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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2803 OF 1999

Shri B.M. Bathija, an Indian
Inhabitant, residing at B-504,
Om Shakuntal Co-op. Soc.,
Opp. RTO Office, Easter Express
Highway, Naupada,
Thane (West) – 400 602.

...Petitioner

versus

1. The Central Bank of India
through its Chairman & Managing
Director having his office at
12th Floor, Chandramukhi,
Nariman Point, Mumbai 400 021.
The General Manager (Personnel),
12th Floor, Chandramukhi,
Nariman Point, Mumbai 400 021.

2. Shri Ajay Vyas
Maintenance Engineer,
Central Bank of India,
11th Floor, Chandramukhi,
Nariman Point, Mumbai 400 021.

...Respondents

Ms. Neeta P. Karnik, for Petitioner.
Mr. Vishal Talsania with Ms. Radha Ved i/by Sanjay Udeshi & Co.
for Respondent no.1.

**CORAM : A.A.SAYED AND
M.S.KARNIK, JJ.**

RESERVED ON : 26th July, 2017.

PRONOUNCED ON : 31st July, 2017

JUDGMENT (PER M.S. KARNIK, J.) :-

The petitioner by this Petition seeks promotion to the post of Maintenance Engineer Grade II with effect from 1/6/1991 by assigning appropriate seniority in the seniority list with consequential benefits. It is petitioner's case that though he joined respondent no.1 on 21/4/1981 as Maintenance Engineer he has not been promoted from then onwards till the date of the filing of the Petition in 1999. Learned Counsel for the petitioner pointed out now the petitioner has retired and even as of the date of retirement the petitioner was not promoted.

2. The petitioner was initially appointed in the Specialist Category and posted in the Architecture Section. The petitioner is a Maintenance Engineer. The petitioner joined the services of respondent no.1 on 21/4/1981. It is the stand of the

respondent that no promotion process for Maintenance Engineers was held between 1981-1997. It is a settled law that the petitioner has a right to be considered for promotion. The petitioner has not come with the case that he is superseded in the matter of the promotion. In this view of the matter it is not possible for us to issue any directions to the respondents to consider the case of the petitioner for promotion upto 1997.

3. We may however consider one grievance made by the petitioner. As there was hardly any scope for getting promoted from the Specialist Category, the petitioner sometime in 1996 had applied for conversion from the Specialist Category to the General Category (Mainstream). It appears that the respondent-bank initiated conversion process for the general category and held interviews in respect thereof in January, 1996. The petitioner participated in the same and was found unsuitable. The petitioner continued to be in the Specialist Category. In the promotion process for the General Category to be held in 1997, the petitioner had given an option letter dated

27/2/1997 as he was eligible for participation in the said promotion process. It is the stand of the respondent that by virtue of the said letter, the petitioner was entitled for conversion to the Mainstream and was entitled to participate in the promotion process for the Mainstream to be held in April, 1997. The petitioner was allowed to participate. However, the results thereof kept in “sealed cover” as some disciplinary proceeding was contemplated against the petitioner. According to the respondents, as the petitioner participated in the promotion process for the General Category (Mainstream) in April, 1997 he was thereafter treated as belonging to General Category (Mainstream).

4. At this stage we may note a letter dated 9/12/1998 of the respondent addressed to the petitioner asking the petitioner to submit his option in writing, if he so desires, for conversion to Mainstream. The petitioner was asked to send his option letter which should reach Central Staff Department, Central Office, on or before 14/12/1998. It is very clear that the

conversion of the General Category to the Mainstream is dependent on the petitioner submitting an option in terms of Clause 15.2 of Promotion Policy for Officers (PPO). The petitioner has not submitted any option in writing pursuant to the letter dated 9/12/1998. We find the stand of the respondent unjustified in treating the petitioner as belonging to the Mainstream Category merely because he participated in the promotion process for the General Category (Mainstream). The policy of the respondent requires the petitioner to submit an option for conversion to the General Category (Mainstream). In the absence of the petitioner submitting such an option he cannot be treated as belonging to the General Category (Mainstream).

5. The petitioner has relied upon the circular dated 24th April, 2000 stating therein about the selection process in the category of Maintenance Engineer (MMG Scale II to MMG Scale III (Specialist) for normal channel. The last date of which was 6/5/2000.

6. The learned Counsel for the petitioner contends that right from the date of his appointment on 21/4/1981 till the date of his retirement he was not promoted even once. Learned Counsel for the respondent however submits that the petitioner was given the benefit of advanced increments.

7. The petitioner's case for promotion in our opinion should be considered for promotion from the category of Maintenance Engineer (Specialist Category). The petitioner has retired and therefore the petitioner can now be only notionally promoted if he is found fit for promotion. Hence following order.

ORDER

1. The respondents are directed to consider the case of the petitioner for promotion from 1997 onwards in respect of the selection process which may have been conducted within a period of eight weeks from today.

2. The petitioner's case for promotion from the year 1997 onwards may be considered on the basis that the petitioner

belongs to the Maintenance Engineer (Specialist Category) in accordance with the rules and regulations as applicable and if he is found fit he may be notionally promoted to the next higher post from the eligible date.

3. In case the petitioner is found fit for promotion to the next higher post he may be granted consequential benefits including arrears within a period of four months.

4. Rule partly made absolute with no order as to costs.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)