

\$~R-121

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

% *Date of Decision: November 02, 2015*

+ **LPA 594/2012**

STATE BANK OF BIKANER & JAIPUR Appellant
Represented by: Mr.R.P.Kapur, Advocate

versus

VINOD KUMAR AGRAWAL Respondent
Represented by: Mr.Barun Kumar Sinha,
Advocate with Mrs.Pratibha
Sinha, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (ORAL)

1. On June 28, 1994 a settlement was arrived at between the Associate Banks of the State Bank of India and the employees of the Union concerning promotion of its employees and officers, and relevant would it be to note that for the post for which the respondent had a grievance, the agreement envisaged that the employees in the category in which the respondent was serving would be given three chances for promotion, with chance defined as under:-

“ “Chance” means actual appearance in the written test under Groups A & B and in the interview under Group D, or a written communication by the employee agreeing to appear in the written test or the interview, as the case may be, but not

appearing therein.”

2. The agreement also envisaged that a period of two years should elapse from the time when the candidates previously appeared for selection.
3. The agreement required employees who had become eligible for being considered for promotion to be considered with reference to their seniority; with number of candidates entitled to being considered for promotion restricted to four times the number of vacancies.
4. It is not in dispute that the post for which the respondent litigated warranted only an interview to be held.
5. On facts, the respondent applied for the post in question in the year 2004, and falling within the zone of consideration was called for the interview, but did not attain requisite marks and hence was not promoted. He applied once again in the year 2005, but did not appear at the interview. He applied in the year 2007, but the date being within the period of two years reckoned from the date in the year 2005 when candidates were considered for promotion. He was not called for the interview and he filed a writ petition praying that his name being wrongly excluded from the list of eligible candidates to be called for the interview, his name should be included in the list and he should be subjected to an interview. The writ petition was opposed by the appellant bank, pleading that since a period of two years had not elapsed from the time of previous appearance for selection, the respondent would not be entitled to have his name included in the list of eligible candidates.
6. For reasons unknown and which neither counsel can explain to us, the learned Single Judge went about discussing as to when can a candidate

be treated as having availed three chances. The learned Single Judge noted the definition of chance as per the agreement but has reasoned that there could be various causes which may prevent a person from being able to appear at the interview and thus has held that when the respondent applied for the post in question in the year 2005 but did not appear at the interview it could not be said that he exhausted any chance in the year 2005.

7. Whether or not the respondent took a chance in the year 2005 was irrelevant to decide whether for purposes of computing three entitlements to offer candidature to be considered for promotion the respondent No.1 would be treated as having taken a chance, because concededly when respondent applied in the year 2007 this was the third time he did so and irrespective of whether he took a chance in the year 2005 or not, and on the assumption that he took the chance in the year 2005, this would be the third time the respondent applied.

8. The real debate between the parties was to the relevant term of the agreement as per which two years period should have been elapsed from the time when the candidates appeared for selection.

9. Now, the clause in question (which requires a two years gap) does not say that the period of two years would be reckoned with reference to the date of the last chance. It refers to the date when the candidates previously appeared for selection. Thus, notwithstanding the fiction in the definition of the chance created under the agreement by treating the persons having availed a chance if he offers his candidatures but does not appear at the interview, we find that the respondent has been wronged because the clause of the agreement which requires a gap of two years does not relate itself to the date of the previous chance taken, but relates itself to the date of

‘previous appearance for selection’ . The phrase previous appearance of selection, with reference to the word *‘appearance’*, would require it to be held (in conformity with the rule of interpretation that a word must be given its ordinary meaning) that the phrase *‘previous appearance for selection’* would mean the date when a candidate presents himself formally for selection, and that would mean appears at the interview in the instant case.

10. We dismiss the appeal and maintain the relief granted to the respondent, not for the reasoning given by the learned Single Judge, but for the reasoning given by us in the present opinion.

11. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

NOVEMBER 02, 2015
SKB