Along with the statement of objections the Bank has produced Annexure 3 in which the resolution of the Bank laying down the criteria for effecting promotions have been laid down. The relevant portion of the same reads:

"(i) The minimum eligibility in terms of years of service for promotion from one scale to another shall be as under:

(b) From Middle Management Grade, Scale II to Middle Management Grade, Scale III, 5 years of satisfactory service in Scale II. x x x x (v) Notwithstanding anything contained in the foregoing clauses, for the purposes of effecting promotions initially on the introduction of the new scales of pay (a) Officers who were serving as Managers of branches classified as "B" Grade branches, for the purposes of discretionary powers, before 1-7-1979 and officers serving in posts which have been categorised as Scale II or Scale III posts under. Regulation 6 shall, for the limited purpose of eligibility for promotion to Scale III, be deemed to have served in Scale II for the number of years for which they have served in the posts hereinbefore mentioned, provided, however, that this direction shall be valid only for a period of three years from 1-7-1979."

The learned counsel appearing for the Bank also produced another document at the time of hearing in which the basis for awarding marks to the candidates eligible for consideration for promotion have been set out. It reads:

"Promotion of Officers from Middle Management Grade Scale II to Middle Management Grade-Scale III.

As per the Promotion Policy approved by the Board in their meeting on Novr. 12, 1979, promotion from one scale to another shall be on the basis of merit with such weightages as may be decided upon by the Departmental Promotion Committee concerned for length of service, educational professional qualifications, training, experience in various posts in banking industry and allied activities, experience acquired by serving in different parts of the country and overseas assignment in banking and the performance of the officer concerned. To assess the relevant merit of each candidate eligible, the DPC-I resolved to award points for service, educational/academic qualifications, exposure, administrative ability and performance as follows at its meeting held on 5th August 1982.

Maximum points

1) Service:

2 points for every completed 6 months service in Scale II and or above posts and or as Managers of "A"/"B" grade branches

20

2) Educational/Academic qualification:

a) CAIIB Part I

b) CAIIB Part II

c) Graduation

d) Post Graduation & or CA 2 points

3 points

3 points

2 points 10

3) Exposure: 15

a) Position: One point each for position as Manager of "B" Gr. and or above Branches/Inspector 2 points each for position as Superintendent/Regional Manager/Area Manager b) Region: 3 points each for service in each State exceeding one State. 3 points for service overseas

5 points

(Minimum Service-one year)

10 points

(Minimum Service-one year)

4) Performance: 55

a) Business Development/ Job performance

b) Leadership/Administrative ability

c) Inter personal relations 25 points

15 points

15 points

100"

Reliance was placed on the above documents by the learned counsel for the Bank to show that a rational basis had been adopted in affecting promotions.

10. Sri M. Gopalakrishna Setty, learned counsel for the petitioner, submitted that the criteria prescribed in the aforesaid documents themselves establish that the petitioner has been discriminated, both in the matter of eligibility and also in the awarding of marks, in view of the criteria laid down by the Bank. His submissions were as follows:

(i) One of the conditions of eligibility prescribed for promotion to the grade of Rs. 1,800-2,250 was that an officer should have worked for a period of 5 years in the grade of Rs. 1,200 2,000 (Middle Management Scale). The 5th clause treated the service of the officers in A or B Gr. branches as equivalent to service in a Scale II post. There was no difference between A or B or C or D Gr. branches, because all the posts carried identical pay scale and it was not within the choice of the official concerned to work in a B Gr. or A Gr. branch. The petitioner had all along been in the pay scale of Rs. 300-900. The mere fact that he was posted to work in a "C" grade branch or "D" grade branch, and consequently he had not put in sufficient number of years of service in "A" grade branch or "B" grade branch constitutes no rational basis to say that the petitioner had no eligibility for promotion. The entire service rendered by the petitioner in the pay scale of Rs. 300-900, which was more than ten years, should have been taken into account and by not doing so, the petitioner had been discriminated.

(ii) While the case of the petitioner was not considered for promotion on 4-1-1980 on the ground that he had not put in 3 years" of service in "A" grade or "B" grade branch, on 18-2-1980, though the petitioner"s case was considered for promotion, he was not selected for the reason that, according to the basis fixed for awarding points, set out earlier, 2 points were required to be awarded for every completed 6 months of service, in Scale II or in an A grade or B grade branch, as a result, the petitioner was given only 8 points in respect of his service rendered by him in A grade and B grade branch. If his services rendered in the same grade during the period when he was posted to "C" grade and D grade branches was taken into account, he would have scored maximum points of 20 and he would have had every chance of being selected.

(iii) The points prescribed under the head "exposure" also suffered from similar infirmity. Out of 15 points prescribed under this head, the petitioner did not secure sufficient number of points under the first head, because the service rendered in A and B grade branches alone were taken into account, though the service rendered in C and/or D grade branches was also equivalent to the former.

(iv) As far as the points prescribed for working in the post of Superintendent/ Regional Manager/Area Manager, as also for rendering service in other states and overseas are concerned, as such postings were entirely within the discretion of the management and not within the choice of an officer, the points prescribed under this head also suffered from the same infirmity.

