

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1433 OF 2002

Mr.K.C.Mehta)
Bank of India, Bank of India Building,)
6th floor, Plot No.11, Sector 11,)
C.B.D.Belapur, Opp.N.M.M.C.,)
Navi Mumbai 400 614.)...Petitioner

vs.

Bank of India.)
through Chairman & Managing Director)
Express Towers, Nariman Point)
Mumbai-400021.)...Respondent

Mr.Makrand Kale i/b. M. P. Vashi & Associates, for the Petitioner.

Mr.R.S.Pai and Mr.Anant Pai and Mr.A.K.Gopal i/b. Naresh Mehta & Co.,
for the Respondent.

CORAM : ANOOP V. MOHTA &
G.S. KULKARNI, JJ.

Reserved on : 19th OCTOBER, 2016.
Pronounced on : 26th OCTOBER, 2016

JUDGMENT: (Per G.S.Kulkarni, J.)

1. By this Writ Petition under Article 226 of the Constitution of India, the Petitioner who was in the services of the Respondent-Bank as a Deputy General Manager and who has retired during the pendency of this Petition on 31 January 2004, has approached this Court making the

following prayers:-

“(a) This Hon'ble Court be pleased to hold and declare that the Respondent have acted arbitrarily and discriminatorily against the Petitioner in denying him the promotion to the post of General Manager and thus have acted contrary to the existing policy and practice and hence violated the constitutional rights under Article 14 and 21 of the Constitution of India by not filling the seven vacancy during the promotion process of July,1998 and further in not exhausting the list of selected candidates before the next promotion process which was held within 4 months of the earlier process.

(b) This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus directing the Petitioner to promote to the post of General Manager with effect from the date of availability of seventh vacancy i.e. 9.9.1998.

(c) Pending the hearing and final disposal of the petition, direct the Respondent to promote to the Petitioner forthwith from the post of Dy.General Manager to General Manager retrospectively i.e. from the date on which the seventh vacancy became available.

(c-1) That pending the hearing and final disposal of this petition this Honourable Court be pleased to direct the Respondent to leave one post of General Manager free and/or unfilled for the Petitioner at the next promotion process.”

2. The case of the Petitioner as seen from the averments in the petition, is that, the Petitioner was eligible for the promotional post of General Manager. In July,1998 the promotional committee called as Director's Promotion Committee (DPC) sat for selection of General Managers in respect of seven vacancies. On 21 July 1998 the Petitioner

was called for interview with some other candidates. The DPC selected seven candidates for promotion against seven vacancies. However, the Respondent declared names of only four selected candidates to fill up four vacancies against seven vacancies available. The Petitioner was selected by the DPC and was placed at Sr.No.7 in the list of selected candidates. It is the Petitioner's contention that despite of existence of seven vacancies and seven selected candidates, the Respondent declared four names for promotion on 21 July 1998. Subsequently, within a period of ten days, two more candidates were promoted which clearly shows that the selected candidates were kept in the list as wait listed candidates, who were to be promoted as and when the next vacancy became available. The Petitioner has averred that the seventh vacancy became clear on 9 September 1998, within a period of 39 days, but the Petitioner was not promoted against it and the Petitioner was the only remaining candidate in the list of successful / selected candidates. The Respondent ignored the Petitioner when the last vacancy out of seven vacancies was available on 9 September 1998. However, the Respondent instead of granting promotion to the Petitioner, arbitrarily decided to hold fresh promotion process by merely adding three more vacancies which were vacant within a span of about month. The action of the Respondent is clearly malafide. It is the contention of the Petitioner that in addition to the above, the candidates

who failed and proved unsuccessful earlier were called and the eligibility criteria for the candidates to be called for the next promotion process was relaxed from three years to less than three years. This was done in the case of Mr.R.R.Parthsarathy, Ms.Viloo Cama and Mr.F.Martis who were eventually selected for promotion and who were promoted in the promotion process which was concluded on 16 November 1998. A perusal of the prayers as noted above show that the Petitioner though has challenged denial of promotion to him, the Petitioner has not challenged promotion granted to other officers. Neither those persons are made parties to the present petition.

3. The Respondent has appeared and filed a reply affidavit of Mr.Dileep Ratiram Harnagle, Assistant General Manager (Personnel & Industrial Relations). The Respondent has averred that the Petitioner is seeking promotion to the post of General Manager in the category of Scale-VII on the basis of an expired select list prepared by the DPC on 21 July 1998 and thus, the Petition is wholly misconceived. It is contended that the Petitioner has no right of promotion under the Promotion policy applicable to him. It is stated that the Petitioner candidature was considered by the DPC in the selection process held on 21 July 1998 and also the second promotion process held on 3 November 1998. As the

