

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 2355/2014

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27th January, 2015

RAJINDRA KUMAR

..... Petitioner

Through: Mr. Ashok Bhalla, Adv.

versus

PUNJAB NATIONAL BANK & ANR.

..... Respondents

Through: Mr. Rajesh Kumar and Mr. Gaurav
Kumar Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner impugns the order/letter of the respondent no.1-employer dated 1.5.2013 whereby the petitioner has been held not to be successful in the promotion process for the years 2012-2013 under which promotion had been claimed by the petitioner from Medium Management Grade(MMG) Scale-III to Senior Management Grade (SMG) Scale-IV.

2. The admitted facts are that petitioner had succeeded in the earlier round of litigation when the first W.P.(C) No. 2888/2012 was

allowed by a learned Single Judge of this Court vide its judgment dated 8.1.2013 to the extent that the petitioner had been held entitled to be considered for promotion in the promotion process from MMG Scale-III to SMG Scale-IV for the year 2012 -2013.

3. By the judgment dated 8.1.2013, respondent no.1/employer was granted a period of four weeks to take steps to allow the petitioner to be considered for the promotion process for the year 2012-2013.

4. Respondent no.1-bank filed a review petition before the learned Single Judge of this Court being Review Petition No. 73/2013 with respect to the judgment dated 8.1.2013 in which two prayers were made. First prayer was for review of the judgment dated 8.1.2013 and the second prayer was for extension of time to comply with the direction to consider the petitioner for promotion in four weeks. Only the second prayer was pressed for extension of time and the main review petition was not pressed on merits by the respondent no.1/bank.

5. In the review petition, the respondent-bank in para 11 specifically stated that the respondent-bank be permitted to call the petitioner for group discussion/promotion process in the next general promotion process in the bank and in case the petitioner is successful in the promotion

process for the next year viz 2013-14, the petitioner then would be granted promotion from back date for the year 2012-13 with all consequential benefits. This para 11 reads as under:-

“11. That without prejudice to the submissions made hereinabove, in the alternative it is most respectfully submitted that the respondent / review applicant herein had preferred CM Application No. 9390 of 2012 seeking modification of the order dated 15.5.2012. In the said application the respondent had pointed out that the process of selection entails a) performance, b) group discussion, c) interview and d) branch experience. That in the said application the respondent had pointed out that as the process for promotion had concluded on 15.5.2012. The respondent bank was unable to invite the petitioner herein for group discussion as other eligible candidates were not available in the absence of which a group discussion could not be held. As is evident from the promotion policy, group discussion is a necessary part of the promotion process. That in the said background it is most respectfully submitted that the direction of this Hon’ble Court in para 55 wherein this Hon’ble Court has directed the bank to allow the petitioner in the promotion process within a period of 4 weeks from knowledge of the judgment has been passed without considering the said submission of the respondent bank. It is most respectfully submitted that, therefore, there is an error apparent on the face of the record and the present application may be allowed whereby the respondent bank may be permitted to call the petitioner for group discussion / promotion process in the next process which incurs in the bank. However, the petitioner if successful in the same could be granted promotion from a back date with all consequential benefits including seniority. It is reiterated that the said submission is made in the alternative without prejudice to the aforementioned submissions.”
(underlining added)

6. In view of the aforesaid stand made by the respondent-bank in its review petition, the learned Single Judge of this Court while disposing of

the review petition recorded as under :-

“4. Learned counsel submits that the review petitioner/respondent Bank is going to conduct that next promotion process, which shall be completed by June, 2013 in all respect. Further submits, since one vacancy has already been kept vacant pursuant to aforesaid directions of this Court, therefore, the petitioner would be considered against the same vacancy and would be given all the benefits from the back date, in case he succeeds in the process.

XXXXX

XXXXX

8. Consequently, vide judgment dated 08.01.2013, this Court quashed the impugned circular and the petition has been allowed in favour of the petitioner. Thus, petitioner has become eligible for the promotion in question.

9. In the facts and circumstances of the case, the review petitioner/respondent Bank is given liberty to complete the promotion process by June, 2013 in all respect including group discussion and interview.

10. I here make it clear that in the eventuality, the review petitioner/respondent Bank would not be able to complete the process by June, 2013, then it shall give the petitioner ad-hoc promotion, subject to his succeeding in the promotion process.

11. I further clarify that if the petitioner would not succeed in the process, then the vacancy reserved pursuant to order dated 15.05.2012 shall be given to the next candidate in the merit, who appeared in the process for which the list been prepared pursuant to process completed by 15.05.2012.”
(underlining added)

7. A reading of the aforesaid paras 4 and 8 to 11 of the order dated 22.2.2013 passed in the review petition alongwith the averments made in para 11 of the review petition shows that the petitioner was directed to

participate in the promotion process for the next year viz 2013-14 which was to be completed by June, 2013 and promotion process in all respects including group discussion and interview would be considered for the promotion process for the promotion of the petitioner for the year 2012-13 and which was the subject matter of W.P.(C) 2888/2012. If at all there is any doubt, para 11 of the order dated 22.2.2013 makes it abundantly clear that in case the petitioner does not succeed in the process i.e process which was to be completed by June, 2013 and which was to be effectively for both the years 2012-13 and 2013-14, then the vacancy which was reserved for the petitioner in W.P.(C) 2888/2012 would be given to the next candidate in the merit list, and which could not have been unless the promotion process of 2013-14 was also to apply for the year 2012-13.

