

GAHC010115152015



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2102/2015

SRI DEBASHISH ROY

S/O LT. NALINI MOHAN ROY, R/O ASKASHDEEP APARTMENT, HOUSE NO .
12, BHOLANATH MANDIR BYE LANE, DR. B.K. KAKATI ROAD, ULUBARI,
GUWAHATI- 781007.

VERSUS

THE UNITED BANK OF INDIA and 4 ORS
REP.BY THE MANAGING DIRECTOR AND CEO, UNITED BANK OF INDIA
HEAD OFFICE, 11 HEMANTA BASU SARANI, KOLKATA- 700001.

2:THE EXECUTIVE DIRECTOR

UNITED BANK OF INDIA HEAD OFFICE
11 HAMANTA BASU SARANI KOLKATA- 700001.

3:THE GENERAL MANAGER

HRM
IT
ADC and MIS
UNITED BANK OF INDIA HEAD OFFICE
11 HEMANTA BASU SARANI
KOLKATA- 700001.

4:THE ASSISTANT GENERAL MANAGER HRM

PA OE DIVISION
UNITED BANK OF INIDA HEAD OFFICE
11 HEMANTA BASU SARANI
KOLKATA- 700001.

5:PUNJAB NATIONAL BANK
REP. BY ITS MANAGING DIRECTOR AND CHIEF EXECUTIVE OFFICER
PLOT NO.4
SECTOR 1
DWARKA
NEW DELHI-11007

Advocate for the Petitioner : MR.A CHETRY

Advocate for the Respondent : MR.M DUTTAR

Date of Hearing : **19.12.2023**

Date of Judgment & Order: : **18.03.2024**

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA
JUDGMENT AND ORDER (CAV)**

This is the second round of litigation resorted to by the petitioner claiming promotion to the next higher post to which the petitioner claims to be entitled to be duly considered for.

2. The petitioner joined in the erstwhile United Bank of India as Probationary Officer in December, 1985. On 27.03.1995, he was promoted from JMG Scale-I to MMG Scale-II. Thereafter, on 05.10.2001, he was again promoted from MMG Scale-II to MMG Scale-III. On 24.12.2009, the petitioner was further promoted to MMG Scale-III to SMG Scale-IV. The grievance of the petitioner pertains to his non-consideration to the next higher grade from SMG Scale-IV to SMG Scale-V. At the relevant point in

time, the United Bank of India (presently Punjab National Bank) issued a circular dated 10.05.2012 specifying the eligibility criteria for promotion from Scale-IV to Scale-V. In terms of the said circular, the following criteria was specified:

- 1. Officers should have completed minimum three years of satisfactory service in Scale-IV which may be relaxed to two years by the competent authority on valid grounds;*
- 2. The candidates must have completed 12 years of service;*
- 3. The candidates will have to pass computer literary test with a minimum of 40% marks;*
- 4. Candidates who have secured minimum 60% marks in APAR in each of the years of service required for eligibility for promotion will be called for group discussion and personal interview.*

3. Although the petitioner claims to be eligible for being promoted to the next higher grade, he was not selected for promotion and accordingly, he approached this Court by way of A writ petition praying for writ for setting aside to the impugned circular dated 10.05.2012 as well as setting

aside of the selection of the private respondent therein who had promoted from SMG Scale-IV to SMG Scale-V in the erstwhile United Bank of India as it then was. A further prayer was made in the writ petition seeking a direction to the respondents to promote him to the SMG Scale-V by holding a fresh selection. The said writ petition was numbered as W.P.(C) No. 3362/2012. During the course of the hearing before the writ Court in the earlier round of litigation, it was urged before the Court that the petitioner was not found eligible as he secured 59 marks in his APAR for the year 2010-11 while he secured 95 marks in the APAR for the year 2011-12. As such, the petitioner was not selected as he failed to secure 60% marks in his APARs for both the years under consideration. The learned Co-ordinate Bench upon considering the entire materials before the Court and upon relying on the law laid down by the Apex Court in *Dev Dutt Vs. Union of India*, reported in (2008) 8 SCC 725; *Sukdev Singh Vs. Union of India and Ors*, reported in (2013) 9 SCC 566 and *Abhijit Ghosh Dastidar Vs. Union of India and Ors*, reported in (2009) 16 SCC 146 that every entry in the ACR of the public servant should be communicated to him within the reasonable period. In so far as the writ petitioner is concerned, he is securing 59 marks in the APAR of 2010-11 was never communicated to him. The Co-ordinate Bench held that such