promotions were made to the post of General Manager in the category of Scale-VII from the candidates in the select list in the order of their rank in the select list as per their merit to the posts available, the Petitioner could not be promoted as his name is at the bottom of the select list. The Respondent has categorically averred that the whole foundation of the Petitioner's case what that there were seven vacancies in existence on 21 July 1998. The Respondent has stated that at the time of selection process held on 21 July 1998, there were only four vacancies and these vacancies were filled up from the select list in the order of their merit and thus the Petitioner could not be appointed. It is thus contended that the Petitioner has no cause of action for filing of this petition. In dealing with paragraph (5) of the Petition, the Respondents have denied that in July, 1998 the DPC was convened for filling up seven vacancies of General Manager. It is stated that the DPC was convened for filling up four vacancies of General Manager. Further in paragraph 13 of the reply affidavit, the Respondent has averred that the select list dated 21 July 1998 expired on 3 November 1998 when the new DPC was convened wherein the Petitioner also participated and was interviewed. It was averred that the Petitioner having participated in the new selection process under the DPC held on 3 November 1998, the Petitioner cannot question the appointment made on the basis of the new select list. The Petitioner in fact neither in the DPC

selection of July,1998 invoked clause 12 of the Promotion Policy by making representation being aggrieved by the DPC., nor the Petitioner in the new selection process dated 3 November 1998 questioned appointment by availing of remedy of clause 12 of the Promotion Policy. It is therefore, contended that the Writ Petition deserves to be rejected.

4. We have heard the learned Counsel for the parties and with their assistance we have perused the pleadings and the documents as placed on record. The learned Counsel for the Petitioner in support of the prayers in the Writ Petition contends that the Petitioner is entitled for the prayers inasmuch as the Respondent has not followed the Rules in vogue. The learned Counsel submits that at the relevant time in July 1998 as sated in the Petition, there were seven vacancies and the Petitioner had a legitimate right for promotion as his name was placed in the select list. The learned Counsel submits that the action on the part of the Respondent is malafide as averred in the petition. The learned Counsel for the Petitioner in support of his submission has placed reliance on Regulation 9.3 and Regulation 17 of the Bank of India (Officers') Service Regulations,1979 (for short "the 1979 Regulations") which read thus:-

"9.3. Promotions for filling up vacancies will be, as far as possible, in one lot every year. However, the Competent Authority, as specified in the Policy, may promote a lesser number of Officers, compared to the declared number of vacancies, in its sole

discretion.”

“17. General:

.....

(iii) The Promotion process will be conducted every year, subject to the availability of vacancies. The Officers, who had failed to get promotion in the previous promotion process in terms of (ii) above, will also be eligible to participate, in the subsequent processes.

....

(vi) Filling up of Vacancies in SMG Scale V and above, arising on account of retirement, resignation, death, voluntary retirement etc.

A waitlist of candidates for promotion to Scale V and above will be prepared and promotions in respective scales will be released as and when vacancies arise on account of expected retirements/elevation to higher scales, if any. In addition to the said waitlist, the Chairman and Managing Director is authorized to release the promotion of candidates appeared for promotion but not selected in the main list or waitlist but standing immediately after the name of the last candidate in the waitlist, so as to fill the vacancies, if any, arising on account of resignation, death, voluntary retirement, superannuation etc. who was/were promoted in the main list/wait list of the concerned promotion process.

... ..

(xv) An officer who applies for promotion and gets selected, cannot refuse promotion.”

It is therefore, submitted that on the basis of the above rules that the Petitioner being in the select list of July 1998 at Serial No.7, had become entitled for promotion and the such denial was arbitrary and illegal.

5. On the other hand, the learned Counsel for the Respondent has supported the decision by referring to the affidavit in reply to contend that the contention of the Petitioner that there were seven vacancies in July 1998 was itself incorrect and there were only four vacancies. He submits that the Petitioner having been participated in the subsequent selection process dated 9 September 1998, dis-entitles the Petitioner to any relief. The learned Counsel for the Respondent would thus contend that neither there were seven vacancies as alleged by the Petitioner nor the select list was kept in operation and same had lapsed when the next selection was undertaken which was the provision in the relevant rules. It is submitted that the reliance on the 1979 Regulations on behalf of the Petitioner is wholly misconceived inasmuch as at the relevant time, 1993's Regulations were in vogue. Reliance is placed on clause 13(viii) of the 1993 Regulations which reads thus:-

“13. General

... ..

(vii) Waiting list for filling up vacancies arising out of non-acceptance of promotion.

The vacancies arising out of non-acceptance of promotion by candidates under seniority channel and merit channel would be filled in as follows:-

(a) Seniority Channel:-

By promotion of the next eligible candidates from the interse seniority list in the order of their standing in the said list.

(b) Merit channel:-

By promotion of the next candidates in the order of their standing in the merit list below the cut off point, provided

such candidates has scored not less than 50% of total marks.

The waiting list as stated in (a) and (b) above will be valid for a period of 1 year from the date of declaration of results or the date of initiating the next process of promotion which-ever is earlier”.

(emphasis supplied)

As regards the Petitioner's contention that the Petitioner ought to have been promoted in the promotional exercise undertaken in September,1998, learned counsel for the Respondent submits that the Petitioners' ranking was below the other candidates to come to be appointed. The Petitioner is therefore not right in making a claim that he ought to have been promoted in this promotion exercise. It is, therefore, submitted that the Petitioner is not entitled to any reliefs.

6. We have heard the learned Counsel for the parties and with their assistance have gone through the pleadings and the documents.

