

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.268 of 2016
IN
Civil Writ Jurisdiction Case No. 7120 of 2015**

- =====
1. The Regional Manager, Central Bank of India, Koshi Chowk, Saharsa (now the Regional Manager, Central Bank of India, Bhatta Bazar, Purnea)
 2. The Deputy Regional Manager, Central Bank of India, Koshi Chowk, Saharsa (now the Deputy Regional Manager, Central Bank of India, Bhatta Bazar, Purnea).
 3. The Zonal Manager, Central Bank of India, Maurya Lok Complex, Budh Marg, Patna.

.... Appellant/s

Versus

1. Suman Kumar Roy, Son of Late Udit Narayan Roy, Resident of Village- Makandpur, P.S- Akbarpur, District- Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Sinha, Advocate
Mrs. Manju Jha, Advocate
For the Respondent/s : Mr. J. K. Giri, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 04-04-2018

1. The order dated 09.09.2015 passed by the learned Single Judge giving a direction upon the appellant-Bank to accept joining of the private respondent on the promoted post of a Clerk as well as pay him all the benefits from the date of his joining on the promoted post has become the reason for Central Bank of India to prefer the intra Court appeal.

2. The facts which became the reason for the private respondent to file a writ application is briefly noted hereinbelow :-



The private respondent is an ex. Army man. He was Sepoy who superannuated from the post on 28.02.2007. He got selected by the Central Bank of India to work as an Armed Guard Sub Staff and he came to be posted in the Alamnagar branch in the district of Bhagalpur.

In terms of the scheme, bank gave opportunity to such employees to earn promotion on the basis of internal assessment and exercise carried out. It is said that the private respondent cleared in the written examination etc and, therefore became eligible to be granted to promotion to the post of a Clerk in the bank. On 15.07.2013, the Regional office of the Central Bank of India issued an office order informing the private respondent that he has been granted promotion to the post of a Clerk. He was directed to report to the currency chest at Birpur on 22.07.2013 positively and work as SWO“ A” which is a clerk cadre post. The order of promotion was to be effective from 12.07.2013. There was also a clause for keeping the private respondent on probation for a period of six months. The letter also clearly stated that if the private respondent did not report to the new place of posting by the stipulated date, he shall be deemed that he has refused promotion and your



promotion shall be annulled.

3. The averments as well as evidence which has been brought on record indicates that the private respondent refused to accept this letter or office order and for which three of the employees of the branch signed on the letter certifying that the private respondent has refused to accept the letter. He however, filed an application on 24.7.2013 addressed to the Regional Manager of the bank indicating that since he was not keeping well, Birpur being a backward and remote place, he may not be able to obtain proper treatment he may not have support of his family and, therefore, he may be allowed to be promoted in the present branch at Alamnagar. A prayer was made to consider the matter sympathetically. Since the respondents authorities refused to entertain such a request, a writ application was filed seeking a direction upon the appellant bank.

4. Earlier C.W.J.C. No.8404 of 2014 was filed when his request went unheeded by the Bank officials which was disposed of by the learned Single Judge with a direction upon the bank to consider the matter and pass an appropriate order.

5. The bank considered the issue and passed a speaking order dated 15.04.2015 rejecting the claim for consideration of promotion of the private respondent stating that in the facts and circumstances, he



had forfeited his right to be promoted from the Sub staff to the clerical staff.

6. The order dated 15.04.2015 issued by the Deputy Regional Manager came to be challenged in C.W.J.C. NO.7120 of 2015. The learned Single Judge quashed Annexure-1 to the writ application and gave direction for acceptance of joining of the private respondent vide order dated 9.9.2015. So the appeal.

7. Counsel for the appellant-bank submits that the learned Single Judge committed serious error by allowing the writ application by failing to take note of the principle of law that the letter or the office order by which promotion was granted to the private respondent to the clerk cadre was a conditional offer and the offer was to subsist till a given date. Refusal to accept and failure to report to the place of posting would have amounted to giving up the offer, and, therefore, the case was covered by the principle of offer and acceptance and since it is established now that the private respondent refused to accept the letter of promotion and also failed to report and join at the promoted place of posting in terms of the said letter, he forfeited his right for promotion. Refusal by the private respondent and failure to act meant that the offer which was given to him was not acceptable to him and, therefore, there was no valid contract of



service between the bank and the private respondent so far as to the promotion so offered.