non-communication of APAR marks which fell below the benchmark prescribed for securing the eligibility for promotion to the next higher post, ought to have been communicated to the Officer concerned in terms of the principle of law laid down by the Apex Court in *Dev Dutt Vs. Union of India*, reported in (2008) 8 SCC 725; *Sukdev Singh Vs. Union of India and Ors*, reported in (2013) 9 SCC 566 and *Abhijit Ghosh Dastidar Vs. Union of India and Ors*, reported in (2009) 16 SCC 146. The writ petition was accordingly disposed of with the following directions:

“25 That being the position and having regard to the law laid down by the Apex Court, the following directions are hereby issued:

1) entries in the APAR of the petitioner for both the years 2010-11 and 2011-12 be communicated to the petitioner within a period of thirty days from the date of receipt of a certified copy of this order;

2) Petitioner may submit representation before the Bank against such entries within thirty days from the date of receipt of communication of the entries in the two APARs by him;

3) Such representation of the petitioner shall be considered by an authority of the Bank who is placed higher in office than the accepting authority. Consideration of the representation shall be done fairly and objectively with an open mind by the higher authority within a period of two months from the date of receipt of the representation. Decision taken on the representation shall be communicated to the petitioner;

4) Once the above exercise is completed within the period of specified and if petitioner attains eligibility, Bank shall hold a review DPC to consider the case of the petitioner for promotion to Senior Management Grade Scale V alongwith the batch of respondent Nos. 5 to 49 within two months of completion of the exercise covered by directions (1) to (3)."

4. Pursuant to the judgment of the Co-ordinate Bench, the order was placed before the appropriate authority including a representation of the petitioner for deciding the matter by the authority as to whether the petitioner was to be considered eligible for the next higher post. The competent authority in the Bank by their communication dated 11.12.2014 informed the petitioner that the appropriate authority before whom the order of the Court along with the representation of the writ petitioner was placed, had decided the matter and disposed of the representation.

5. It is the case of the petitioner before this Court that the appropriate authority had essentially rejected the claim of the petitioner and same was so done without due regard to the directions of this Court vide Judgment and Order dated 11.08.2014 in W.P.(C) No.3362/2012. Under this circumstances, the petitioner has assailed this order before this Court.

6. It is submitted on behalf of the petitioner that notwithstanding the specific directions issued by the Court earlier by Judgment and Order dated 11.08.2014, the authorities merely disposed of the representation without a clear indication that the claim of the petitioner was rejected. This is the inference drawn by the petitioner upon a plain reading of the communication through which petitioner was informed of the decision of the appropriate authority. It is submitted on behalf of the petitioner that he was not considered for promotion in terms of the circular as he failed to obtain 60% marks in both the years of APAR under consideration. For the APAR of the relevant year under consideration which is 2010-11, the petitioner obtained 59 marks. The criteria for eligibility is 60 marks. As such, the petitioner was not considered for selection by just one mark. In the APAR of the succeeding year which is 2011-12, he secured 95 marks. It is the submission of the petitioner that in the previous years also he has secured marks which would have made him eligible except that the petitioner did not meet the criteria for the completion of the number of years of service. The further submission of the petitioner is that by referring to the extracts of the APARs is that the allocation of marks under each criteria or category is totally whimsical and arbitrary. There is no rational in allocation of the marks indicating the basis of the criteria

