

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

LPA No.10 of 2014(O&M)
Date of decision: **July 23, 2015**

Gurgaon Gramin Bank

----Appellant

Versus

P.S.Dalal and others

----Respondents

**CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present:- Mr.Vipin Mahajan, Advocate
for the appellant - Bank.

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 06.08.2013, whereby, CWP No.12599 of 1991 filed by the respondent challenging the denial of promotion to him to the post of Field Supervisor or in the alternative to the post of Senior Clerk, was allowed.

The respondent joined the appellant bank as Junior Clerk-cum Cashier on 15.1.1979 and was confirmed on 15.2.1980. A seniority list was published on 13.6.1986 in which the respondent was shown at Sr. No.6. In the seniority list of the year 1987, he was shown at No.7. In the seniority list of Junior Clerk-cum-cashier as was applicable on 31.3.1990 he was shown at Sr. No.3.

The appellant bank framed a criteria for promotion from Junior Clerk to Senior Clerk which was circulated vide circular dated

6.10.1990 (Annexure P-5). As per this, all eligible candidates as on 31.3.1990 were to be considered for selection. The promotion criteria is as under:-

3. PROMOTION FROM JR. CLERK TO SENIOR CLERK. <i>All eligible candidates as on 31.3.90 shall be considered for selection</i>		
<i>Seniority</i>	<i>70 marks</i>	<i>10 marks for the first 4 completed per year of service as on 31.3.90 and 5 marks for subsequent each completed year of service subject to a max. of 80 marks.</i>
<i>Performance</i>	<i>30 marks</i>	<i>15 marks for each calendar year for the performance of the last two years i.e. 1988 and 1989.</i>
<i>Total</i>	<i>100 marks</i>	

The respondent's case was that at the time of filing of the writ petition in 1991 he had 12 years of service. Hence as per the criteria he would get 40 marks for the first four completed years of service. He would get 30 marks for next 6 completed years of service. Thereby, he would obtain 70 marks for seniority. Further, as all his reports were good and he had not been communicated any adverse report so he would get 30 marks for performance. Despite this, on 27.3.1991, the appellant bank promoted persons much junior to him in the seniority list ignoring the respondent.

Aggrieved, the respondent filed the writ petition seeking a direction to the appellant Bank to promote him on the post of Field Supervisor or in the alternative as Senior Clerk.

Before the Ld. Single Judge, learned counsel for the respondent gave up his claim for promotion to the post of Field Supervisor and restricted his prayer for promotion to the post of Senior Clerk.

The appellant had taken a preliminary objection to the

maintainability of the writ petition on the ground that an alternative remedy was available to the respondent. The Ld. Single Judge rejected this objection on the ground that as the case has been lying admitted for about two decades, it would be unfair to relegate the respondent to his alternative remedy at such a belated stage.

On the merits of the claim, the Ld. Single Judge noted that in the written statement filed by the appellant it has not been explained as to how the respondent fell short in the grading as against the private respondents, who were promoted. It was only stated that the respondent had been found guilty of committing a fraud and consequently he was dismissed from service. However, in appeal the Board of Directors reviewed the penalty of dismissal and ordered that two annual increments be stopped with cumulative effect. Based on these averments in the written statement, Ld. Single Judge concluded that after acceptance of his appeal the respondent was reinstated on 26.5.1987. Assuming that he rejoined his duties immediately thereafter, the punishment of stoppage of two annual increments with cumulative effect was to be operative for a period of two years. Hence, after 26.5.1989, there was no bar against his entitlement for consideration for promotion. Also there was no adverse entry against him in his ACRs as none was communicated to him. Accordingly, Ld. Single Judge held that the action of not considering the respondent for promotion to the post of Senior Clerk from the date when the private respondents were so considered was vitiated. Accordingly, the appellant was directed to

promote the respondent from the date when the person next junior to him was promoted and give him all consequential benefits.

During the pendency of this appeal, the appellants have filed application under Order 41 Rule 27 for placing on record additional documents namely the punishment order dated 25.2.1987 passed by the punishing authority, the order dated 25.5.1987 passed by the Appellate Authority, minutes of the Board meeting dated 28.5.1990 and a notification dated 29.11.2013 (Annexure A-2 to A-5). Though, there is no explanation as to why the said documents could not be produced before the Ld. Single Judge, but we have considered the same.

Learned counsel for the appellant has placed reliance on the Minutes of the Board Meeting dated 28.5.1990 (Annexure A-4). He states that norms for promotion of Junior Clerk to the cadre of Senior Clerk had been framed in this meeting and the consideration of the respondent for promotion was to be in accordance therewith. Item No.15 of the Minutes deals with promotion of Junior Clerks to the cadre of Senior Clerks. Condition No.9 thereof reads thus :

'Frauds etc. committed during the last five years shall be taken into account before finalizing the selection of the candidates.'

Ld. Counsel states that as the respondent had been dismissed for committing a fraud, which punishment on appeal was reduced to that of stoppage of two increments with cumulative effect, hence he was rightly denied promotion.

This argument of the Ld. Counsel cannot be accepted.

A perusal of the punishment order dated 25.2.1987 (Annexure A-2) reveals that the allegations against the respondent were regarding misappropriation of amount of Rs.500/- on one occasion and Rs.150/- on two occasions. It is also clear from the perusal of Annexure A-2 that these allegations pertain to the period before 1985, as he was issued the charge-sheet in respect of these allegations on 7.2.1985. Though it is doubtful whether these allegations tantamount to committing fraud, but even assuming it to be so, by the time, the promotion was made to the post of Senior Clerk on 27.3.1991 more than six years had elapsed from the date of the alleged misappropriations. Accordingly, this condition could not have been relied upon to deny the respondent the benefit of promotion as in terms of this condition frauds committed during the previous five years only were to be taken into account.

No other ground was urged.

Thus, we do not find any ground to interfere with the impugned order. Accordingly, the appeal is dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

July 23, 2015

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