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

% *Judgment delivered on: 24th May, 2012*

+ **W.P.(C) No.7615/2007**

VINOD KUMAR AGRAWAL Petitioner
Through : Mr.Barun K Sinha , Adv.

versus

STATE BANK OF BIKANER
AND JAIPUR & ORS. Respondents
Through : Mr.Rajiv Kapur & Ms.Vatsala
Rai, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide instant petition, the petitioner has sought *mandamus* to direct the respondents to include the name of the petitioner in the list of eligible candidates and to consider him for promotion for the post of Junior Management Grade Scale-I (hereinafter referred as JMGS-1) under Grade-D post.

2. The petitioner joined the respondent bank initially as Clerk-cum-Cashier (Clerical Cadre) in the year 1981. On 28.06.1994, the State Sector Bank Employees Association entered into an agreement with the management of the State Bank for giving promotion to the employees in clerical cadre in the bank. As per the said agreement, the bank appointed 'P.C.Joshi Committee, who recommended the clerical cadre staff of banks

to JMGS-1 post under Groups-A, B, & D.

3. In view of the above recommendations, the promotion to the JMGS-1, post under Group A, B & D are being given by the banks.

4. In the year 2004, the petitioner gave his consent for promotion to JMGS-1 post under Group-A. He appeared in the year 2004 Group-A; however was not selected.

5. The petitioner again made application for JMGS-1 post under Group A in the year 2005. However, he did not appear in the test and interview.

6. In April, 2007 the respondent bank published/circulated a notice inviting the consent from the eligible clerical staff of respondent No.1 for JMGS-1 under Group A, B & D post and those consented were to be furnished on or before 12.05.2007.

7. As per said notice prescribed for giving consent in a prescribed format. Clause 4 of the said notice provides for debarment, clause 5 provides for non-acceptance for promotion/request for reversion.

8. Pursuant to the said notice, petitioner gave his consent on 04.04.2007 in prescribed format for JMGS-1 post under Group-D.

9. Mr.Barun Kumar Sinha, learned counsel appearing on behalf of petitioner submitted that the notice issued by respondent No.1 provides that the promotion to JMGS-1 under Group D shall be given on the basis of interview only. The eligibility provided in the notice was that the candidate should not be more than 57 years of age as on 01.04.2007. That apart, the

candidates who have put in minimum 15 years of service with respondent No.1 as on 01.04.2007.

10. It is further provided that the eligible employees equal to 4 times the number of vacancies, who have given consent letters, will be called for interview.

11. Further provided that the period of two years should have been elapsed from the time of previous appearances for selection under Group-A. It is specifically submitted that the petitioner had last appeared in the written test in the year 2004. And in the year 2005, though he consented, but did not appear in the test.

12. Learned counsel submitted that the petitioner was eligible to appear in the interview to be held for JMGS-1 Group D, which was held on 15.10.2007.

13. The petitioner came to know about the circular dated 10.09.2007 on 11.09.2007, which contains the tentative list of names of the candidates who were eligible to be called for interview for JMGS-1 under Group D post and in that list, petitioner's name did not appear.

14. On 11.09.2007, petitioner sent a representation to the Assistant General Manager (II) of the respondent Bank requesting to include his name in the eligible candidates list. On 04.10.2007, petitioner gave a reminder to the respondent bank.

15. Learned counsel for petitioner has drawn the attention of this Court to Annexure P-1 wherein the names of juniors to the petitioner appeared at Sr.

Nos.84 to 156 whereas the name of the petitioner not considered, therefore, not indicated in the list.

16. Interview of the candidates was fixed on 15.10.2007. In that eventuality, petitioner filed the instant petition.

17. Vide order dated 12.10.2007, notice was issued, simultaneously, the petitioner was permitted to appear in the interview held on 15.10.2007. It is further directed that the result of the petitioner will not be declared till further orders of this Court.

18. Learned counsel has also drawn the attention to para No.8 of the counter affidavit filed by the respondents wherein it is averred that the Zonal Office of respondent Bank had advised Branch vide their letter No.AGM/II/SS/166 dated 09.10.2007 that since the petitioner had availed the chance by submitting the consent and by inclusion of his name in the test of the eligible candidates for promotion under Group A in the year 2005, therefore, in term of the policy guidelines for promotion, the petitioner was not eligible for inclusion under Group D for the current year promotion.