11. The conditions of eligibility prescribed by the Bank for promotion from the cadre of Rs. 1,200-2,000 to the grade Rs. 1,800-2,250 was that the service rendered by the Officers in A grade or B grade branch or both, alone had to be taken into account for finding out the eligibility for promotion, because the condition of eligibility prescribed was 3 years of service in A grade or B grade branch. On the first occasion when the cases were considered for promotion on 4-1-1980, the petitioner's case was not considered because he had not put in the requisite number of years of service in A grade branch or B grade branch. But as stated earlier the post of Manager, whether it was of an A grade branch or B grade branch or C grade branch or D grade branch, it carried an identical pay scale and all of them were equivalent posts, and therefore, a manager working in a D grade branch or a C grade branch could be senior to a manager working in an A grade branch or B grade branch. Therefore, by the mere fortuitous circumstance, namely, that a person got posting to an A grade branch or B grade branch, would not make him senior, or superior to, his senior who came to be posted to work in C grade or D grade branch. This is particularly so because whether a person should work in A grade branch or B grade branch or C grade branch or D grade branch, was not within the choice of the officer, but depended upon the posting given to him by the management. Thus the effect of the criteria fixed by the Bank, was while a person who had put in the requisite number of years of service in A grade branch or B grade branch was eligible for promotion though he was junior to a person who was working in C grade or D grade branch and that the latter was not eligible though he had put in more than 3 years of service as branch manager. The question is, whether such prescription of criteria is violative of, Arts. 14 and 16 (1) of the Constitution. In my view, it is.

12. A similar situation had been brought into existence, under the provisions of the Recruitment Rules of the Revenue Department of the State Government and its validity was tested in the case of *N.G. Maheswarappa v. State of Mysore*, 8 LR 636. The Karnataka Revenue Subordinate Branch (Recruitment) Rules, 1959, prescribed that promotion to the cadre of Taluk Sheristedars be made from among First Division Clerks and First Grade Revenue Inspectors, of the respective Revenue Divisions. The posts of First Division Clerks and First Grade Revenue Inspectors carried identical pay scale, and were equal and interchangeable. The only difference was, the former was ministerial and the latter executive. The rules further prescribed that a First Division Clerk in order to become eligible for promotion as Taluk Sheristedar, should have put in a minimum of 3 years of service as a Revenue Inspector. The petitioner therein, who was junior to respondents 3 to 17 therein in the combined seniority list of First Division Clerk and First Grade Revenue Inspectors, questioned the legality of promotion of respondents 3 to 17 on the ground that their promotion was illegal because though they were seniors they had not worked as Revenue Inspectors for a period of 3 years. Those respondents resisted the petition on the ground that the rule to the extent it prescribed, that a First Division Clerk, to be eligible for promotion as a Taluk Sheristedar, must have put in 3 years of service

as Revenue Inspector, which qualification was incapable of voluntary acquisition, was itself unconstitutional. The contention of the respondents was accepted and the rule which prescribed 3 years of service in the executive cadre as a condition of eligibility for promotion was held to be void as offending Arts. 14 and 16 (1) of the Constitution and the promotions of respondents 3 to 17 were upheld. The ratio of the said decision applies on all fours to this case. Admittedly the posts of Managers in A grade branch or B grade branch or C grade branch or D grade branch were equivalent and interchangeable and carried identical pay scale. Therefore, the mere fact, that a junior of the petitioner came to be posted to A grade branch or B grade branch earlier and the petitioner came to be posted to a "C" grade branch or D grade branch earlier and to an A grade branch or B grade branch later could not be regarded as a rational basis to place in a disadvantageous position in the matter of condition of eligibility for promotion. The only proper criteria that could have been prescribed was requisite number of years of service in the grade of Rs. 300-900 and not that a person should have worked in A grade branch or B grade branch. The irrationality of the classification made by the Bank, stands proved by Regulation 8 (4) itself. As pointed out earlier the first contention of the petitioner, viz., because he was working in A grade branch as on 1-7-1979 he should have been fitted into a grade, was resisted by the Bank relying on Regulation 8 (4) and it was submitted that the mere fact that he was in an A grade branch on 1-7-1979 would not entitle him to claim fitment in a higher pay scale. I have accepted this contention urged for the Bank. If that is the correct legal position in the matter of fitment, it cannot be different in the matter of promotion. Therefore, no officer can claim to be or be placed in an advantageous position in the matter of further promotion just because he was posted to work in A grade branch or B grade branch, and another similarly placed officer could not be placed in a disadvantageous position just because he came to be posted to a C grade or D grade branch.

Therefore, I hold that the criteria fixed by the Bank for promotion and the non-consideration of the case of the petitioner as a consequence thereof, on the first occasion i.e., on 4-1-1980, was discriminatory.

