

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2188 of 2012

Date of Decision:-16.11.2016.

S.S. Ahluwalia

.....Petitioner

Versus

Punjab National Bank and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

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

Mr. Saurav Verma, Advocate and
Mr. Akash Soni, Advocate for the respondents.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has questioned the validity of the order dated 11.6.2011 vide Annexure P-8. The same has been communicated vide a letter dated 13.6.2011 by which the petitioner's appeal against the Annual Confidential Report for the year 1989-90 has been rejected and so also rejection of his name for promotion to the post of Middle Management Grade Scale-II. The petitioner while working as Junior Management Grade Scale-I his name was considered for promotion to the Middle Management Grade Scale-II in the year 1991 among others. His name was overlooked on the sole ground that the Annual Confidential Report for the year 1989-90 was below average. Feeling aggrieved by the non consideration of his name for promotion to the post of Middle Management Grade Scale-II, he preferred appeal on 30.11.1992. His appeal

was rejected on 10.2.1993 on the sole ground that it was not within the stipulated period of 45 days from the date on which promotion was announced. Thereafter, he has approached this Court seeking a writ of *mandamus* to expunge the adverse remarks/entry for the year 1989-90 for the purpose of selection and promotion to the cadre of Middle Management Grade Scale-II for the year 1991 and 1993 and also sought for a direction to the respondents to grant incidental relief after expunging the adverse entry for the year 1989-90. On 10.2.2011, this Court while disposing CWP No.9346 of 1993 directed the respondents to consider grievance of the petitioner in respect of assessment for the relevant period and if the petitioner succeeds in his appeal, the respondents would consider case of the petitioner for promotion by excluding the report from consideration. If the appeal is rejected, then the process of re-consideration may not be needed and it was also made clear that if the appeal is filed by the petitioner is decided against him, he would be at liberty to raise challenge against the order so passed, in accordance with law. The Appellate Authority considered grievance of the petitioner and passed an order on 11.6.2011 rejecting the petitioner's appeal stating as follows:-

On the basis of the facts and documents available on records, I find as under:-

“1. It was incorrect on the part of Shri Ahluwalia to state that he did not attend the Bank during the year 1989-90 and therefore his performance for the relevant year cannot be rated as below average because it is fact on record that he himself had not filled up the self appraisal Part-1 of the PARF for the period 1.1.1989 to 31.3.1990 and submitted the significant achievements in the key result areas of his function

during the period. He himself had written on the format that he proceeded on leave on 28.2.1989 whereas the appraising authority had mentioned that he attended the branch from 1.1.1989 to 4.2.1989. Accordingly, there is nothing wrong on the part of the appraising and reviewing authority to rate his PARF for the relevant period on the basis of his actual performance during the period he attended the Bank. Further, I do not find any reason to interfere in the rating awarded by the reviewing authority on his PARF for the aforesaid period.

2. There was no element of penalty in non-payment of salary to Shri Ahluwalia for the period he did not work because it was an administrative action and loss of seniority was a consequence of the same.

3. It was provided in the promotion policy of Officers of erstwhile New Bank of India, prevailing at the relevant period of time that the aggregate marks of PARF for 5 years will be added to arrive at the total marks to be awarded to an employee for performance. There was no option available in the policy to ignore the marks of any particular year during which an employee had not attended the Bank for a major part, as claimed by him. Accordingly, his promotion for JMG Scale-I to MMG Scale-II was considered at the relevant time under the laid down guidelines/promotion policy of eNBI by considering PARF of relevant 5 years and he was not found suitable for promotion to MMG Scale-II.”

2.) Thus, the petitioner aggrieved by the decision of the Appellate Authority dated 11.6.2011 vide Annexure P-8 has presented the present

petition.

3.) Learned counsel for the petitioner submitted that the sole reason to ignore the name of the petitioner for promotion to the cadre of Middle Management Grade Scale-II is that performance for the year 1989-90 is below average. It was also noticed that during the relevant year, he has not attended the work, therefore, question of assessing his performance for the relevant year may not arise. At the same time, it was also recorded that the petitioner has attended the branch from 1.1.1989 to 4.2.1989. Since Annual Confidential Report has been written for the year 1989-90 as below average, the promotional authorities have considered the Annual Confidential Report of the petitioner for the year 1989-90 and held him that he is not suitable to be promoted. Such a decision is incorrect for the reasons that Annual Confidential Report for the year 1989-90 even though it is a below average, the same has not been communicated to the petitioner. Therefore, promotional authority should not have taken into consideration for the purpose of rejecting the name of the petitioner for promotion. In other words, the petitioner counsel submitted that since respondents-Bank have not communicated the Annual Confidential Report for the year 1989-90, therefore, they could not have taken the Annual Confidential Report of that year for the purpose of considering merit of the petitioner's case for promotion. Learned counsel for the petitioner further submitted that as per the promotion policy for Officers-1983 he relied on para 14.2 relating to performance. The promotional authorities are required to appreciate the officer to be promoted with reference to Performance Review Report in the last five years. In the petitioner's case even the Annual Confidential Report for the year 1989-90 has been taken into consideration which is

uncommunicated remarks. Therefore, the promotional authorities should have considered 4 years Annual Confidential Reports while taking average points for four years. In support of the petitioner's contention that uncommunicated adverse remarks cannot be taken into consideration for the purpose of promotion, he relied on two decisions of the Supreme Court which are reported in (i) **2009 (16) SCC 146 (Abhijit Ghosh Dastidar Vs. Union of India and others)** Para 8 and (ii) **2013 (4) SCT 129 (Sukhdev Singh Vs. Union of India and others)** Para 7 and 9.