19. He submitted that the petitioner initially gave the consent to test his luck, however, finally, he did not appear. Therefore, he did not avail his chance in the year 2005. Therefore, he was eligible for the year 2007.

20. On the other hand, Mr.Rajiv Kapur, learned counsel appearing on behalf of respondents stated that as per the agreement between the employees and the management for Group D post, the eligible employee would be equal to 4 times, the number of vacancies from those, who given

the consent letters, would be called for interview and from amongst those, call, the notified vacancies would be filled up.

21. The period of two years should have been elapsed from the time of the previous appearance for selection under Group A.

22. The number of chances are restricted to three on consecutive basis; whereas four chances are given to SC/ST candidates. Since the petitioner is from the general category, therefore, the restricted chances to the petitioner are 3 on consecutive basis.

23. Learned counsel further submitted that in the said agreement, the meaning of 'Chance' has been defined as under:-

*“**Chance**’ means actual appearance in the written test under Groups A & B and in the interview under Group D, or a written communication by the employee agreeing to appear in the written test or the interview, as the case may be, but not appearing therein.”*

24. He submitted that the petitioner given his consent for JMGS-1 under Group A for the year 2005, for which the roll number was issued for appearing in the written test; however, the petitioner chose not to appear in the test.

25. Therefore, as per the promotion guideline, the petitioner had availed chance for the promotion in the year 2005, therefore, he was not eligible for inclusion in the Group D for the current year promotion. Hence, his name could not be appeared in the list of eligible candidates for the Group D posts.

26. Learned counsel further submitted that the petitioner concealed this

fact in the consent form vide column No.10. It was undertaken by the petitioner that the information given in the consent letter was true and correct and to the best of his knowledge, if any information found to be incorrect, apart from his candidature treated as invalid and may be proceeded against as per award/bi-partite settlement.

27. Pursuant to the order dated 12.10.2007 of this Court, petitioner appeared in the interview. His result was kept under sealed envelope and same shall be declared with the permission of the Court.

28. I have heard learned counsels for parties.

29. The only issue in the instant petition is, 'Whether the consent to appear deemed to be effective chance availed by him'?

30. On perusal of the agreement for Group D it is clearly mentioned that period of two years should have been elapsed from the time of previous appearance for selection under Group A post.

31. In the counter affidavit filed by the respondent bank, it is clearly stated that the petitioner did not appear in the test and contrary stated that since the petitioner availed the chance for promotion in the year 2005. Therefore, found not eligible for inclusion in the Group D for the current year promotion.

32. In para No.2 of the para-wise reply, it is stated that a period of two years should have been elapsed from the time of previous appearance for selection under Group A. On perusal of the definition of chance, clearly mentioned that it means 'actual appearance' in the written test under Group

A & B and in the interview under Group D. However, further contrary written that a written communication by the employee agreeing to appear in the written test or the interview, as the case may be, but not appearing therein.

33. I find no reason. Sometimes, a candidate who had given his consent as sought by the institutions, but some mis-happenings may take places in the family or some emergency due to health problem. Therefore, he may not appear in the exams. Since the total chances are limited i.e. three in numbers. Therefore, the candidate has to choose three consecutive chances after his own assessment that he would be able to appear in the interview and could secure success in the same.

34. Therefore, mere giving the consent to appear and if he does not appear in the test or interview, that in my opinion, would not be a effective chance, as agitated by the bank.

35. Therefore, I find no merits in the contention of learned counsel for respondent and the definition of chance given in the agreement.

36. Vide order dated 12.10.2007, the petitioner was permitted to appear in the interview held on 15.10.2007. The petitioner appeared therein and his result was kept in sealed cover.

37. Today, this Court permitted the respondent to open the result in the Court.

38. Mr. M. L. Makkar, Manager has produced the result of the petitioner, wherein it is stated 'The petitioner is not being found suitable for promotion

to JMGS-1 with effect from 01.12.2007’.

38. The envelope containing the result of petitioner has been returned to Mr.Makkar.

39. Consequently, while allowing the petition, liberty is given to the petitioner, in case he was found suitable for promotion for the reasons other than the ground that ‘he was not eligible for two years’ to challenge the same.

40. Accordingly, instant petition is allowed and stands disposed of.

41. No order as to costs.

SURESH KAIT, J

MAY 24, 2012

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