

CWP No.22469 of 2013

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.22469 of 2013
Date of decision:29.07.2015**

Subhash Sharma

...Petitioner

Versus

Punjab National Bank and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. H.C.Arora, Advocate,
for the petitioner.

Mr. Saurav Verma, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

The petitioner joined the Punjab National Bank (hereinafter referred to as the "Bank") as Clerk on 22.04.1989. He was promoted as JMG Scale-I on 16.02.2004 and MMG Scale-II on 22.07.2008. A charge sheet dated 17.07.2010 for imposition of minor penalty was served upon the petitioner and during the disciplinary proceedings, the Bank invited applications for promotion from MMG Scale-II to MMG Scale-III. The petitioner was considered for promotion in Channel-II (written test channel, which does not involve any interview) in the 17th Selection Process-2011. However, on account of pendency of the minor penalty charge-sheet against the petitioner, the Bank resorted to Sealed Cover Procedure, provided in the promotion policy, and kept his promotion in abeyance. The result of

CWP No.22469 of 2013

[2]

promotion was announced on 01.06.2011 and the petitioner was duly selected on merit by the Selection Committee/ Competent Authority for promotion to MMG Scale-III on the basis of the written test. The proceedings initiated vide charge-sheet dated 17.07.2010 culminated, into minor penalty of reduction to a lower stage by one stage in the time scale of pay for a period of two years without cumulative effect and not adversely affecting the pension, on 02.02.2012 and in the meantime, another major penalty charge-sheet dated 06.01.2012 was served upon the petitioner in respect of Vigilance Reference No.5472. The petitioner applied to the respondents by way of a representation dated 28.03.2013, alleging that the Sealed Cover Procedure was wrongly applied in his case and he has to be promoted along with others in terms of the result declared on 01.06.2011. In response to his representation, the petitioner received a letter dated 13.05.2013 from respondent no.2 by which he has been informed that his result was withheld for want of vigilance clearance and subsequently cancelled because he became ineligible for promotion on account of imposition of major penalty vide DA order dated 31.10.2012. The petitioner has, thus, challenged the said order dated 13.05.2013 and prayed for a direction to the respondents to give effect to his promotion to MMG Scale-III, which was erroneously kept in sealed cover, with all consequential benefits including seniority and the arrears of the salary on promoted post w.e.f. 10.06.2011, the date the other successful/selected candidates, who were considered for promotion along with the petitioner, were given promotion.

Counsel for the petitioner has submitted that Regulation 17 of the PNB Officers' Service Regulations, 1979, lays down that the promotions to all grades of Officers in the Bank shall be made in accordance with the Policy laid down by the Board of Directors in exercise of powers conferred by Section-19 read with Sub-Section-26 of Section-12 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, in consultation with the Reserve Bank of India and with the previous sanction of the Central Government. Pursuant thereto, the HRD Division of the Bank, vide Circular No.516, issued the promotion policy for officers from JMG Scale-I to MMG Scale-II, MMG Scale-II to MMG Scale-III and MMG Scale-III to SMG Scale-IV. He has referred to Clause 21 of the promotion policy, dealing with the Sealed Cover Procedure, which is reproduced as under:-

“21. SEALED COVER PROCEDURE

(1) Officers who are otherwise eligible for promotion but are either:

- under suspension; or
- in respect of whom a charge sheet for major penalty has been issued and the disciplinary proceedings are pending; or
- In respect of whom a charge sheet for minor penalty has been issued and the Disciplinary Proceedings are pending and the Officer had been imposed other minor penalty during the preceding 3 years; or
- in respect of whom prosecution for criminal charge is pending;

will be eligible for participating in the selection

process but their result shall be kept in Sealed Cover.

(2) For the said purpose, the procedure described below shall be followed:

2.1) An officer in whose case 'Sealed Cover Procedure' is attracted, the findings of the Interview Committee shall be recorded in respect of such officer in a separate Interview Evaluation Sheet, which shall be signed by all the members of the Interview Committee and the Interview Evaluation Sheet shall be kept in a Sealed Cover which shall be superscribed as

“Interview Evaluation Sheet of Shri for promotion (specify grade and scale)”

“Date of interview.....”