4.) Per contra, learned counsel for the respondents submitted that no doubt, the Annual Confidential Report for the year 1989-90 has not been communicated to the petitioner. At the same time, no prejudice has caused to the petitioner and he relied on official memorandum dated 19.2.1991 under what circumstances Annual Confidential Report can be furnished to the Officers/employees. It was further contended that petitioner's appeal has been taken into consideration by the Appellate Authority and dealt the contentions of the petitioner. Therefore, there is no infirmity in the order of the Appellate Authority dated 11.6.2011. He further contended that even un-communicated adverse remarks can be taken into consideration for the purpose of considering Officers/employee for the purpose of promotion. In support of the said contention, he relied on decision of the Supreme Court reported in **1970 SLR 926 (R.L. Butail Vs. Union of India and others)** Para 7 and 13 which is Constitution Bench decision. He relied on another judgment reported in **1970 SLR 150 (Prakash Chand Sharma Vs. The Oil and Natural Gas Commission and others)** para 9.

5.) Heard learned counsel for the parties.

6.) Petitioner's name was overlooked for promotion to the post of

Middle Management Grade Scale-II in the year 1991 and 1993. His name was not considered for the reasons that he had below average report for the year 1989-90 (Annual Confidential Report). The sole contention of the petitioner is that the respondents while considering his name for promotion should not have taken into consideration Annual Confidential Report for the year 1989-90 (below average) for the reasons that the same was not communicated to the petitioner. In other words, uncommunicated adverse remarks cannot be taken into consideration for the purpose of declining to promote an officer/employee. Perusal of the guideline dated 19.2.1991 that under what circumstances Annual Confidential Report can be furnished to the bank employee, it is evident that it is a prospective in nature. In the present case, the Annual Confidential Report is relating to the year 1989-90. Therefore, the official memorandum dated 19.2.1991 cannot be taken into consideration as it is prospective application. The respondents-Bank are relying on Annual Confidential Report which is uncommunicated for the purpose of denying promotion. The Supreme Court in case of *Abhijit Ghosh Dastidar (supra)* has held that Annual Confidential Report which has been uncommunicated, the same cannot be taken into consideration for the purpose of promotion. Therefore, the respondents have erred in considering the uncommunicated adverse remarks of the year 1989-90 in respect of the petitioner so as to decline him promotion. The learned counsel for the respondents-Bank relied on decisions of the year 1970 in the case of *R.L. Butail Vs. Union of India and others (supra)* is concerned, it is not a case relating to uncommunicated remarks. Therefore, the decision of *R.L. Butail Vs. Union of India and others (supra)* do not assist the respondents'

Commission and others case (supra) is concerned, no doubt the Supreme Court has held that adverse remarks is required to be taken into consideration and the promotional committee need not investigate the matter whether Annual Confidential Reports have been communicated or not. Having regard to the latter decisions *Abhijit Ghosh Dastidar Vs. Union of India and others* and *Sukhdev Singh Vs. Union of India and others* wherein it is held that un-communicated adverse Annual Confidential Report cannot be taken into consideration while considering an employee's promotion. Therefore, the promotion committee/authority decision to ignore name of the petitioner for promotion to the post of Middle Management Grade Scale with reference to un-communicated adverse remarks for the year 1989-90 of the petitioner is arbitrary and illegal. So also contrary to the decision of the Supreme Court in the case of *Abhijit Ghosh Dastidar Vs. Union of India and others* and *Sukhdev Singh Vs. Union of India and others*. Consequently, the decision of the Appellate Authority dated 11.6.2011 even though on merits it is stated that for the year 1989-90 Annual Confidential Report should not have been written for the reason that petitioner remained absent and he has worked only for a period of one month and two days in the year 1989. However, the promotional authorities/Committee have already taken Annual Confidential Report for the year 1989-90 as below average and declined to promote the petitioner. In other words, declining promotion to the petitioner is based on the Annual Confidential Report for the year 1989-90 (below average) which is un-communicated. Even assuming that the Annual Confidential Report for the year 1989-90 is not written still the respondents should have considered

of the petitioner for promotion while taking average with reference to para 14.2 of the promotion policy. Even though it refers to 5 years under the circumstances that the petitioner is stated to have not worked few months in the year 1989-90. That apart, the petitioner has attained age of superannuation and retired from service in the month of April, 2007. In view of these facts and circumstances, Annexure P-8 is set aside. The respondents are directed to reconsider the petitioner's name for promotion to the post of Middle Management Grade Scale-II and promote him retrospectively from the date his juniors were promoted. However, petitioner is not entitled to monetary benefits since he has retired from service in the month of April, 2007 and he has not worked in the promotional post. Therefore, notional pay fixation be made and re-fixation of his pension and other retiral benefits as per Rules while disbursing monetary benefits also within a period of six months from today.

7.) Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

November 16, 2016.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.