

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.16950 OF 2003

ORDER:

The petitioner, who joined as Probationary Officer in the respondent-Bank on 02.02.1987, filed the instant writ petition praying for Mandamus declaring non-selection and promotion of petitioner to the cadre of MMG-III by respondents, as arbitrary, illegal and unconstitutional. The petitioner prays for a direction to promote him to MMG-III cadre w.e.f., 01.11.1999 with all consequential benefits.

The following admitted circumstances are prefaced before adverting to the stand taken by respondents in the counter affidavit:

The petitioner was working in Ahmedabad Circle at the time of appointment and also on promotion as MMG-II. On 01.11.1994, the petitioner was promoted as Middle Management Grade (MMG)-II Officer. According to petitioner, on 01.11.1999 he became eligible for promotion to the next cadre i.e., MMG-III. In June, 2000, the petitioner was transferred from Ahmedabad Circle to Hyderabad Circle. Admittedly, in the year 2001, the promotions for officers from MMG-II to MMG-III were initiated in Ahmedabad Circle. The petitioner since was already transferred from Ahmedabad Circle to Hyderabad Circle, he was not considered for promotion in Ahmedabad Circle. On 19.11.2001, the petitioner filed appeal against the grievance of non-consideration and on 23.09.2002, the petitioner was interviewed by the Hyderabad Circle and was not promoted. Hence, the writ petition.

The Chief General Manager of Hyderabad Circle filed counter-affidavit opposing the writ prayer. The stand of respondents is that on the request of petitioner, in the year 2000, the petitioner was transferred from Ahmedabad Circle to Hyderabad Circle as MMG-II Officer. On the date of his transfer, there were no promotions for the officers in this cadre in Ahmedabad Circle. By accepting the eligibility of petitioner for promotion in Hyderabad Circle along with other eligible candidates in the zone of consideration, he was interviewed. The petitioner secured marks below the cut off marks stipulated by the Management. Therefore, the petitioner did not figure in the selection list of Hyderabad Circle. The petitioner filed an appeal against non-selection and the appeal against non-promotion was considered and the appellate authority did not consider the grievance of petitioner as legitimate or legal.

The 2nd respondent further states that there is no scope for discrimination in promotion, as the Management follows uniform procedure of all the eligible candidates in different circles. The promotion policy and procedure adopted in the respondent bank is most transparent, impartial, unbiased etc., and gives no scope for any personal prejudices. He submits that entire process was objective and once the petitioner is transferred from Ahmedabad Circle to Hyderabad Circle, the case of petitioner for promotion as Grade-III is considered in Hyderabad Circle in accordance with the vacancies available here and the marks he obtains in this behalf. In the case on hand, it is stated that not only the selection committee but also the appellate authority have

considered and found that the grievance against non-promotion w.e.f., 01.11.1999 is not made out.

Learned counsel have substantially reiterated the stand taken in the pleadings and hence pleadings are not reiterated.

I have perused the material available on record and taken note of the submissions of learned counsel.

Now, the point for consideration is - whether the denial of promotion to petitioner as MMG-III w.e.f., 01.11.1999 is illegal and warrants interference of this Court under Article 226 of the constitution of India?

The scope of judicial review in the matter of promotions is no more *res integra*. I refer to the decision of the Apex court reported in *DALPATADASAHEB SOLUNKE v. DR.B.S.MAHAJAN*¹. Bearing in view the principle laid down by the Apex Court, let me examine the circumstances, dates and events in the matter. This Court, having regard to the limitations of judicial review, is not sitting in the arm chair of either the selection committee or the appellate authority and deciding the grievance of petitioner. Briefly stated, at request, the petitioner was transferred from Ahmedabad Circle to Hyderabad Circle. Admittedly, as on the date of his transfer, the promotions to MMG-III in Ahmedabad Circle did not also take place. Therefore, he was transferred as MMG-II Officer. The promotion to MMG-III is confined to each circle, keeping in view the entitlement of petitioner, he was considered for promotion w.e.f.,

¹ AIR 1990 SC 434

01.11.1999 in Hyderabad Circle. The petitioner was interviewed and was not found suitable and hence not promoted. The complaint of the petitioner is that the petitioner ought to be interviewed by the selection committee at Ahmedabad Circle appears to be untenable for two reasons. Firstly with the transfer of petitioner from Ahmedabad Circle to Hyderabad Circle, the petitioner is an officer in Hyderabad Circle and his promotional avenues are considered within Hyderabad Circle. Secondly, according to the promotion rules, the Management is entitled to decide the number of posts available for promotion, prepare the list of all candidates and in accordance with merit, the promotions are made. If the petitioner is not within the cut off marks prescribed by Management, bearing in view of the number of vacancies, the consideration of petitioner for promotion by Hyderabad Circle cannot be a ground to promote petitioner from 01.11.1999.

The stand in counter-affidavit is clear and categorical to the effect that the petitioner was, as per his entitlement, considered and not selected for promotion by both the Selection and Appellate Committees. Now, hence this Court cannot sit as a further appellate authority and decide the entitlement of petitioner. Apart from this reason, the petitioner has not brought to the notice of this Court a rule/guideline/regulation authorising selection/interview by Ahmedabad Circle.

The writ petition fails and is, accordingly, dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, stand closed.

10th April, 2017

Lrkm

S.V.BHATT, J

