

Court No. - 5

Case :- WRIT - A No. - 19618 of 2019

Petitioner :- Arun Kumar Anand

Respondent :- State Bank Of India Mumbai Thru Chairman And Ors.

Counsel for Petitioner :- Arun Kr.Anand In Person

Counsel for Respondent :- Anurag Srivastava,Ashish Saxena

Hon'ble Abdul Moin,J.

1. Heard the petitioner, who appears in person, as well as Shri Alok Saxena, learned counsel for the respondent bank.

2. The short controversy which is involved in the instant writ petition is as follows.

3. The petitioner had earlier approached this Court by filing Writ Petition No. 7093 (S/S) of 2001 in re: Arun Kumar Anand vs State Bank of India and others challenging an order dated 08.05.2000 as communicated to him through letter dated 12.02.2001 whereby his appeal against non-promotion to the post of Senior Management Grade Scale IV was rejected as being time barred. The writ court vide judgement and order dated 22.04.2016 as corrected on 27.05.2016, the copy of which are annexures 2 and 3 to the writ petition, appreciating the submissions made by learned counsel for the petitioner, disposed of the writ petition with a direction to the competent authority / appellate authority to decide the appeal of the petitioner in accordance with law expeditiously within a period of three months from the date of receipt of a certified copy of the order. In pursuance thereto the petitioner was issued the impugned communication dated 26.09.2016, a copy of which is annexure 1 to the writ petition, per which he was informed that the appeal has been declined by the appellate authority. Incidentally the appellate order or the order that might have been passed by the appellate authority was not annexed alongwith communication dated 26.09.2016.

4. Considering the aforesaid, this Court vide order dated 13.10.2022 required the learned Standing Counsel to bring the order passed by the appellant authority on the appeal of the petitioner on record. In pursuance thereto a supplementary affidavit dated 02.12.2023 was filed by the learned counsel for the respondents duly bringing on record an order dated 17.09.2016 which is purported to be an order passed on the appeal of the petitioner, a copy of which is annexure SA-1 to the said affidavit. This Court vide order dated 02.07.2024 after considering the order dated 17.09.2016 observed that once a direction had been issued by this Court specifically to the appellate authority to take a decision on the petitioner's appeal, it was incumbent on the said authority to have applied its own independent mind and to have passed appropriate orders taking into consideration the grounds taken in the appeal by the petitioner and the course of action as adopted by the appellate authority renders the entire proceedings vitiated.

5. For the sake of convenience, the order dated 02.07.2024 is reproduced below:

"1. Heard petitioner in person and Mr. Ashish Saxena, learned Counsel for opposite parties.

2. It is the case of petitioner that he was denied promotion on the post of SMGS-IV with effect from 01.11.1997. It appears that petitioner had earlier also filed Writ Petition No.7093(S/S) 2001 which was disposed of vide order dated 22.04.2016 directing the competent authority/ appellate authority to decide appeal of petitioner within stipulated time frame.

3. Opposite parties have thereafter filed a supplementary affidavit dated 02.12.2023 to submit that the competent authority has thereafter passed an order dated 17.09.2016

rejecting petitioner's claim for promotion. The said order has been brought on record as SA1. It has been submitted that the order brought on record as SA 1 clearly indicates that recommendations have been made by Deputy General Manager and Appellate Authority thereafter on the basis of recommendations did not find any case for interference.

4. Petitioner in person relying upon the rejoinder affidavit has submitted that in paragraph 10 of the counter affidavit dated 27.02.2020, the opposite parties have admitted that it is only the Deputy Managing Director of the Bank who is the appellate authority whereas the order brought on record by means of supplementary affidavit has been signed by the Chief General Manager. It is further submitted that there is no independent application of mind by the Deputy Managing Director of the Bank with regard to grounds raised in appeal by petitioner.

5. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that this Court vide order dated 22.04.2016 had issued a clear direction to be the appellate authority to decide petitioner's appeal in accordance with law within a period of three months from the date of receipt of certified copy. A perusal of order brought on record by means of supplementary affidavit clearly indicates that recommendation has been made by the Deputy General Manager (Cadre Management) and subsequently a further recommendation has been made by the Chief General Manager of the Bank. The order bears signatures along side the designation of DMD and CDO indicating decided on 17/9. Page 2 of the order indicates a noting that as per recommendations of the circle, there is no case. However there does not appear to be any independent application of mind or consideration of grounds raised in

appeal by petitioner by the Deputy Managing Director of the Bank who is admitted by opposite parties to be the appellate authority.

6. In the considered opinion of this Court, once a direction had been issued by this Court specifically to the appellate authority to take a decision on petitioner's appeal, it was incumbent upon the said authority to have applied its own independent mind and to have passed appropriate orders taking into consideration on the grounds taken in appeal by the petitioner. Such a course of action having not been adopted by the appellate authority, renders the entire proceedings vitiated.