8. The case of the petitioner in this writ petition is that when he appeared in the promotion process for the year 2013-14, the petitioner did not know that his marks for the promotion process for 2013-2014 will also be considered for promotion for the year 2012-13 and which year of promotion was in issue in W.P.(C) 2888/2012. Petitioner also argues that the criteria for selection for promotion from MMG Scale-III to SMG Scale-IV for the year 2012-2013 was different from the year 2013-14. Therefore,

the petitioner argues that neither the petitioner was given any notice with respect to the fact that the promotion process for the year 2013-14 will be considered for the promotion process for the earlier year 2012-13 nor the eligibility criteria for the two years was same. Let us examine these arguments urged on behalf of the petitioner.

9. So far as the first aspect is concerned, I cannot agree with the contention of the petitioner that the promotion process of the year 2013-14 was held without the petitioner having notice that the same would also be considered for the promotion process of the year 2012-13. Para 11 of the review petition when the same is read with para 4, 8 to 11 of the order dated 22.2.2013, passed in Review Petition No. 73/2013 in W.P.(C) 2888/2013 it becomes clear that the promotion process was to be completed with respect to the petitioner by June, 2013 i.e the promotion process both for the years 2013-14 as also for the year 2012-13 with respect to which W.P.(C) 2888/2013 was filed and for reviewing of which judgment dated 8.1.2013 in W.P.(C) no. 2888/2012 a Review Petition No. 73/2013 was filed and, which was decided on 22.2.2013. Therefore, I cannot agree with the arguments urged on behalf of the petitioner that he was taken by surprise that the performance in the promotion process 2013-14 will be transplanted/used

with respect to the entitlement of the petitioner to be considered for promotion for the year 2012-13.

10. The second argument urged on behalf of the petitioner that the eligibility criteria was different, and which is argued on the ground that different marks have been given for the year 2012-13 and 2013-14 with respect to group discussion and interview than are given in the year 2012-13, the argument is without merit because the respondent no.1/bank/employer has only proportionately used the marks with respect to the promotion process of the year 2013-14 for the year 2012-13 and this is explained in para (I) of the counter-affidavit and which reads as under:-

“I. In reply to Ground I it is denied, having regard to the submissions made hereinabove in this affidavit, the Respondent Bank was required to either form separate / special group or the Petitioner was to be separately called for group discussion/interview for the promotion process for the year 2012-13 as alleged. It is denied that the Respondent Bank has wrongly applied the changed parameters for deciding the result of the petitioner for the year 2012-13. It is evident from the letter dated 1.5.2013 (Annexure P-5 at Pg. 92) that the marks allotted for group discussion and interview to the petitioner in respect of the group discussion and interview held on 30.4.2013 have been converted and calculated to give effect to the respective parameters as applicable for the selection process of 2012-13. It is also evident from the said letter dated 1.5.2013 that after following the said process the total marks secured by the petitioner were found to be below the cut of mark of the last candidate approved for promotion in the panel for the year 2012-13 and hence the petitioner was not approved for promotion. The candidature of the petitioner for the year 2012-2013 and 2013-2014

for promotion from MMGS-III to SMGS-IV has been considered, as follows, after he had appeared for Group Discussion and Interview on 30.4.2013:-

CRIETRIA/ PARAMETER	FOR THE YEAR 2012-2013		FOR THE YEAR 2013-2014	
	Maxi. Marks	Marks obtained	Maxi. Marks	Marks obtained
Performance	60	50.16	50	41.20
Group Discussion	20	8	20	8
Interview	60	28	30	14
Branch Experience	10	1	n.a	
TOTAL	150	87.16	100	63.20

It is further stated that the details of marks obtained by last candidate who was approved for promotion in the year 2012-2013 and 2013-2014 is as under:-

LAST CANDIDATED WHO WAS APPROVED FOR PROMOTION IN THE PROCESS HELD IN THE YEAR	MARKS OBTAINED
2012-2013	103.60
2013-2014	73.80

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11. After the marks of the petitioner with respect to the group discussion and interview were proportionately given for the year 2012-13 by

using the marks of the year 2013-14, the fact which emerged was that the petitioner had obtained only a total of 87.16 marks, whereas the last candidate who was promoted in the process of the year 2012-13 had received 103.60 marks. Since the petitioner had obtained lesser marks viz 87.16 than the last candidate of the year 2012-13, who obtained 103.60 marks in the promotion process of the year 2012-13, petitioner was hence rightly held not to be entitled to the promotion for the year 2012-13.

12. I may state that the petitioner now for the subsequent year 2014-15 has already received promotion from MMG Scale-III to SMG Scale-IV and therefore, really the limited issue in this writ petition is with respect to the claim of the petitioner for promotion benefits of two years, and which cannot be granted as the contentions urged on behalf of the petitioner do not merit acceptance by this Court.

13. Dismissed.

JANUARY 27, 2015
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VALMIKI J. MEHTA, J