

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C)3471/2002**

% **Date of decision: 23rd February, 2010**

RAKESH KUMAR GUPTA Petitioner
Through: Mr Pradeep Gupta, Mr Suresh Bharti, Mr
Eklavya Gupta, Ms. Laxmibai Leitanthem
and Mr Rahul Singh, Advocates.

Versus

CENTRAL BANK OF INDIA & ORS Respondents

Through: Mr Vinay Sharma, Advocate for R- 1 & 2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petitioner, employed as System Analyst with the Central Bank of India, New Delhi, has instituted this petition under Articles 226 of the Constitution of India for setting aside and declaring the Quota Rule 1.7.1 in the Promotion Policy for Officers of the Bank as arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India. The petitioner also sought issuance of a writ of *quo-warranto* for setting aside the selection of

respondents 3 to 12 and for issuance of direction to the respondent Bank to prepare the merit list of 20 candidates instead of 10 against the 20 vacancies for scale II. The respondents 3 to 6 and 11 failed to appear inspite of service. The respondents 7 to 10 and 12 were not served by the petitioner and ultimately on 7th February, 2007 the counsel for the petitioner gave up the respondents 7 to 10 and 12 and their names were deleted from the array of respondents.

2. The case of the petitioner is that he started his career as a clerk with the respondent/bank; that he was promoted through written test followed by interview and joined the duty of computer officer and at the time of filing the petition was working as System Analyst Scale – I in the Junior Management Grade (JMG) of the respondent Bank for the last over 18 years. As per the hierarchy in the respondent Bank, the next promotion of the petitioner would be to Middle Management Grade –II (MMG) i.e. to the post of System Analyst Scale– II. As per the promotion policy for officers of the respondent Bank, the promotions from JMG Scale-I to MMG– II are to be filled up through two channels i.e. “written test channel” and “normal channel” in the ratio of 50:50. The officers in JMG Scale– I who have completed the minimum eligibility period of 7 years of service are eligible to

apply for appearing in the written test of the selection process for promotion to MMG Scale – II under the written test channel, for filling up 50% of total vacancies in MMG Scale– II on a specified date. The remaining 50% of vacancies are to be filled through the normal channel i.e. from amongst the officers completing 7 years of service, on the basis of performance, weightages for educational / proposed qualifications and potential. It is the case of the petitioner that he opted for the written test channel and passed the written test twice, in the year 2000 and in the year 2002; that in the written test of the year 2002 he secured 8th position in merit and there were 20 vacancies i.e. 10 in the written test channel and 10 in the promotion channel but owing to the arbitrary quota rule in the promotion policy aforesaid he was not promoted. It is his case that first, all the 20 vacancies are required to be thrown open to the written test channel and only thereafter the vacancies through the normal channel ought to be filled. The respondents 3 to 12, of which as aforesaid the respondents 7 to 10 and 12 were given up, are stated to be junior to the petitioner who have been promoted to MMG Scale– II. It is further his case that the respondents 3 to 12 had failed to qualify the written test examination and were not even called for interview but nevertheless promoted through the normal channel. It is his case that the

normal channel is being misused by the Bank for superseding the meritorious candidates as himself, by way of allotting discretionary marks in viva voice etc.

3. The challenge in the petition as filed is confined to the promotion policy through two channels being bad and the contention of the petitioner is that all vacancies in MMG Scale– II ought to be filled through the written test channel only. The counsel for petitioner urges that if the vacancies are to be so filled, the petitioner is entitled to be promoted.

4. The contention of the counsel for the petitioner is that the service jurisprudence does not recognize formulation of two channels of selection for the same post and the promotion policy is liable to be set aside on this ground alone. It is contended that the service jurisprudence recognizes promotion only by three modes i.e. by written examination or by oral test or by a combination of both and as such the policy of the respondent Bank providing a dual channel of promotion is bad and liable to be struck down. It is contended that at the relevant time there were 20 vacancies to MMG Scale–II and if all 20 were to be filled through the written test channel, the petitioner would certainly make the grade.

5. This court vide ex parte order dated 29th May, 2002 on the application of the petitioner for interim relief had directed that the appointments made during the pendency of this writ petition would be subject to the final outcome of the petition. The said order has not been vacated till now. The counsel for the respondent no.1 Bank disputes that the petitioner in the written test had secured 8th rank as contended and has shown the record of the results under the written test channel to contend that the petitioner had secured the 13th rank. However, if the petition was to be allowed and the normal channel of promotion was to be struck down as claimed, the petitioner even with the 13th rank would be entitled to promotion to MMG Scale– II in terms of the interim order in the petition.

