

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7120 of 2015

=====

Suman Kumar Roy, Son of Late Udit Narayan Roy, resident of village Makandpur, P.S. Akbarnagar, District Bhagalpur.

.... Petitioner/s

Versus

1. The Regional Manager, Central Bank of India, Koshi Chowk, Saharsa.
2. The Deputy Regional Manager, Central Bank of India, Saharsa.
3. The Zonal Manager, Central Bank of India, Maurya Lok Complex, Budh Marg, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Praveen Kumar, Advocate.

For the Respondent/s : Mr. Ajay Kumar Sinha, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

5 09-09-2015

Heard learned counsel for the parties as with regard to

the following relief prayed in this writ application:

"1. That, the present writ application is being frilled for issuance of appropriate Writ/Writs/direction directing the respondent to allow the petitioner to join and work on the promoted post of Clerk in Respondent Bank pursuant to the Office order dated 15.7.2013 vide office Order No. RO/RRD/2013-14/967 issued by respondents.

Further the prayer of the petitioner is to quash the office order dated 15.4.2015 RO/SAHARSA/HRD/2015-16/42, whereby and whereunder the respondent no. 2 instead of considering the direction of this Hon'ble Court forfeited the right of the petitioner to be promoted form Sub Staff to Clerical cadre arbitrarily against the spirit of the observation of this Hon'ble Court dated 23.02.2015 passed in C.W.J.C. No. 8404/2014 and instead of considering the case of the petitioner sympathetically passed the impugned order dated 15.4.2015."

2. Learned counsel for the petitioner, in support of the

aforementioned prayer, has submitted that earlier the petitioner was serving Indian Army as a Sepoy and had retired from Silliguri Cantonment on 28.02.2007 whereafter he, on being selected, had joined the service of Central Bank of India (hereinafter referred to as 'the Bank').

3. Learned counsel for the petitioner explained that after serving the Bank for a period of more than five years, he became eligible for being considered for promotion from Sub-staff cadre to clerical cadre, in view of the internal promotional scheme of the Bank initiated in the year 2012, and the petitioner, as per the requirement of the promotion, had cleared the written test and was ultimately selected for promotion by assigning him to join at Branch office of the Bank at Birpur.

4. It is the case of the petitioner that he became ill and could not join at Birpur whereas it is the case of the Bank that the petitioner was discourteous to the Bank to have even refused to accept the copy of the promotion order much less comply the directions given for joining at Birpur. According to the petitioner, he had however represented his case for being given the promotional assignment and when he did not hear anything positive from the officials of the Bank, he moved this Court by filing a writ application being C.W.J.C. No. 8404 of 2014 which

was disposed of by this Court by an order dated 23.02.2015 directing the Bank to consider the case of the petitioner sympathetically whereafter the impugned order has been passed on 15.04.2015.

5. In course of hearing of this writ application, this Court, having noted the objection of the Bank in allowing the petitioner to avail the benefit of promotion, had initially passed an order on 22.05.2015 indicating as to whether the Bank was prepared to allow the petitioner to join on the promotional post at any place and latter on 13.07.2015, it had again made a specific query from the Bank as to the post, on which the petitioner was given promotion, had been filled up and if not, what was the difficulty to the Bank if the petitioner's promotion was made operative from the date of his joining at any post that he may be given by way of promotion.

6. Let it be noted that a counter affidavit was already filed on 27.06.2015 in which the Bank had taken following stand:

"3. That, the petitioner was given office order vide letter no. RO/HRD/2013-14/967 dated 15.07.2013 (Annexure-3) to B/o currency chest, Birpur after his promotion to clerical cadre and was directed to report on 22.07.2013 the said letter was served upon the petitioner by the staff of Alam Nagar Branch on 20.07.2013 but he refused to accept the said letter as such in terms of letter of promotion itself the same stood forfeited as it was mentioned in the said letter itself that if the petitioner does not report at new place of posting on

stipulated date it shall be deemed that he was refused promotion and his promotion shall be annulled.

4. That, the statement made in paragraph (i),(ii),(iii),(iv), (vi) of paragraph 3 are matters of record so far statement made in paragraph 3(v) is concerned, it is submitted that refusal to receive the said letter as mentioned above have the effect of forfeiture of his right to promotion. The representation of petitioner was disposed of vide letter dated 15.04.2015 (Annexure-1).

5. That as regard statements made in paragraph 4 is concerned, it is submitted that since the petitioner refused to receive the letter contained in Annexure-3 and did not join the vacancy lapsed.

7. That so far statements made in paragraph 7 is concerned, it is stated that petitioner's illness is a matter of record but since he did not receive the letter of promotion nor joined by 22.07.2013 his right to promotion from Sub-staff to Clerical cadre has been forfeited and the vacancy has lapsed. It is further submitted the petitioner made his representation only after lapse of stipulated date of joining the promoted post where in terms of letter of promotion dated 15.07.2013 the right to promotion has been forfeited."