under which these marks are being allotted under each category in the APAR. The petitioner refers to the portion of the self appraisal report for the year 2010-11 in which there is a provision for allotment of markings by the appropriate authority. Referring to the columns in which the authorities are required to allot the marks. It is submitted that for "quality of Judgment and decision" the Reporting Officer had commented satisfactory and the weight awarded by the Reporting Officer was Six (6) out of Ten (10). Again in the category "Introduction of Innovative/Improved System of Work", the Reporting Officer had commented '*Good*' and the weight of marks allotted was 6 out of 10. Under the category "Prioritizing of work and future planning", the comments of the Reporting Officer is satisfactory and the weightage of marks allotted is 7 out of 10. Referring to these instances, it is submitted that a bare perusal reveals that the markings are allotted whimsically without any reasoning or rational. For satisfactory two different sets of marks are seen to be allotted by the same Officer which is not supported by any reasoning. It is further submitted that under circumstances, the authorities rejected the claim of the petitioner without deciding the same objectively as has been directed by this Court by the Judgment and Order dated 11.08.2014 passed in W.P(C) No. 3362/2012. It is further

submitted that for a period of time, the petitioner was in a training college and therefore the authorities at the Bank could not have graded him for his performance at the Bank Head Office as he was admittedly posted at the training centre/college. It is further submitted that the entire process of consideration of the representation as shown to have been done by the impugned communication dated 11.12.2014 is an eye wash and actually no such assessment was done. It is submitted that in the communication, it was mentioned that the appropriate authority had duly considered the entries in the APAR of the petitioner from the year 2006 to 2014. However, the same is totally incorrect in view of the statements of Deputy General Manager, one Shri Anurag Srivastava, wherein it is stated that the APARs for 2008-09 and 2009-10 were not available with the Bank. Accordingly, the very statement of Bank authorities that his APARs from 2006 to 2014 was considered is totally incorrect and false statement. He, therefore, submits that the writ petition be allowed setting aside the impugned communication along with the order and the respondents be directed to expunge all adverse remarks recorded in the APARs of the petitioner for the year 2010-11 and review the marks awarded and thereupon consider his case for promotion by review DPC from the date his juniors were promoted. In support of his

contentions, the petitioner relies upon the following Judgments:

“1. Rukhsana Shaheen Khan Vs. Union of India and Ors (Civil Appeal No. 32/2013);

2. Badri Nath Vs. Government of Tamil Nadu and Ors,

3. R.K. Jibanlata Devi Vs. High Court of Manipur through its Registrar General and Ors., reported in 2023 SCC Online SC 178 (W.P(C) No. 1209/2021)”

7. *Per contra*, Mr. S. Dutta, learned counsel representing the Bank disputed the contentions raised by the petitioner. He submits that in terms of the direction passed earlier by the Court, the APARs of the petitioner was duly considered and the authorities did not find any reason to review the markings granted earlier and therefore rejected his representation. It is submitted that in the earlier writ petition, the matter was disposed of with a direction to the authorities to consider the representation of the petitioner by an Officer who is placed higher in the office than the accepting authority. This was accordingly done by the communication dated 11.12.2014 and the representation was rejected. The learned counsel for the respondents submits that the petitioner having failed to acquire the eligibility criteria, he was rightly not considered and the authorities in their capacity, as superior authority, had

considered the petitioner not eligible for further promotion. In the meantime, the petitioner superannuated. It is submitted that the writ Court in the earlier round of litigation had examined the matter in detailed and there is no occasion now to reopen the issues which are already decided earlier. The only direction issued by the earlier Court was to consider the representation of the writ petitioner and in terms of the said direction, the same was accordingly considered and disposed of. That being the position, there is no merit in the writ petition and the same should accordingly be dismissed. The learned counsel further submits that it is the prerogative of the authority to lay down what criteria is to be applied so long, the same is duly circulated and within the parameters laid down by law. Whether, the petitioner is a suitable candidate or not for the post is the decision to be taken by the authorities concerned by applying the criteria available. The same was accordingly done and there is no infirmity into the decision arrived at by the appropriate authority. It is submitted that in the course of Judicial review, writ Court will not supplement its decision in place of the decision making authority. Once it is seen that the decision has been taken by following due process of law, judicial review is not called for. In support of his contentions, the learned counsel relies upon the following Judgment:

“1. Maharastra State Board of Secondary & Higher Secondary Education Vs. Paritosh Bhupesh Kumarsheth, reported in (1984) 4 SCC 24;

2. President Board of Secondary Education, Orissa Vs. D. Suvankar, reported in (2007) 1 SCC 603;

3. Dheeraj Prajapati Vs. Board of Secondary Education, reported in 2022 Legal Eagle (MP) 448;

4. Madan Lal & Ors Vs. State of J&K & Ors, reported in (1995) 3 SCC 486; and

5. Andhra Bank Vs. B. Satyanarayana, reported in (2004) 2 SCC 657.

8. The petitioner is aggrieved by the rejection of his representation and was communicated by the impugned communication dated 11.12.2014. The grievance of the petitioner in the Bank authorities not considering him to eligible for promotion to the next higher grade was assailed before this Court in W.P.(C) No. 3362/2012 by the petitioner. Upon consideration of the facts and circumstances in the matter, a Co-ordinate Bench vide Judgment and Order after having elaborately discussed the issues raised in the petition disposed the writ petition with the following directions:

*“**25** That being the position and having regard to the law laid down by the Apex Court, the following directions are hereby issued:*

1) entries in the APAR of the petitioner for both the years 2010-11 and 2011-12 be communicated to the petitioner within a period of thirty days from the date of receipt of a certified copy of this order;

2) Petitioner may submit representation before the Bank against such entries within thirty days from the date of receipt of communication of the entries in the two APARs by him;

3) Such representation of the petitioner shall be considered by an authority of the Bank who is placed higher in office than the accepting authority. Consideration of the representation shall be done fairly and objectively with an open mind by the higher authority within a period of two months from the date of receipt of the representation. Decision taken on the representation shall be communicated to the petitioner;

4) Once the above exercise is completed within the period of specified and if petitioner attains eligibility, Bank shall hold a review DPC to consider the case of the petitioner for promotion to Senior Management Grade Scale V alongwith the batch of respondent Nos. 5 to 49 within two months of completion of the exercise covered by directions (1) to (3)."

9. Pursuant to the directions issued, the petitioner having been granted permission to file the representation duly represented before the authority ventilating his grievances and thereupon the authorities disposed of the representation. For the purposes of deciding this case, it would be necessary to extract the communication dated 11.12.2014 by which the petitioner was informed that his representation has been

disposed of.

“Ref. No. HRM/PA(OE)/TP-19/REVIEW/9579/2014 December 11, 2014

*Shri Debashish Roy (SPF No. 28001)
Chief Manager, United Bank of India,
Baguiati Branch, Baguiati Road (Baguiati Bazar)
Kolkata-700059*

Sub: Decision of the Appropriate Authority (higher in the office than the Accepting Authority for APAR) in compliance of the directions of the Hon'ble Gauhati High Court vide judgment & order dated 11/08/2014 in W.P.(C) No. 3362/2012

***Ref: Your representation dated 04/09/2014 and 10/10/2014
Our letter No. PD/DIR/CC-718//4145/2014 dated 26/09/2014***

We are to state that the Hon'ble Mr. Justice Ujjal Bhuyan of the Gauhati High Court was pleased to dispose of the captioned writ petition vide judgment and order dated 11/08/2014 inter-alia, issuing following directions:

“.....25 That being the position and having regard to the law laid down by the Apex Court, the following directions are hereby issued:

1) entries in the APAR of the petitioner for both the years 2010-11 and 2011-12 be communicated to the petitioner within a period of thirty days from the date of receipt of a certified copy of this order;

2) Petitioner may submit representation before the Bank against such entries within thirty days from the date of receipt of communication of the entries in the two APARs by him;

3) Such representation of the petitioner shall be considered by an authority of the Bank who is placed higher in office than the accepting authority. Consideration of the representation shall be done fairly and objectively with an open mind by the higher authority within a period of two months from the date of receipt of the representation. Decision taken on the representation shall be communicated to the petitioner;

4) Once the above exercise is completed within the period of specified and if petitioner attains eligibility, Bank shall hold a review DPC to consider the case of the petitioner for promotion to Senior Management Grade Scale V alongwith

the batch of respondent Nos. 5 to 49 within two months of completion of the exercise covered by directions (1) to (3)."