6. Neither of the counsels has cited any judgment on the aspect of two channels of promotion for a single post. However, I find that the Supreme Court in *S.P. Biswas Vs State Bank of India* AIR 1991 SC 2039 was considering the same policy as it stood then and the material terms whereof under challenge now were the same even then. The counsel for the respondent no.1 Bank has also stated that the policy under challenge applies to all nationalized banks. The Supreme Court held:

“Our conclusion is that no infirmity rendering this policy arbitrary and, therefore, assailable on that ground is disclosed. Keeping in view the laudable object of attracting academically brilliant candidates into the Bank's service as officers by direct recruitment by giving incentive of accelerated promotion to the most meritorious amongst them who maintain a high standard of achievement is conducive to public interest and cannot be faulted.”

7. I may however record that the same policy was also the subject matter of challenge before the Andhra Pradesh High Court in ***Canara Bank Officers Congress Vs The Government of India*** MANU/AP/0840/1996. A Single Judge of the Andhra Pradesh High Court though noticing the judgment (supra) of the Supreme Court nevertheless held the policy aforesaid to be bad. However, the only reason stated for holding the same bad was that the policy as it stood then permitted the officer to choose only one channel and thereby his right to be considered for promotion was reduced by 50%.

8. I may notice that the policy has since been amended. Now the officers are not required to exercise an option and choose amongst the two channels of promotion and the right of promotion is not reduced by 50%. Further clause 5 of the policy as on 31st January, 1998, and which is applicable to the case at hand, lays down the weightage of various factors in

the promotion. The petitioner also has been considered under both channels; while his rank in the test channel was 13th as aforesaid, his rank in the normal channel was 26th. Thus the reason which prevailed with the Single Judge of the Andhra Pradesh High Court, now no longer exists.

9. I also find that Hon'ble Mr Justice P. Sathasivam (As His Lordship then was) in the Madras High Court in ***Canara Bank Officers' Union Vs Canara Bank*** 2000-III- LLJ (Suppl) 973 has disagreed with the judgment aforesaid of the single Judge of the Andhra Pradesh High Court and held that the policy which meets the aspirations of the majority of officers of the Bank and which has been formulated after consultation with the majority of the officers cannot be faulted with. Reliance was placed on ***State of Maharashtra v. Chandrakant Anant Kulkarni*** 1981 II LLJ 433 (SC) wherein the Supreme Court held that "*Mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not...*"

10. *De hors* the aforesaid position, the counsel for the petitioner has even otherwise been unable to show any discrimination meted out to the petitioner

by creation of two channels of promotion. This Court does not find any arbitrariness or illegality in the same. There is a valid reason, having rational nexus to the creation of two channels of promotion. The written test channel provides a motivation in the promotion system to meet the legitimate aspirations of officers for assumption of higher responsibilities. As per clause 5 of the policy as it now stands, for selection through the normal channel weightage of 20% is given to educational/professional qualifications, 50% to performance, appraisal and 30% to potential (interview). In the selection through written test channel, in addition to the above, 100 marks are given to written test. The policy thus gives an opportunity to a meritorious person who may not make the grade under the normal channel to be promoted through the written test channel by securing high marks in the written test. In fact from the records submitted by the counsel for the bank itself it is clear that while the rank of the petitioner in promotion through the normal channel was 26th, it was 13th in the case of written test channel. Had the petitioner done better in the written test and/or if the others taking the written test had not done better, the petitioner though having a rank of 26th in the normal channel could have still been promoted if had been within the first 10 in the written test channel. The policy thus tends

to give an opportunity to a person who has prepared well and is able to pass with flying colours in the written test channel to be promoted though in the normal channel he will not be entitled to. Such encouragement to talent can by no stretch of imagination be said to be discriminatory and the policy cannot be struck down for the said reason.