8. On the contrary, counsel representing the private respondent submits that within two days of the expiry of the period for joining the promoted post, the private respondent filed a representation explaining the difficulty in accepting the promotion order and it is evident from reading of that representation addressed to the Regional Manager that he wanted to make the acceptance of the promotion order as conditional in the sense that he was willing to accept the promotion, if he was allowed to continue in the present place of posting and not to the transferred place of posting.

9. From a reading of the representation, the Court opines that if there was an offer and that a counter offer was not there or it was a conditional counter offer, then the respondent lost his right to demand or command benefit of the offer of promotion. The representation which was addressed to the Regional Manager was dated 24.07.2013 which meant that the period for which the offer was valid had already expired on 22.07.2013 by failure of the private respondent to act upon by accepting that letter or the offer and, therefore, any representation filed after the period of expiry of the offer will have no meaning or validity.



10. Counsel for the Bank further submits that in a similar circumstance the Hon'ble Supreme Court has occasion to consider a case which was the case of *State of Madhya Pradesh and Ors. Vs. Ramanand Pandey reported in (2014)10 SCC 610*. Attention of the Court has been drawn at para 17 and 18 of the said decision which reads as under :-

“17. The respondent filed the writ petition on 24.10.2008, i.e., almost two years after the cancellation of his promotion order. So much so, even before filing of the writ petition, he did not make any representation of any nature whatsoever. It would also be interesting to note that in his writ petition, the respondent alleged that he was orally told that some departmental enquiry is pending against him and, therefore, his promotion order had been cancelled, but no departmental enquiry was ever started against him. This is clearly an afterthought plea. In the first instance, if that is the reason for cancellation of promotion order, it was not at all necessary for him to wait for departmental enquiry to either start or finish, inasmuch as, when he was not served with any charge-sheet, there was no question of withholding his promotion, which was the position in law, as laid down in K.V. Jankiraman. Furthermore, this was not the reason stated in the cancellation order. The appellants, in their counter-affidavit, had specifically pleaded that there was no departmental enquiry pending and that was not the reason for cancellation of the promotion order and, in fact, it was cancelled as the respondent had refused to accept the promotion order by making representation dated 14.08.2006. As mentioned above, it is this aspect which was to be necessarily looked into which has not been examined by the High Court.

18. As we find that it is the respondent himself who is responsible for cancellation of the promotion order as he did not join the promoted post, the impugned order of the High Court is clearly erroneous and against the law. The same is, accordingly, reversed. As a result, the appeal is



allowed and the writ petition filed by the respondent in the High Court is dismissed. There shall, however, be no order as to costs.”

11. Drawing support from the observation from the Hon’ble Supreme Court in the case of **State of Madhya Pradesh (Supra)**, the submission is that the refusal to accept the order of promotion was a conscious decision taken on behalf of the respondent and, therefore, he cannot be promoted and also change his stand by taking a plea before the learned Single Judge that he is now willing to accept the promotion order as well as accept any place of posting.

12. The private respondent could have been wiser subsequently but since the offer or the letter of promotion was issued by the Bank way back on 15.07.2013 and more than 5 years have now elapsed, this Court is not willing to go by the rational and reasoning given by the learned Single Judge that since it was a personal promotion given to the private respondent and nobody else had been promoted in that post, therefore, vacancy subsist and he ought to be accommodated on the promoted post.

13. The omission was on the part of the private respondent to take benefit of the offer as well as to give his consent or counter offer in terms of the promotion order by accepting it and acting upon it by joining the promoted post and the place of posting but since he has intentionally and deliberately refused to do so, the Bank committed



no error by opining that he has forfeited his right of promotion by his own conduct.

14. The Appeal stands allowed. The impugned order dated 09.09.2015 passed by the learned Single Judge in C.W.J.C. No.7120 of 2015 stands quashed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Sanjeev/-

AFR/NAFR	AFR
CAV DATE	NA
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