Accordingly, in deference to above directions of the Hon'ble Gauhati High Court, the Bank has duly informed you entries in the APAR for both the years i.e. 2010-11 and 2011-12 vide letter dated 26/09/2014 as referred above. Subsequently, you submitted a detailed representation dated 10/10/2014 to the Assistant General Manager (HRM) inter-alia, with a request to forward the same to Appropriate Authority for up gradation of your APAR for the year 2010-11.

Please Note that your aforesaid representation dated 10/10/2014 has been placed before the Executive Director of the Bank, being an Authority higher in the office than the Accepting Authority for the purpose of APAR of Officer Employees working in Scale IV (hereinafter referred to as 'the Appropriate Authority'), for taking a decision after consideration of the same in due compliance of the directions of the Hon'ble Gauhati High Court.

Accordingly, the Appropriate Authority has duly considered entries in your APARs (in original) from 2006-2014 pertaining to your performance as an Officer of the bank in different capacities, marks obtained against different heads under APARs, your achievements under various head mentioned in APARs, your independent assessment of own performance during impugned period, observations/special comments of your Reporting/Reviewing Authorities against each entry in APARs at relevant point of time and after examining all relevant facts related to reporting of your work performance inter-alia, during the year 2010-11 fairly and objectively with an open mind and disposed of your representation dated 10/10/2014 by observing as follows:

"I have seen past performance and performance in the Branch, May be in training college, he has done good but as Branch Head, his performance was not so good and marks allotted are fair and without any prejudice or bias."

Thus, with aforesaid observations, the Appropriate Authority has disposed of your representation dated 10.10.2014 in terms of the directions of the Hon'ble Gauhati High Court vide judgment and order dated 11/08/2014.

This is for your information.

Sd/-

(Umesh Kumar Roy)
General Manager (HRM, IT, ADC & MIS)”

10. A careful perusal of the communication shows that the competent authority of the Bank nowhere specifically rejected the claim of the petitioner for re-consideration of the grades of the markings allotted in the APAR for the year 2010-11. In fact the very order of the competent authority concerned which had disposed of the representation has not been placed before the Court by the respondent Bank inspite of they having filed their counter affidavit.

11. Be that as it may, since the actual order passed by the competent authority placed before this Court, the extract of the order as seen in the impugned communication dated 11.12.2014 has to accepted to be the manner in which the representation of the writ petitioner came to be disposed of. It is only because of the fact that the petitioner's case was not put up before the Review DPC by the Bank authorities, it can be accepted that the representation of the petitioner stood rejected.

12. The Co-ordinate Bench in its Judgment and Order dated 11.08.2014 passed in W.P.(C) No. 3362/2012 had elaborately dealt with the issues relating to the grievance of the petitioner. The Co-ordinate Bench

accepted the fact that the gradings in the APAR for the relevant year namely 2010-11 were never communicated to the petitioner and as compared to the grading in the APARs for the earlier and the succeeding years, the Co-ordinate Bench held that the gradings were adverse in that context and relying on the principle laid down by the Apex Court in *Dev Dutt (supra)*; *Sukdev Singh (Supra)* and *Abhijit Ghosh Dastidar (supra)*, it was held that un-communicated gradings could not be relied upon.

13. The writ petition ultimately came to be disposed of by directing the respondent Bank inter alia to dispose of the representation by considering it fairly and objectively with an open mind.

14. In order to decide whether the representation was disposed of by the respondent authorities by considering it "objectively", an attempt will have to be made to comprehend the meaning that may be ascribed to the term "*Objectively*" or "*Objective*".

