

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1278 OF 2015**

Lalit Joshi

..Petitioner

Vs.

Dena Bank & Ors

..Respondents

**Mr. Avinash Jalisatgi a/w Mr. R. R. Mishra I/b Mr. A. B. Desai for the
Petitioner**

**Mr. S. K. Talsania Senior Advocate a/w Mr. Aditya Bhat, Mr. Netaji
Gawade, Mr. Parth Choudhari, Mr. Kaushal Udeshi I/b M/s Sanjay Udeshi
& Co. for the Respondent No.3**

**CORAM :R. M. SAVANT, &
K. K. SONAWANE, JJ
DATE : 5th SEPTEMBER, 2018**

P.C.

1 The above Writ Petition as originally filed was for quashing and setting aside the decision of the Respondent Bank of considering the uncommunicated Annual Performance Appraisal Report (APAR) of the year 2012 for promotion from Grade Scale-III to Grade Scale-IV in the process which was carried out in the year 2014 and not granting promotion to the Petitioner from Grade Scale-III to Grade Scale-IV w.e.f. 30-6-2014 with all consequential benefits. In view of the event which has transpired pending the above Petition namely that the Petitioner was permitted to make a representation against the adverse entry in his APAR for the year 2012 and the consequential order dated 21-6-2016 passed by the Competent Authority i.e.

the Committee of 3 General Managers, that the Petitioner amended the above Petition so as to incorporate prayer (c-2) for quashing and setting aside, the said order dated 21-6-2016 passed by the Competent Authority i.e. committee of 3 General Managers. The Petitioner has also by way of amendment incorporated prayer clauses (c-3) to (c-6) for claiming promotion from, Senior Management Grade Scale-IV to Senior Management Grade Scale-V w.e.f. 4-5-2017 which is the next promotion as according to the Petitioner he is otherwise eligible.

2 The Petitioner herein is presently in the middle management of the Respondent-Dena Bank. The Respondent Bank invited applications from officers belonging to the said middle management for promotion from Grade Scale-III to Grade Scale-IV by publishing a notice on 3-5-2014. The consideration of the candidates for the said promotion was to be on the basis of the APAR for the preceding 3 years i.e. 2010, 2011 and 2012. The Petitioner applied pursuant to the said notice, however in so far as the APARs of the Petitioner are concerned, for the year 2012 the Petitioner had 55 marks whereas for the APAR for the year 2010 the Petitioner had 80 marks and for the APAR for the year 2011 the Petitioner has 72 marks. The Respondent Bank had fixed the bench mark as 75 marks with minimum 60% in each preceding available APAR. In view of the fact that in so far as the year 2012 is concerned, the Petitioner had 55 marks and though the Petitioner's name was

at Sr. No.88, pursuant to the written and computer test the Petitioner's name did not appear in the final list of selected candidate which was put up on 30-6-2014.

3 Aggrieved by his said non selection that the Petitioner as indicated above filed the instant Petition for quashing and setting aside the decision of the Respondent Bank of not selecting the Petitioner, which Petition has thereafter been amended for the reasons which we have already adverted to hereinabove.

4 The above Petition had come up for admission before a Division bench of this Court Anoop V. Mohta (as His Lordship then was) and AA.Sayed JJ., on 2-5-2016. By an order passed on the said day the Petitioner was permitted to make a representation within one week both in respect of the denial of promotion which encompassed the fact that the APAR for the year 2012 was not communicated to the Petitioner. The Respondent Bank was directed to decide the said representation of the Petitioner within 3 weeks from the date of the receipt of the said representation. The Respondent Bank vide its letter dated 19-5-2016 informed the Petitioner of the receipt of the representation dated 6-5-2016 made through his Advocate pursuant to the Division Bench order of this Court dated 2-5-2016 passed in the above Writ Petition. It was mentioned in the said letter that the grievance made by the

Petitioner was in respect of the APAR of the year ending March 2012 which has not been communicated to the Petitioner, the reasons for the said non communication were mentioned in the said letter dated 19-5-2016. The Petitioner was informed that his representation would be placed before the Competent Authority i.e. Committee of 3 General Managers i.e. GM(HRM), GM (Resource Mobilisation) & GM (Inspection). It was lastly informed that the decision of the Competent Authority would also be placed before the Departmental Promotion Committee for review of the case of the Petitioner for promotion. The Petitioner it seems thereafter himself made a representation on 23-5-2016 addressed to the General Manager (HRM), this representation was made by the Petitioner with reference to the letter dated 19-5-2016 of the Respondent Bank. The said representation was exhaustive in nature being both against the uncommunicated APAR of the year ending March 2012 as also against the denial of promotion to the Petitioner on the basis of the said APAR of the year ending March 2012. The said representation was considered by the Competent Authority i.e. Committee of 3 General Managers. The Competent Authority rejected the said representation of the Petitioner. Whilst rejecting the said representation, the Competent Authority has inter alia recorded a finding that the Petitioner has not submitted any evidence of the accepting authority being biased against him. According to the Competent Authority the fact that the reviewing authority increased the marks given by the reporting authority, indicated the absence of any bias. In so far as the