11. There is yet another reason which prevails with me for declining the relief to the petitioner. If the relief claimed by the petitioner is to be granted, this court will necessarily have to strike down the promotion through the normal channel and through which channel the respondents 7 to 10 and 12 were promoted. The petitioner cannot be entitled to the said relief without impleading and serving as parties the persons to be affected thereby. The Supreme Court in *Reserve Bank of India Vs C.N. Sahasranaman* AIR 1986 SC 1830 has held that “Whether there has been denial of equality of the view of promotion or any constitutional right infringed or not cannot be judged, where interest of large number of people are concerned, in the abstract. Vast majority, indeed the overwhelming majority of the workmen are in favour of the scheme as evolved by the Bank as modified as it would be apparent from the submissions urged on behalf of All-India Reserve Bank Employees' Association impleaded as party-respondent in this appeal”. It

was further held that it has to be borne in mind that in service jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees and fortunes of some individuals is not the touch-stone.

12. I had during the hearing also inquired from the counsel for the petitioner whether the petitioner would not be estopped from challenging the aforesaid policy after having taken a chance and having been considered through both the channels of promotion. Though the counsel for the petitioner contended otherwise, the counsel for the respondent has relied on

- i. Suneeta Aggarwal Vs State of Haryana* 2000(I) CLR 825 (SC)
- ii. Union of India Vs N. Chandrasekharan* AIR 1998 SC 795
- iii. Dr. G. Sarena Vs University of Lucknow* AIR 1976 SC 2428
- iv. Maj. Chandrabhan Singh Vs lafaullah Khan* AIR 1978 SC 1814
- v. Om Prakash Shukla Vs Akhilesh Kumar Shukla* AIR 1986 SC 1043
- vi. Madan Lal Vs State of Jammu and Kashmir* AIR 1995 SC 1088
- vii. Utkal University Vs Dr. Nrusingha Charan Sarangi* JT 1999 (1) SC 101

to contend that the petitioner is so estopped. In my view also, the petitioner after having availed a chance and after being unsuccessful is not entitled to challenge the procedure / policy which he had admittedly availed and in which he remained unsuccessful. The counsel for the petitioner laid much emphasis on *Praveen Singh Vs State of Punjab* (2000) 8 SCC 633 to contend that arbitrariness as opposed to reasonableness is the antithesis to law and the conscience of this court ought to be pricked by the respondents 3 to 12, who had failed to clear the written test, having been selected through the normal channel. The record produced by the respondent shows that the respondents 3 to 12 were ahead of the petitioner (who was 26) in the normal channel. Moreover the Supreme Court in *Praveen Singh* (supra) was concerned with the written test being reduced to the only method for determining eligibility for the interview and the selection being made as per the result of the interview only. It was in that context that the Supreme Court held the policy to be bad. The same is not the position here. In the present case only 30% weightage is given to the interview and the cumulative marks of the professional/educational qualification, appraisal and interview have been taken into consideration for giving the rankings.

13. Reliance is also placed on *Lila Dhar Vs State of Rajasthan* (1981) 4 SCC 159 on the ideal mode of selection and in which selection on the basis of viva voce alone has been deprecated. This judgment is also not apposite to facts of this case.

14. Though the counsel for the petitioner during the hearing, also attempted to contend that there was no denial in the counter affidavit filed by the respondent of the petitioner having stood 8th rank in the written test channel but I find that there is a general denial of the same. The records produced by the respondent Bank before this court also belie the said contention and show the petitioner to be on 13th in the rank in the written test channel. There is no averment in the petition of fraud or of any mala fides and in fact there is no challenge in the petition to the ranking and no relief in that regard has been claimed. The counsel for the respondent has also drawn attention to the counter affidavit where it has been stated that Rule 12 of the Promotion Policy provides the remedy of appeal, within a period of three months from the date on which promotions are announced, to any officer who feels that his case for promotion has not been properly dealt with. Admittedly, the petitioner has not preferred any appeal or made any grievance as to his ranking. The counsel for the petitioner in response relies

upon *Harbanslal Sahnia Vs. Indian Oil Corporation Ltd.* (2003) 2 SCC 107 to contend that exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. However, this court without any foundation being laid, will not enter into the said controversy specially when the petitioner confines the writ petition to the constitutional challenge to the policy.

15. There is no merit in the petition. The same is dismissed. The counsel for the respondent bank has also pressed for costs. However, since the petitioner continues to remain with the respondent bank, it is felt that imposition of costs may further embitter the relationship between the employer and the employee. In the circumstances, I refrain from imposing any costs on the petitioner.

**RAJIV SAHAI ENDLAW
(JUDGE)**

February 23rd, 2010
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