Black's Law Dictionary (Seventh Edition) defines "Objective" as under:

Objective. 1. *Of, relating to, or based on externally verifiable phenomena, as opposed to an individual's perceptions, feelings, or intentions [the objective facts], 2. Without bias or prejudice; disinterested [because her son was involved, she felt she*

could not be objective]

In Webster Comprehensive Dictionary (International Edition) (Volume Two) defines "Objective" as under:

Objective. 1. *Of or belonging to an object; having the nature of an object or being that which is thought of or perceived, as opposed to that which thinks or perceived, as opposed to that which thinks or perceives; outside the mind: opposed to subjective. 2. An objective goal. 3. Having independent existence apart from experience or thought; substantive; self-existent. 4. Directing the mind or activity toward external things without reference to personal sensations; also resulting from such direction; hence, representing things as they are; unbiased by thoughts, emotions, opinions, etc.: said of an artist, a writer, etc., or of his habits of thought. 5. Made up of objects represented precisely as they are, without idealization; realistic: said of a work of art, as a picture. 6. Gram. Denoting the case of the object of a transitive verb or of a preposition; accusative*

Again in The New Lexicon Webster's Dictionary (Volume I) defines "Objective" as under:

Objective: *1. Adj. of or pertaining to an object having a real, substantial existence external to an observer pertaining to an external object or event quite independent of the observer's emotions or imagination unbiased to take an objective view (gram) of the case of an object governed by transitive verbs or prepositions. 2. An aim or goal (mil) a place to be captured, destroyed etc. (gram) the objective case something having an existence external to an observer (optics) the principal image forming device in a optical instrument. In a microscope or refracting telescope it consists of a lens or a system of lenses forming an image of the object at the focal*

plane of the eyepiece.

15. Taking into consideration the definitions as extracted above, it is seen that for a decision to be “objective” it must be rendered without bias or prejudice or disinterest and as opposed to one’s individual perceptions, feelings or intentions. The decision maker must take a decision which is unbiased and quite independent of the personal emotions or perceptions of the decision maker. It must be a decision based on the essential facts, relevant particulars and as per the procedure laid down which are resorted to be such a decision maker while rendering a decision.

16. While there is no quarrel with the proposition that administrative orders need not contain elaborate reasons or justifications for the orders passed, however, it is trite to mention here that time and again the Apex Court as well as the various High Courts of the country including this Court has laid down that that administrative decisions must also be supported by the reasons in order to enable a Court, while exercising judicial review, to ascertain the correctness of the order passed by the administrative authority.

17. The Judgments relied upon by the petitioner reiterates the law

which has been settled by the Apex Court in *Dev Dutt (supra)*; *Sukdev Singh (Supra)* and *Abhijit Ghosh Dastidar (supra)*. There is no quarrel that un-communicated ACRs cannot be relied upon by the concerned authority. It is evident that the law laid down by *Dev Dutt (Supra)* is still a good law.

18. The Judgments referred to by the learned counsel for the respondents are in support of his contentions that the scope of interference by a Writ Court in matters of evaluation of answers is extremely limited. There is no quarrel with the proposition that while exercising judicial review, the writ Court is ordinarily not expected to substitute its wisdom in place of the decisions taken by the competent authorities of the department pursuant to the evaluation of the relevant facts and materials.

19. The Apex Court in *Siemens Engineering & Manufacturing Co. of India Ltd. Vs. Union of India and Ors*, reported in (1976) 2 SCC 981, while examining orders passed by administrative authorities has stressed the need for administrative order to be adequately supported by reasons. The Apex Court held that administrative authorities and Tribunals should

accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

20. Again in *Madhya Pradesh State Co-operative Diary Federation Limited and Anr. Vs. Rajnesh Kumar Jamindar and ors*, reported in (2009) 15 SCC 221, the Apex Court held that it is well settled that when a power is exercised by an authority ordinarily, the reasons contained in the order should be supported by the materials on record.

21. While the Judgments discussed above are in respect of decisions to be rendered by quasi-judicial authorities or tribunals, however, the principle that the orders of administrative authorities are required to be

supported by specific reasons which reflects the basis on which the orders are passed by the authority is a principle which will govern even purely administrative orders. It is a trite law that the requirement of furnishing specific and clear reasons for the orders passed by administrative authority, is a concomitant of *audi altreram partem* and thereby making it a necessity under the principles of natural justice.