7. Today, a supplementary counter affidavit has been filed wherein the same facts have been reiterated even by the Regional Manager of the Bank. The Bank does not deny the illness of the petitioner. In fact, in the counter affidavit, it has been stated that it is the matter of record. Therefore, this Court will have to proceed that when offer to the petitioner was given by way of promotion and posting at Birpur, the petitioner was ill.

8. The fact, which has really enraged the authority of



the Bank against the petitioner, seems to be that the petitioner was trying to get a choice posting of promotion and for that reason, he had probably refused to receive the order of promotion. Unfortunately, no direct proof of refusal or receiving of the petitioner of promotional order has been brought on record.

9. Let it be noted that the order of promotion, as per annexure-A, dated 15.07.2013 was sought to be made effective from 12.07.2013 and is said to have been refused on 20.07.2013, wherein the order was to join the petitioner by 22.07.2013. If it was the refusal sought to be acted upon by the authorities of the Bank, nothing had prevented them to send order dated 15.07.2013 to the petitioner by registered post. Thus, this Court is not prepared to accept the story of refusal of the order of promotion.

10. Nonetheless, as the petitioner himself claims that he had filed his representation on 24.07.2013, as contained in Annexure-4, which has again not been denied by the Bank in their counter affidavit, this Court will have no difficulty in coming to the conclusion that the petitioner, for last four years, was suffering from ailments and had wanted a sympathetic consideration for his being posted at the place where he could get his treatment. The Bank, therefore, was required to immediately dispose of the representation of the petitioner.



11. Let it be noted that in his representation, the petitioner, apart from making prayer of his being posted at any other Branch other than at Birpur, had also made a request that if his posting to Birpur was considered for his promotion, he should be posted under Birpur Currency Chest Establishment, but even that was not considered much less answered by the authorities of the Bank by way of disposal of the aforesaid representation of the petitioner.

12. Be that as it may, the petitioner, had been always filing his representation from time to time he cannot be said to have slept over his matter of promotion because he had also moved this Court by filing a writ application well within one year of his being denied promotion.

13. Thus, the only question which would now remain for being answered is that as to whether there was any forfeiture clause of promotion either in the rules and regulations of the Bank or as was stipulated even in the notice inviting application for grant of promotion. Unfortunately, nothing on this score has been brought on record to show that the scheme of promotion under which the petitioner had qualified and earned his promotion had contemplated forfeiture.

14. Let it be noted that forfeiture of promotion is a



penal clause and in fact, as per the service regulation of the Bank is a punishment. Such punishment could not have been inflicted on the petitioner unless a departmental proceeding was initiated against him. Therefore, the Bank cannot deprive the petitioner of his promotion by way of forfeiture on the basis of his simply not joining at the place assigned in the order of promotion. This Court cannot close its eyes that the petitioner was an ex-army man and was suffering from certain ailments and, therefore, when he had clarified in his representation just two days after the last day of his joining as per the order of promotion, the officials of the Bank, instead of taking a hardened attitude, ought to have considered the case of the petitioner with some more sympathy.

15. Be that as it may, no one else has been promoted in the place of the petitioner. The plea that the vacancy has lapsed can never be accepted for a simple reason that if there was a promotional post, either for the petitioner or for the next person to him, who could have been promoted and posted and, therefore, the concept of lapsing of the vacancy is not very clear. In the service jurisprudence that either it was a sanctioned post on which the petitioner had earned his promotion or the sanctioned post had already been abolished. It is not the case of the Bank that the sanctioned promotional post has been abolished.

16. Therefore, this Court is also not satisfied with the explanation of the Bank that the petitioner cannot be given the promotional post on account of lapsing of vacancy.

17. As noted above, the petitioner had qualified for such promotion on the basis of his passing the departmental written examination, therefore, there is no question of the petitioner being not meritorious to earn his promotion as per the stipulated terms of the service condition of the Bank.

18. Considering all these aspects, this Court would direct the Bank to allow the petitioner to join the promotional post anywhere and in fact, in any Branch of the Bank, as it may choose to place of posting to the petitioner because the learned counsel for the petitioner has given an undertaking that the petitioner will be prepared to work at the promotional post at any place where ever he is posted by the Bank.

19. It is, however, made clear that if the petitioner does not join this time on the promotional post at the place assigned to him by the authorities of the Bank, he will not be entitled to claim his promotion on the basis of the earlier order of his promotion.

20. Let it be also made clear that the petitioner will also not be entitled for payment of salary for the interregnum period on the promotional post and his salary of the promotional

post shall be paid only from the date of his joining on the promotional post but then the authorities of the Bank must make his promotional operational by giving promotional post within a period of 15 days from the date of receipt of a copy of this order.

21. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

U			
---	--	--	--