marks given to the Petitioner are concerned, the Competent Authority was of the view that the score given by the reporting authority is based on various attributes pertaining to various key responsibilities areas assigned to the concern officer and the same has been reviewed by the Reviewing Authority and duly accepted by the Accepting Authority. Hence the consideration of the Petitioner's representation by the Competent Authority i.e. the Committee of 3 General Managers was under the order of this Court dated 2-5-2016 and can be said to be in the nature of a post decisional hearing. Hence the consideration of the representation of the Petitioner and its rejection by the Competent Authority i.e. the Committee of 3 General Managers of the Respondent Bank in a way transcends and would impinge upon the grievance of the Petitioner as regards the uncommunicated APAR of the year ending March 2012 . The said fact in our view assumes relevance in the context of the challenge raised in the above Writ Petition.

5 The Learned Counsel for the Petitioner Mr. Jalisatgi would contend that since the APAR of the year ending March 2012 has been taken into consideration and which APAR remained uncommunicated to the Petitioner, the said APAR ought to have been kept away from consideration whilst considering the Petitioner for the promotional post. The Learned Counsel in support of the said contention sought to place reliance on the judgment of the Apex Court in the matter of **Dev Dutt Vs. Union of India &**

Ors.¹, as also the judgment of the Apex Court in Civil Appeal No.32 of 2013 dated 28-8-2018. It was the submission of Mr. Jalisatgi that the post decisional hearing would not cure the violation of principles of natural justice in so far as the uncommunicated APAR of the year ending March 2012 is concerned and that the Petitioner is therefore entitled to be considered for promotion by ignoring the APAR of the year ending March 2012 .

6 Per contra the Learned Senior Counsel for the Respondent Bank Mr. Talsania would contend that post decisional hearing which has been granted to the Petitioner would undoubtedly have an effect on the Petitioner's case of the violation of the principles of natural justice in so far as APAR of the year ending March 2012 is concerned. It was the submission of the Learned Senior Counsel that once the Petitioner was given an opportunity to make a representation against the APAR of the year ending March 2012 and the said representation has been considered by the Competent Authority, the grievance of the Petitioner on that score would not survive. The Learned Senior Counsel sought to place reliance on paragraph 43 of the judgment of the Apex Court in Dev Dutt's case (supra), in support of the aforesaid contention.

7 We have heard the Learned Counsel for the parties at some length. As indicated above the Petition as originally filed was for quashing and setting aside of the decision of the Respondent Bank in not permitting the Petitioner

¹ (2008)8 Supreme Court Cases 725

to the Senior Management Grade Scale IV by taking into consideration the uncommunicated APAR of the year ending March 2012. The said prayer was made in the Petition, in terms of the factual situation as was prevailing at the time of the filing of the above Petition. However, as indicated above by order dated 2-5-2016 a Division Bench of this Court permitted the Petitioner to make a representation against his non promotion as well as against the uncommunicated APAR of the year ending March 2012. The Petitioner accordingly made the said representation on 23-5-2016. The said representation has been considered by the Competent Authority i.e. the Committee of 3 General Managers of the Respondent No.1 and has been rejected. The reasons for the rejection we have already adverted to hereinabove. In a case where the uncommunicated adverse remarks are taken into consideration in respect of a candidate who is in the zone of consideration the usual course that is required to be followed is to give an opportunity to the candidate to make a representation by directing the employer to communicate the adverse entry and consider the representation of the employee against the said adverse entry. The said course of action has been endorsed by the Apex Court as can be seen from paragraph 43 of the judgment in Dev Dutt's case (supra). In the said case the employee concerned had retired and the Apex Court had directed that his representation against the adverse entry be considered and if his representation is allowed and the entry is upgraded, then he may be considered for promotion and the employee may thereafter be

given the monetary benefits. The said course of action in the instant case has been followed albeit on the directions of this Court as contained in its order dated 2-5-2016. Once that be so, in our view, the grievance of the Petitioner based on the violation of the principles of natural justice in so far as the APAR of the year ending March 2012 is concerned, would not survive as what could have been done finally in the above Writ Petition has been done at the interim stage in the above Writ Petition. It is another matter that the Petitioner's representation was not found fit for acceptance and has been rejected by the Competent Authority but the same would not give a leeway to the Petitioner to challenge the action of the Respondent Bank once again on the ground of violation of the principles of natural justice in so far as the APAR of the year ending March 2012 is concerned. The Petitioner's case having been considered and rejected in so far as the APAR of the year ending March 2012 is concerned, the original decision of the Respondent Bank based on the fact that the Petitioner does not meet the parameters for promotion to Grade Scale IV, cannot be found fault with. Hence no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[K. K. SONAWANE, J]

[R.M.SAVANT, J]