22. In the facts of this present case, this Court had specifically directed the respondent authorities to consider the representation filed by the petitioner fairly and objectively with an open mind by the higher authority who is placed higher in the office above the accepting authority, within the time period specified.

23. When the Court has directed the respondent authorities to consider the case fairly and objectively with an open mind, it means that Court was inclined to interfere with the order passed by the authorities which was assailed in the writ petition being W.P.(C) No.3362/2012. However, instead of interfering with the order, the Court left it to the authority in order that the authority will reconsider the matter and decide it afresh by taking into consideration of relevant materials and without being

influenced or guided by their individual perception or bias while deciding the case of the petitioner. Viewed from this perspective, the impugned communication dated 11.12.2014 which is extracted in the paragraph herein before, merely conveyed the order of the higher authority while intimating the petitioner that his representation was considered fairly and objectively as under:

“I have seen past performance and performance in the Branch, May be in training college, he has done good but as Branch Head, his performance was not so good and marks allotted are fair and without any prejudice or bias.”

24. It was implicit in the order dated 11.08.2014 passed in W.P.(C) No.3362/2012 by the Co-ordinate Bench that any such order that may have been passed by the higher authority as directed, a copy thereof was required to be served on the petitioner. Instead the petitioner was served with the communication dated 11.12.2014 which merely conveyed the order passed by the higher authority. It appears that the Bank authorities undermined the directions passed by the Co-ordinate Bench earlier that on the representation permitted to be filed by the petitioner, an authority higher than the accepting authority was directed to consider the representation filed by the petitioner “objectively” and pass appropriate orders in the representation.

25. Under such circumstances, this Court is of the considered view that the authorities did not consider fairly and objectively the representation passed by the petitioner while disposing it of by the order communicated through the impugned communication. Such act undermines the directions of the Court. There is no dispute that no appeal or review was preferred against the Judgment and Order dated 11.08.2014 passed in W.P.(C) No.3362/2012. As such, the Judgment and order dated 11.08.2014 passed in W.P.(C) No.3362/2012 had attained finality. The respondents authorities were therefore duly bound in law to carry out the orders as directed by the Court. Such failure to comply with such directions and in the manner as directed by the respondent authorities can be viewed by this Court to be contumacious. However, taking all facts and circumstances into consideration and in view of the fact that there is already a direction of this Court vide Judgment and order dated 11.08.2014 passed in W.P.(C) No.3362/2012, this Court directs the respondent authorities to re-decide the issues in the matter as directed earlier by the order dated 11.08.2014 and pass an order giving reasons in support of such a decision as may be taken by the higher authority concerned. Any such order that is passed in pursuance to the order passed today, copy thereof shall be marked to the petitioner.

26. The writ petition therefore is allowed in terms of the above. The impugned communication dated 11.12.2014 is set aside. The impugned order as reflected in the impugned communication stated to have been passed by the authority higher than the accepting authority is also interfered with and set aside. The authority who had passed earlier order will re-decide the matter afresh by taking into consideration the relevant materials in respect of the claims made by the petitioner and pass a speaking order within a period of 60 (sixty) days from the date of receipt of a certified copy of this order. The petitioner is given liberty to file a copy of this order before the concerned authority.

27. As has been discussed above, this Court by the earlier Judgment and order did not proceed to interfere with the findings and the evaluations of the respondent authorities but rather relegated the matter to the department/the Bank authorities to re-decide as directed. As such while this Court respectfully agrees with the proposition laid down by the Apex Court and urged by the learned Sr. Counsel for the respondents, however, in the facts of the present case, since the matter is ultimately relegated to the Bank authorities to re-decide the matter again as directed herein above, the case laws cited on behalf of the petitioner need not be

discussed in the facts and circumstances of the present case and in view of the order passed above.

JUDGE

Comparing Assistant