7. At the outset we may note that the Petitioner's assertion that there were seven vacancies when the promotion exercise was undertaken in July,1998, itself is without basis. We asked the learned Counsel for the Petitioner as to on what basis the Petitioner has averred in the Petition that there were seven vacancies in July 1998, the learned Counsel for the Petitioner was unable to point out any material to show that there were

seven vacancies. A perusal of the affidavit filed on behalf of the Respondent makes it clear that there were only four vacancies when DPC undertook promotional exercise on 21 July 1998 and for which the select list of seven was prepared. In view of the fact that only four vacancies were available and the Petitioner was not falling within four vacancies and his position in the select list was at Sr.No.7, the Petitioner could not have been granted promotion. The Respondent has made categorical averments in regard to this position of four vacancies in paragraphs 8 and 9 of the reply which read thus:-

“8. With reference to paragraph 5 of the Petition, I deny that in July 1998 the DPC was convened for filling up 7 vacancies of General Manager. I reiterate that the said DPC was convened only for filling up 4 vacancies of General Managers. I say that the DPC was convened on 21st July 1998 to consider promotion of Officers from top Executive Grade Scale-VI to Scale VII to fill up 4 vacancies. On 21st July 1998, DPC interviewed about 10 Officers and prepared a select list consisting of 4 officers in Top Executive in Scale-VI. I therefore deny that on 21st July 1998 when DPC was convened there were 7 vacancies, as alleged. I reiterate that as on 21st July 1998 there were only 4 vacancies of General Managers. The said DPC effected promotion of the first 4 candidates from the select list dated 21st July 1998. It is correct to say that the Petitioner was at Sr.No.7 in the said select list.

9. With reference to paragraph 6 of the Petition, I deny that there were 7 vacancies on 21st July 1998, as alleged. I say that two additional vacancies for General Managers arose on 22nd July 1998 and the Board of Directors approved filling up of 2 vacancies of General Managers, which were filled from the waitlist dated 21st July 1998 in the order of their serial number. Accordingly, Shri.M.D.Choudhary and Shri.K.H.Vora came to be appointed as General Managers with effect from 1.8.1998.”

8. In paragraph 11 of the affidavit, the Respondent has stated that another DPC convened on 3 November 1998 which prepared a select

list of the eligible officers in Scale VI and same was also approved by the Board of Directors in the meeting held on 16 November 1998. In this DPC, the Petitioner was also interviewed by the DPC on 3 November 1998 alongwith the other eligible candidates. It is stated that the norms as permissible under the Rules were applied and in this DPC the Petitioner's name was appearing in the select list dated 3 November 1998 below the names of the top executives who were appointed in Scale VII. It is stated that participation of the Petitioner in the subsequent DPC on 3 November 1998 itself dis-entitled the Petitioner to claim any relief in respect of DPC of July,1998 as prayed in prayer clause (a). It is stated that even in respect of DPC held on 3 November 1998 the Petitioner has not made any representation under Clause 12 of the Promotion Policy. The Petitioner, therefore, cannot have any grievance in respect of DPC dated 3 November 1998. What is pertinent is that in the rejoinder affidavit filed by the Petitioner these averments which go to the root of the matter, that there were only four vacancies in respect of DPC of July,1998 and that in the DPC of September,1998 the Respondent had undertaken promotion exercise as per the ranking in the select list prepared by the DPC, are not denied by the Petitioner.

9. In view of the above clear facts we are not persuaded to

accept the Petitioner's case that the Petitioner is in any manner became entitled to reliefs as prayed for. The law in regard to the promotion is well settled that there is only legal right to be considered for promotion. The scope of judicial review is only in regard to the decision making process, in making promotion. In the present case the Respondent-Bank had properly adhered to the Rules and Regulations. 1993's Rules in respect of waiting list as relied upon on behalf of the Respondent are also clear inasmuch as the waiting list as provided in Rule 13(viii) will be valid for a period of one year from the date of declaration of result or the date of initiating the next process of promotion whichever is earlier. The Petitioner therefore would not be correct in contending that July,1998's waiting list ought to have been given effect to. More particularly the Petitioner had participated in the selection process of DPC of 9 September 1998, however, as per the ranking and for the reasons which are set out, the Petitioner could not succeed in the promotional exercise. We also cannot be oblivious that the Petitioner immediately did not make any representation by invoking Clause 12 of the Promotion Policy, but for the first time on 28 August 2001 almost about three years after the promotional exercise of July,1998 and September,1998 was complete, submitted a representation. In any case, the Petitioner is now retired during the pendency of this Petition. We are not satisfied with the case of

the Petitioner in regard to the basic prayers. We have, therefore, disallowed any amendment of this Petition, sought to be made by a Chamber Summons (being moved after about 14 years of the filing of this Writ petition), so as to make additional prayer in respect of difference of emolument on the ground that the Petitioner was entitled to promotional post from 21 July 1998 till his retirement i.e. 31 January 2004.

10. In the light of the above discussions, we see no merit in the Writ Petition. The Petition is accordingly rejected. No costs.

(G.S.KULKARNI, J.)

(ANOOP V. MOHTA, J.)