“Place of interview”

2.2) Under written test channel, Score-sheet of those officers whose results attract sealed cover procedure as per the policy, will be kept under sealed cover after recording the written test marks and marks obtained under other selection parameters in the score-sheet. Score-sheet will be duly authenticated by the AGM/Chief-HRD.

2.3) In the main Interview Evaluation Sheet, the entry against the name of the officer falling under any of the above categories, shall be recorded as 'Interview Evaluation Sheet attached in sealed envelope. The Sealed Cover shall be kept under the custody of the Chief-HRD/AGM-HRD, Head Officer, New

Delhi.

- 2.4) The procedure outlined above, will be followed for the subsequent Selections also till the disciplinary/criminal proceeding against the officer concerned, is concluded.
- 2.5) As and when disciplinary or other proceedings instituted against such an officer are completed, resulting in his exoneration, the Sealed Cover(s) shall be opened one by one, in seriatim and after adding the marks obtained by him in various parameters, if his merit position falls above the cut-off point in the panel pertaining to any of the concerned Selections, his case shall be considered by the Competent Authority at Head Office to approve promotion and if finally approved for promotion, he shall be given notional promotion at par with officers of his seniority in the concerned Selection. However, he will not be entitled to receive any arrears on account of his notional promotion. On the contrary, if the proceedings culminate in imposition of any punishment, his case shall be dealt as under:
- a) If Minor penalty is imposed and if no other penalty had been imposed during the 3 years preceding the date on which this punishment was imposed, in this case also the Sealed Cover will be opened and his case will be considered by the Competent

Authority in terms of procedure described above. However, if the minor penalty imposed is of withholding of promotion, then, if otherwise approved for promotion, the promotion shall be released only after the expiry of the period stipulated by the Disciplinary Authority.

Further, if he had already been imposed another Minor penalty during the preceding 3 years, he shall be treated as not eligible for promotion and the Sealed Cover shall be cancelled. The period of one year stipulated in Clause-19 shall be reckoned from the date of interview, the result of which was kept in sealed cover.

- b) If the proceedings culminate in imposition of Major penalty, the Sealed Cover shall not be opened and the officer shall be treated as not eligible for promotion. The period of 2 years stipulated in Clause-19 shall be reckoned from the date of interview, the result of which was kept in Sealed Cover.
- c) An officer who has been approved for promotion by the Competent Authority but in whose case any of the circumstances mentioned in

CWP No.22469 of 2013

[7]

Clause-21.1 supra above arises after he has been interviewed by the Interview Committee, but before he has been offered promotion in accordance with the approval accorded by the Competent Authority for approving promotions, it will be considered as if his case has also been placed in a Sealed Cover. His case shall be reconsidered after conclusion of the said disciplinary/prosecution proceedings having regard to the procedure laid down herein above and provisions pertaining to 'Sealed Cover Procedure' shall be applicable in his case also.

Counsel for the petitioner has further submitted that his case for promotion from MMG Scale-II to MMG Scale-III was considered in Channel-II (written test channel) and its result was declared on 01.06.2011, but his case was illegally and erroneously kept in Sealed Cover only on the ground that he was served with a minor penalty charge-sheet on 17.07.2010, which was ultimately decided by the disciplinary/competent authority on 02.02.2012 and the minor penalty of reduction to a lower stage by one stage in the time scale of pay for a period of two years without cumulative effect and not adversely affecting the pension was awarded under Regulation 4(e) of PNB Officer Employees' (Discipline & Appeal) Regulation, 1977. According to the petitioner, the subsequent charge-sheet dated 06.01.2012 for major penalty, in which disciplinary authority had imposed a penalty on

31.10.2012 of reduction to a lower stage by one stage for a period of one year with further directions that increment will not be released to him during the period of reduction and the same will have the effect of postponement of future increment, shall have no effect as the right of the petitioner for promotion from MMG Scale-II to MMG Scale-III had already been crystalized on 01.06.2011 when his result was declared, though it was kept in sealed cover. It is further submitted that none of the provisions of Clause 21.1 are applicable to the case of the petitioner because he was neither under suspension nor any charge-sheet for major penalty was issued, the disciplinary proceedings were pending when he was considered for promotion and though the charge sheet for minor penalty was issued on 17.07.2010 but there was no imposition of other minor penalty during the preceding 3 years. It is also submitted that even the Circular dated 10.12.2001, relied upon by the respondents in respect of the clearance from Vigilance Cell, is not applicable to his case because it pertains only to the promotion to Scale-IV onwards.