7. At this stage, learned counsel for opposite parties submits that he may be granted some time to produce an order issued specifically by the appellate authority regarding consideration of grounds raised in appeal by petitioner.

8. In view thereof, list this case on 15.07.2024 at 02.15 P.M in order to enable learned counsel opposite parties to produce any such order."

6. On 15.07.2024, learned counsel for the respondent bank sought further time to produce the order.

7. Incidentally the order dated 17.09.2016 as was considered by this Court in its order dated 02.07.2024 is the order whereby the appellate authority has simply indicated while deciding the appeal of the petitioner as "declined".

8. After the aforesaid order the respondents have filed the supplementary affidavit purporting to be in compliance of the order dated 15.07.2024 and justifying the order dated 17.09.2016 as has been passed by the appellate authority who is said to be the Deputy Managing Director of the bank. Various

grounds have been taken in the supplementary affidavit, including the detailed grounds as taken in paragraphs 11 and 12 of the said affidavit. However no other order has been brought on record by the respondents per which the mind of the appellate authority might have been disclosed except the earlier order dated 17.09.2016 which, as already indicated above, indicates the order passed on the appeal of the petitioner as "declined" as passed by the appellate authority.

9. Admittedly the earlier order of the writ court dated 22.04.2016 as corrected on 27.05.2016 has attained finality. It is not the case of the respondents that they have filed any application for either correction or modification or have challenged the said order before the appellate court or even before Hon'ble Supreme Court meaning thereby the said order passed by the writ court has attained finality in all respects and therefore the appellate authority was required to decide the appeal of the petitioner in accordance with law which also indicates application of mind on the part of the appellate authority.

10. The method, as has been adopted by the appellate authority by passing a single word order on the appeal of the petitioner i.e. "declined" also indicates that it was a note which had been put up by an incompetent authority namely the Chief General Manager whereby amongst the "other comments made by the local head office, if any" as finds place in the said note, the Chief General Manager had indicated that the performance highlighted by the officer and the ratings awarded by his controller, no review of the matter is being called for and it was recommended accordingly. It is an order passed by the Chief General Manager, the incompetent authority, which has resulted in the competent appellate authority to pass a one word order

"declined".

11. As already indicated by this Court in its order dated 02.07.2024, the said order does not indicate any application of mind on the part of appellate authority on the appeal filed by the petitioner.

12. At the risk of repetition once the writ court vide order dated 22.04.2016 specifically directed the appellate authority to decide the appeal of the petitioner, consequently the appellate authority i.e. the Deputy Managing Director was under a duty to pass a reasoned and speaking order on the appeal of the petitioner and by no stretch of imagination could he have simply indicated one word order "declined" on a note which has been put up by an incompetent authority namely the Chief General Manager who had no role in deciding the appeal of the petitioner in as much the appellate authority of the petitioner admittedly is the Deputy Managing Director and not the Chief General Manager.

13. Even if for the sake of argument it is accepted that a note could be put up by the Chief General Manager, even then it was the duty of the appellate authority, which is the Deputy Managing Director, to have gone through the note and to have discussed the note vis a vis the appeal that had been filed by the petitioner and after discussing the pros and cons of the said note vis a vis the grounds taken in the appeal a detailed order should have been passed by the appellate authority which would have reflected application of mind by the appellate authority and not by the an incompetent authority.

14. Thus it is simply a case whereby a note which has been put up by an incompetent authority which was disposed of by one word "declined" as has been done by the Deputy Managing

Director which thus vitiates the aforesaid order on this ground alone.

15. Keeping in view the aforesaid discussion, the writ petition is **allowed**. The communication dated 26.09.2016, a copy of which is annexure 1 to the writ petition, is quashed.

16. By natural corollary the appellate order dated 17.09.2016, though not explicitly challenged in the writ petition but exercising the power as vested in this Court under Article 226 of the Constitution of India, is also quashed.

17. Let the appellate authority i.e. respondent no. 2 pass an order on the appeal of the petitioner in accordance with law and the relevant rules keeping in view the observations made above which order would be passed within six weeks from the date of receipt of certified copy of this order.

18. The Court is constrained to observe that an ego issue has been adopted by the Deputy Managing Director. The Court is of the view that the matter should be referred to appropriate authorities for necessary action against the respondent no. 2 for the said conduct as specifically observed by this Court in the order dated 02.07.2024. However, Shri Alok Saxena, learned counsel for the respondent bank with utmost humility and fairness states that no order may be passed in this regard as it may affect the service career of the Deputy Managing Director. As such, although the Court refrains itself from passing any strictures against the respondent no. 2, or referring the matter to the appropriate authorities for action against the respondent no. 2 for the aforesaid conduct yet he is cautioned to be more careful in future while dealing with the orders passed by writ courts.