13. On the second occasion, namely on 18-2-1980 the case of the petitioner has been considered, but he was not selected and his juniors were selected on the ground that they had secured more points. But the criteria prescribed by the Bank for awarding points, was again on the same basis on which the criteria regarding condition of eligibility was prescribed, as is evident from the relevant portion of the decision of the Bank extracted earlier. The basis laid down for awarding the points was that while the maximum points fixed under the head experience was 20, 2 points were required to be awarded for every completed 6 months of service in Scale-II or as a Manager of A grade branch or B grade branch. By taking into account, the services rendered by the petitioner in A grade and B grade branches only, 8 points were awarded to him. Therefore, he was not selected. The very reasoning which persuades me to take the view that the exclusion of the service rendered by the petitioner in C grade branch or D grade

branch, was discriminatory, holds good for declaring that the basis prescribed for awarding of points under the first head was discriminatory and that if the entire service rendered by him in the grade of Rs. 300-900 was taken into account the petitioner would have been entitled to get 20 points.

14. Though the case of the petitioner was considered on 18-2-1980, by relaxing the condition of eligibility of 3 years service as Manager of A grade or B grade branch on the ground that sufficient number of candidates were not available, the petitioner was adversely affected because of the criteria prescribed in the matter of awarding points. The contention of the petitioner that his entire service rendered in the grade of Rs. 300-900, should have been taken into account for the awarding of points under the head "service" has to be accepted. As far as the other two criteria on the basis of which points were awarded, namely "Education" and "performance" is concerned, the learned counsel for the petitioner did not question their validity.

15. The learned counsel for the petitioner, however, attacked the basis prescribed for awarding of points under the third head, namely, "Exposure", for which 15 points were prescribed. He submitted that he was prejudiced in the awarding of points earmarked for position under the head "Exposure" in two ways in view of the criteria fixed for awarding marks, namely- (a) His service rendered in B grade branch and A grade branch alone was taken into account.

(b) Points were prescribed for having worked in the position of Superintendent, Regional Manager or Area Manager or working in some other State or overseas.

The counsel argued that as far as this matter is concerned, it has to be held in favour of the petitioner, for the same reasons assigned by me earlier to uphold his eligibility and entitlement for the award of points regarding service rendered as Branch Manager, as it was again a qualification incapable of voluntary acquisition as it depended upon the giving of such posting order by the management and, therefore discriminatory.

16. (i) As far as the marks prescribed for working in the position of A Gr. or B Gr. Manager only, the contention of the petitioner is sound and has got to be accepted.

(ii) As far as marks prescribed for working in certain other positions or outside the State or outside the country, Sri Sundaraswamy learned counsel for the Bank, submitted that the criteria prescribed for awarding of points on that count had a rational basis and was not arbitrary. He submitted that the posting of a person as Superintendent, Regional Manager or Area Manager was in the nature of things made taking into consideration the aptitude and also the capacity of the concerned officer having due regard to nature and duties. another State or overseas would normally depend on the willingness of the officer, though his willingness might not have been expressly asked for, and therefore, in the absence of any specific allegation that such postings were being given arbitrarily and only in order to favour any particular individual, there was no ground for

interference as it should be presumed that the management would have acted reasonably, having considered all relevant factors, in posting a person to work as Superintendent or Regional Manager or Area Manager or to serve in other States or overseas.

17. The learned counsel for the petitioner submitted that the basis on which he contended that the criteria fixed for condition of eligibility and for awarding of points under the head "service" was discriminatory was also applicable to the challenge for awarding of points under this head also. Though, at first sight, the submission appears to be good, a closer examination of the matter indicates that it would be unsafe and difficult to conclude that the petitioner had been discriminated on this count. In this behalf, it should be pointed out that these postings, both having regard to the nature and duties of these posts, and the places of posting as also the selective basis said to have been adopted in the matter of making posting to these posts, they cannot be compared to the posting of a Branch Manager to an A Gr. or B Gr. or C Gr. or D Gr. branch, which is done in a routine manner. Therefore in the absence of specific plea and proof to the effect that postings to those specified executive posts or outside the State or abroad were being given to a few officers, only with the object of favouring them by giving them such posting, the contention of the petitioner cannot be upheld. There is no such plea raised or evidence adduced in support thereof by the petitioner. Therefore I hold that without raising a specific plea and adducing sufficient material in support thereof, the petitioner is not entitled to urge this ground and accordingly, I decline to decide this point.

18. For the reasons aforesaid, I make the following order:

(i) The writ petition is partly allowed;

(ii) A writ in the nature of mandamus shall issue to the respondents-Bank to review the promotions made to the cadre of Middle Management Gr., Scale-III, Rs. 1,800 75-2,250 on 4-1-1980 and 18-2-1980 in the light of this order i.e., by treating the service rendered by an officer as Manager in a "C" grade branch and/or "D" grade branch as equal to the service rendered in an "A" grade or "B" grade branch, both for purposes of eligibility and awarding of points and in that process to reconsider the case of the petitioner for promotion to the cadre as on those dates.

(iii) If on such review and re-consideration the petitioner is found fit and eligible for promotion as from 4-1-1980 or 18-2-1980, the petitioner shall be promoted and his promotion shall be made effective from the date on which he is found fit for promotion;

(iv) The petitioner shall also be given all other consequential benefits flowing from such promotion and permissible under law.

In other respects, the writ petition is dismissed.

No costs.