In support of his submissions, counsel for the petitioner has relied upon a decision of the Supreme Court in the case of **Union of India vs. K.V.Jankiraman**, 1991(3) S.C.T. 317, in which it has been held that the Sealed Cover Procedure is to be adopted when charge sheet is issued to an employee and the pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the Sealed Cover Procedure.

It is further submitted that the respondents have heavily relied

upon Clause 21(2.5)(c) of the promotion policy, which deals with the procedures in respect of the major penalty, which was initiated in the case of the petitioner on 06.01.2012 and not prior to declaration of his promotion result on 01.06.2011 and nothing prior thereto, namely, the preliminary investigation was not sufficient for the respondents to adopt the sealed cover procedure, as held by the Supreme Court in **Union of India's case (supra)**.

Counsel for the respondents has argued that when the case of the petitioner for promotion from MMG Scale-II to MMG Scale-III was considered, the minor vigilance charge sheet relating to vigilance case no.5161 was pending in respect of lapses pertaining to Branch Office Pindora. He has also submitted that as per Circular dated 10.12.2001, the clearance of the vigilance was necessary and the case of the petitioner has been cancelled because of the major penalty having been imposed upon him on 31.10.2012. In this regard, he has submitted that a conjoint reading of Clause 21(2.5)(c) and Clause 21(1)(ii) of the promotion policy issued vide HRD Circular No.516 dated 19.02.2009 would be relevant and has relied upon a decision of the Supreme Court in the case of **Manoj Kumar Singh vs. Coal India Ltd. & others**, 2006(13) SCC 705.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The undisputed facts are that the petitioner was served with a charge sheet for minor penalty on 17.07.2010; the Bank invited applications for promotion from MMG Scale-II to MMG Scale-III; the case of the

CWP No.22469 of 2013

[10]

petitioner for promotion from MMG Scale-II to MMG Scale-III in Channel-II (written test channel) was considered in the 17th Selection Process-2011 and the result was declared on 01.06.2011. There were about 27 candidates along with the petitioner who were selected through Channel-II for promotion to MMG Scale-III and were relieved immediately on publication/notification of the merit list and were given seniority w.e.f. 10.06.2011, however, the case of the petitioner was kept in sealed cover. The minor penalty was imposed by the disciplinary authority upon the petitioner on 02.02.2012. However, in the meantime on 06.01.2012, another charge sheet for major penalty was issued to the petitioner on which disciplinary authority imposed the major penalty on 31.10.2012. The respondents have declined promotion to the petitioner holding him ineligible on account of imposition of major penalty on 31.10.2012. There is also no dispute that the promotion from MMG Scale-II to MMG Scale-III is governed by promotion policy in which Clause 21.1 deals with the Sealed Cover Procedure.

Admittedly, at the time when the petitioner was considered for promotion, there was a charge sheet served upon him for minor penalty dated 17.07.2010, but the question involved is as to whether result of the petitioner could have been kept in the sealed cover in terms of Clause 21.1(iii) of the promotion policy, which provides that the result can be kept in sealed cover in respect of an employee, whom a charge sheet for minor penalty has been issued, the disciplinary proceedings are pending and the other minor penalty has been imposed upon the officer during the preceding

CWP No.22469 of 2013

[11]

3 years. It is also an admitted fact that no minor penalty during the preceding 3 years was imposed upon the petitioner.

Now the question arises as to whether the respondents were required to obtain vigilance clearance in case of promotion of the petitioner, as projected by them with the aid of circular dated 10.12.2001.

It is apparent from the said circular dated 10.12.2001 that it is meant for promotion to Scale-IV onwards besides it applies to the cases of the officials for review on their attaining the age of 55 years or 30 years of service. The case of the petitioner does not fall within the parameters of the said circular dated 10.12.2001 because he is not seeking promotion to Scale-IV.

