

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 8092 of 1995 (O&M)

Date of Decision: 18.10.2019

D.S. Khangwal & Ors.

... Petitioners

versus

National Bank for Agriculture and Rural Development Sterling Centre & Ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Argued by :Mr. I.D. Singla, Advocate
for the petitioners.

Mr. V.K. Jindal, Sr. Advocate with
Mr. Deepender Singh, Advocate and
Ms. Janya Sirohi, Advocate
for the respondents.

ARUN MONGA, J.

1. Challenge herein, *inter alia*, is to an promotion order dated 18.08.1993(Annexure P-3), whereby private respondents No.3, 4 and 6 were promoted as Clerk Grade-I by the respondent National Bank for Agriculture and Rural Development(for brevity, NABARD). Issuance of a writ in the nature of *mandamus* has also been sought commanding the respondents to accord an automatic switch-over to the petitioners from the date of their exercise of option of switch-over and place them in gradation list of Clerks and thereafter accord them promotion as Clerks Grade-I, as per switch over policy dated 30.07.1984 (Annexure P-1).

2. Succinct factual narrative first. The petitioners joined the respondent Bank as Typists during the month of April, 1984. A switch-over scheme was introduced by the respondent Bank for shifting of non-Clerical staff to Clerical cadre. The Scheme gave a choice to an eligible employee to exercise his/ her option for switch-over to the Clerical cadre within prescribed period. Seniority would be fixed in All India Combined Seniority List for Clerical service and in that event the employee had to forgo two third of total non-Clerical service in Class-III(including temporary service) as on the date of acquiring the qualification or as on 11.01.1983, whichever is later, subject to a minimum period of 20 months.

3. It is the case of the petitioners that pursuant to the Scheme, *ibid*, they exercised their option for switch-over to Clerical cadre on 03.08.1989. The respondent Bank took a decision for departmental test amongst the Clerks who had completed 7 years of service as on 31.12.1993, for promotion to Group 'B' staff to the post of Officer in Grade 'A'(General Service). The test was conducted on 20.01.1995 and 21.01.1995. The left over candidates were called by conducting a supplementary test on 12.03.1995. However, without declaring the result thereof, the respondent Bank proceeded to sent respondents No.3, 4 and 6 on induction training course for the post of Assistant Development Officer, ignoring the lawful and legitimate claim of the petitioners. Petitioners were entitled to be promoted as Clerk Grade-I over and above the private respondents who joined the respondent Bank as Clerks in the month of March, 1990 and were not even eligible for sitting in the test.

4. After exercising option to switch-over with effect from 03.08.1989, the petitioners were entitled to be inducted in the Clerk cadre automatically as per the Scheme. Private respondents who were/ are junior have to be placed below

petitioners in the seniority list. The petitioners are required to be promoted as Clerk Grade-I with consequential relief after switching over to Clerical cadre, as per Scheme(Annexure P-1.

5. In the return, the claim of the petitioners has been resisted by the respondent Bank. It is averred that the Scheme which came into force with effect from 31.03.1984 was restricted to typists, Telex Operators, Assistant Caretakers, Telephone Operators, Pharmacists, Punch Card Operators and Draftsmen etc. and not Stenographers. As per Scheme, once a Typist accepted promotion as Stenographer, he cannot claim any right or benefit under the switch-over Scheme, inasmuch as, the Stenographers have been provided a separate channel of promotion to Officer cadre.

6. It is the stand of respondent Bank that petitioner No.1 accepted the promotion as Stenographer as such he ceased to be governed by the switch-over Scheme. Para 3(i)(d) of Appendix I-(I) Staff Rules is applicable on him, according to which, he becomes eligible to take the Departmental written test for promotion to Grade 'A' Officer only on completion of 7 years service as Stenographer. His service as Typist cannot be reckoned for the purpose of qualifying service or for the purpose of seniority. At the time of exercising switching over Scheme, he was not having requisite 7 years qualifying service to his credit, therefore, he was merely allowed to participate in the merit test, but was not permitted to compete in departmental promotion, being ineligible.

7. As regards, petitioners No.2 to 5, it is averred that they were offered to switch-over in May, 1993 and were transferred to Head Office, Bombay. However, they declined to switch-over and opted to continue at Chandigarh office as Typists and had agreed to wait until vacancies in Clerical cadre arose at Chandigarh. It is lateron, when departmental test was conducted, that the

petitioners No.3 to 5 unsuccessfully participated.

8. It is also the stand of the respondent Bank that private respondents No.3 to 6, who belonged to Scheduled Castes, were recruited directly in Clerical services in the month of March, 1990. Per reservation, they got promotion as Clerk Grade-I against the available vacancies in their category, superseding several employees belonging to general category. The petitioners who belonged to the non-Clerical cadre cannot, therefore, compare themselves with private respondents, who were rightly selected for induction training programme.

9. I have heard the rival contentions of learned counsel for the parties and have perused the pleadings along with relevant record appended thereto.

10. As per applicable relevant rules i.e. NABARD(Staff) Rules, which in turn were framed on the basis of bipartite settlement executed between NABARD and its employees through All India NABARD Employees Association. There are two distinct components for providing the promotional avenues to Grade-A Officers for existing staff of the Bank. As per Appendix I-3 of the Rules, besides departmental test for promotion, 20% of the vacancies in the cadre of the Officers in Grade-A are to be filled up by merit test for promotion of the confirmed employees in Group-B (Clerks, Typists, Stenographers etc.), with a minimum 4 years of qualifying service on the basis of competitive written test followed by an interview. In addition to the merit test, departmental test has also been provided for which eligibility condition is 7 years of qualifying service.