Insofar as the issue of major penalty is concerned, no doubt that the major penalty charge-sheet was served upon the petitioner on 06.01.2012 before the minor penalty was imposed upon him on 02.02.2012 and the major penalty was imposed upon him on 31.10.2012, but the issuance of major penalty charge sheet on 06.01.2012 or imposition of major penalty on 31.10.2012 has no effect on the case of the petitioner because Clause 21.1(ii) of the promotion policy provides that the Sealed Cover Procedure can be adopted where the charge sheet for major penalty has been issued and the disciplinary proceedings are pending, whereas the result of promotion of the petitioner had already been declared on 01.06.2011 and had it not been kept in sealed cover, he would have been relieved and joined the promoted post of MMG Scale-III on 10.06.2011 along with the other selected/promoted candidates. Thus, the charge sheet

CWP No.22469 of 2013

[12]

dated 06.01.2012 served for the major penalty or the punishment of major penalty imposed on 31.10.2012 has no effect on the promotion of the petitioner, which had already taken place on 01.06.2011 and right of the petitioner has already been crystalized on that date.

The judgment relied upon by learned counsel for the respondents in **Manoj Kumar Singh's case (supra)** is not at all applicable to the facts and circumstances of the present case because in that case, the Departmental Promotion Committee met on 08.10.1999 and did not promote the appellant therein. Thereafter, on 10.11.1999, a charge sheet was served upon the appellant and disciplinary proceedings ended with a censure order passed against him on 21.06.2000. On 30.08.2000, a Departmental Promotion Committee was again constituted and this time, the appellant was promoted to the next higher grade. The appellant therein filed a writ petition claiming promotion w.e.f. 08.10.1999 when his juniors were promoted. His case was that there were no departmental proceedings pending within the meaning of relevant rules when the 08.10.1999 DPC was held. The learned Single Judge accepted his contention and allowed the writ petition, which order was reversed by the Division Bench on the ground that the vigilance proceedings had already been commenced against the appellant with the approval of the Chairman-cum-Managing Director on 20.01.1999, much prior to the holding of the October 1999 DPC. The appellant, thus, approached the Supreme Court. The Supreme Court had referred to the memorandums dated 19.06.1979 and 27.06.1979, which reads as under:-

“An executive, who has been placed under suspension pending inquiry and/or against whom departmental/vigilance proceedings are pending will be promoted, if selected and placed in the select list by a DPC, only after completion of the proceedings and his complete exoneration of the charges. Such an officer shall be promoted in the first vacancy that may be available immediately after his complete exoneration with prospective effect.”

It was, thus, observed that the aforesaid rule clearly provides that even if vigilance proceedings are pending, the selection can be made only after completion of the proceedings and the complete exoneration from the charges. The attention of the Court was also drawn to another Circular dated 08.01.1991 in which it was clarified that all orders of promotion will be issued only after vigilance clearance and that vigilance clearance should be withheld inter alia when “in the case of a preliminary inquiry, either by CBI or departmental agencies, the competent authority, on consideration of the results of the investigation, has formed the opinion that a charge-sheet may be issued on specific imputations for departmental action”. Since the decision in the said case was taken against the appellant on 20.01.1999, therefore, he could not have been granted vigilance clearance. In those circumstances, the Civil Appeal filed by the appellant therein was dismissed by the Supreme Court. Thus, the decision in the said case, heavily relied upon by learned counsel for the respondents, has no relevance to the facts and circumstances of the present case.

In view of the aforesaid discussion, I am of the considered

CWP No.22469 of 2013

[14]

opinion that the order dated 13.05.2013 is totally illegal and is, thus, hereby quashed and the respondents are hereby directed to give effect to the promotion of the petitioner from MMG Scale-II to MMG Scale-III, kept illegally and erroneously in sealed cover, with all consequential benefits including seniority and the arrears of the salary on promoted post w.e.f. 10.06.2011. This exercise shall be done by the respondents within a period of three months from the date of receipt of certified copy of this order.

July 29, 2015
vinod*

(Rakesh Kumar Jain)
Judge