11. With reference to eligibility of Stenographers(petitioner No.1) for promotion to Officer Group-A, a minimum of 7 years of qualifying service was, thus, required for being eligible to appear in the departmental test for promotion. Furthermore, the expression qualified service is defined in Rules by way of explanation as service excluding the service in any category lost by an employee,

for any reason whatsoever, for the purpose of seniority.

12. In this background, so far as petitioner No.1 is concerned, his claim that he was not considered for promotion after having successful in the merit test, is not admissible. He was simply allowed to appear in the merit test, but was not eligible to appear in the departmental test since he was still to acquire 7 years qualifying service. Whereas, promotion was to be accorded on the basis of departmental test and the same did not fell in the cadre of 20% of vacancies to be filled up by way of merit test. Any comparison, therefore, of petitioner No.1 with private respondents is completely misplaced.

13. As regards switch-over scheme introduced by NABARD with a view to provide equitable opportunity for promotion of non-Clerical staff i.e. typists, telex operator, Assistant Caretaker, Telephone Operator, Pharmacists, Punch Card Operator and Draftsmen etc., a perusal of the same would reveals that the same is not applicable to the Stenographers. In the premise, once petitioner No.1 who had accepted promotion as Stenographer, he could not have staked his claim for double benefit under switch-over scheme. Stenographers had been provided a separate channel of promotion to the Officer cadre either as a Private Secretary in Secretarial Service or as an Officer in Grade-A in Rural Banking Service. Petitioner No.1 cannot claim twin benefits of two parallel promotion avenues.

14. On the other hand, other four petitioners i.e. petitioners No.2 to 5 were offered actual switch over in May, 1993 by the Bank vide its letter dated 05.06.1993 and were transferred to Head Office at Bombay. The said petitioners with an open mind and being fully conscious of the consequences, declined the switch-over and opted to continue at Chandigarh as Typists and agreed to wait until vacancies in Clerical cadre arose at Chandigarh. In the premise, the Bank cannot be found at fault for their having not opted for switch-over.

15. Another aspect of the matter is that in November, 1994 the Bank offered an opportunity of departmental test to all eligible candidates and petitioners No.2 to 5 were only eligible candidates amongst the petitioners herein who appeared for the same but did not qualify. Accordingly, they were not granted the promotion to Grade-A.

16. The contention of petitioners that respondents No.3 to 6 have been unfairly promoted, also seems to be incorrect. The position that emerges from record is that respondents No.3 to 6 were direct recruitee in the Clerical service in the Scheduled Castes category and joined the Bank in the month of March, 1990. Being from special category, they were accorded early promotion as Clerk Grade-I against the reserved vacancies in the month of August, 1993 and naturally they superseded all general category candidates. As a necessary consequence, they became seniors to the general category candidates. Any comparison of the petitioners who were belonging to General category with that of Scheduled Caste category is, therefore, *per se* not tenable.

17. Furthermore, respondents No.3 to 6 had also been made to undergo the requisite written test in March 1995, which they successfully cleared. As regards their further promotion to Clerk Grade-I to Officers Grade-A, respondents No.3 to 6 ought to have taken the written test held on 21.01.1995, but under some mistaken/ misinterpretation of instructions qua eligibility of the eligible Scheduled Castes/ Scheduled Tribes candidates, they did not take the test even though they were eligible and senior to certain other candidates. In order to provide an opportunity to them, the Bank decided to hold a supplementary test for all those candidates who could not take the test earlier and the same was held on 12.03.1995. Respondents No.3 to 6 undertook the said supplementary written test and successfully qualified the same and were accordingly granted the benefit of

promotion to Grade-A Officer.

18. Thus, seen from any angle, no grounds to interfere in the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, is made out.

19. Apart from the aforesaid merits of the case, discussed in the preceding paras, even otherwise, the case of the petitioners seems to be belated to grant relief, as has been sought by them. An affidavit dated 06.12.2017 has been filed by Assistant General Manager of the Bank, which has not been controverted by the petitioners. The same would reveal that during pendency of the writ petition, all the petitioners have had fair and reasonable opportunity and have been accorded benefit of career progression by the Bank. Petitioner No.1 was promoted as Assistant Manager in the Officers cadre on 02.09.2002 and thereafter promoted as Manager on 15.07.2009 followed by being considered and interviewed for the post of Assistant General Manager on 02.12.2017, the result of which was awaited at the time of filing of the affidavit. Similar is the situation with regard to the other petitioners, as after according the benefit of switch-over as Clerk Grade-II, they were later on accorded the promotions from time to time, except petitioner No.2, who wrote to the Bank to forego his promotion to Group A and B and presently posted as Senior Development Assistant at Chandigarh. Whereas, petitioners No.4, at the time of filing of the affidavit, was serving as Assistant General Manager while petitioner No.4, after being accorded promotions etc., retired in April, 2017 and petitioner No.5 too was promoted from Clerk Grade-II to Clerk Grade-I, but was dismissed from service on 27.11.2008 and thereafter appropriate judicial proceedings were filed by him seeking relief qua his dismissal, which, for the purpose of adjudicating the present writ petition, is not relevant.

20. In view of my discussion and reasoning contained hereinabove, I am

of the view that petitioners are not entitled to any relief. The writ petition is devoid of merit and is accordingly dismissed.

21. No order as to costs.

(ARUN MONGA)
JUDGE

October 18, 2019
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| 1. Whether speaking/ reasoned: | Yes/ No |
| 2. Whether reportable: | Yes/ No |