

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 24079 of 2014 (O&M)

Date of Decision: 02.05.2019

Attar Singh Kalra

... Petitioners

versus

Bank of India & Ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms. Anita Balyan, Advocate
for the petitioner.

Mr. Ranjan Lohan, Advocate
for respondents No.1 to 3.

ARUN MONGA, J. (ORAL)

1. The claim of the petitioner in the instant petition, inter alia, is to seek promotion to the cadre of MMG-II, III and Senior Manager to the extent of his entitlement w.e.f. 01.01.1995 when he fulfilled the requisite criteria for promotion.

2. As per the case set up by the petitioner, due to his involvement in a criminal case along with other employees, his promotion was kept in abeyance. Initially, they were convicted by the trial Court, but the Appellate Court acquitted them of all the criminal charges. Consequently, he submitted a representation and vide order dated 16.05.2008 was given notional promotion from Clerical Cadre to General Banking Officer w.e.f. 01.01.1995.

3. Lateron, the period for which his promotion was kept in abeyance was reckoned only towards *inter se* seniority, whereas another similarly situated employee, namely Sh. S.C. Dua, co-accused in the FIR was not only given the

promotion from the back date but consequential benefits too were granted to him.

4. The petitioner sought parity and submitted another representation, but the same was not adverted, leading to filing of CWP No. 14604 of 2013 before this Court, which was disposed of vide order dated 11.07.2013 and a direction was issued to the respondents to decide the representation of the petitioner by passing a speaking order.

5. The respondents vide impugned order 10.10.2013(Annexure P-12) negated the claim of the petitioner ostensibly on the ground that since the petitioner had originally joined the bank in Clerical cadre and was promoted to the General Banking Officers Cadre and therefore, cannot seek parity with an Officer who was a direct recruitee in the Officers' cadre.

6. The respondents in their written statement justified their action of denial to the claim of the petitioner. They took the stand that the promotion of the petitioner from Clerical cadre to General Banking Officers' cadre in Junior Management Grade Scale-I is governed by settlement dated 05.05.1989, as modified by the settlement dated 18.02.1993. It was averred that after exoneration of the petitioner in the criminal proceedings as well as enquiry, he was given notional promotion w.e.f. 1.1.1995, as per stipulation contained in Para 10-C of settlement dated 18.02.1993.

7. It is the case of respondents that the inter se seniority of the petitioner was maintained and consequently he was selected for promotion to Scale-II w.e.f. 01.04.2012 under seniority channel and was further promoted to MMGS-III w.e.f. 16.06.2015.

8. The respondents denied the parity in the case of the petitioner and Sh. S.C. Dua. It is further submitted that Sh. S.C. Dua was already in the Officers' cadre and the regulations governing his service conditions, viz. Officers' Service

Regulation were not applicable to the petitioner who was then in Clerical cadre and was governed by Bipartite settlement dated 5.5.1989, as modified on 18.02.1993.

9. The petitioner filed replication and controverted the stand taken in the written statement and reiterated the grounds taken in the petition.

10. Learned counsel for the petitioner contends that the petitioner had fulfilled the requisite qualifications and criteria for the post of MMG-II in the year 2008 and yet he was promoted on the same post much later in the year 2012. Subsequently, he was given the benefit of next higher grade i.e. MMG-III and Senior Manager. According to him, the petitioner has been discriminated and though the respondents granted him notional promotion w.e.f. 01.01.1995 with the stipulation to maintain inter se seniority, but it was not adhered to and he was not granted promotions in consonance with his junior who though was involved in the criminal case and was acquitted.

11. On the other hand, learned counsel for the respondents urges that the claim of the petitioner is barred by *estoppel* as after exoneration from the charges, he himself failed to exercise his option to promotion. According to him, the case of the petitioner is distinguishable from the case of Sh. S.C. Dua, as claimed by the petitioner.

12. Pursuant to order dated 19.04.2019 passed by this Court, an affidavit of Mr. Kiran Prashant Kumar, Constituted Attorney and Senior Manager Bank of India has been tendered in course of hearing which is taken on record. It has been deposed in affidavit that an eligible officer has to apply for promotion to higher post and he was not entitled for consideration automatically. It is further deposed that the petitioner did not apply for the promotion in the wake of promotion circular dated 01.01.2011, despite being eligible. However, he later preferred to

apply for promotion from JMGS-I to MMGS-II under fast track promotion. The petitioner was not eligible for the same, therefore, his application was rejected under fast track category. Lateron, he applied under seniority channel and was selected as per his *inter se* seniority.

13. I have gone through the rival pleadings of the parties and have heard the learned counsel and I am of the opinion that the impugned order dated 21.11.2011(Annexure P-12) does not stand judicial scrutiny and is, therefore, not tenable.

14. It is conceded case that pursuant to the same FIR prosecution was initiated against the petitioner(a promotee) and Sh. S.C. Dua (a direct recruitee). Lateron, consequent upon acquittal, Sh.S.C. Dua who was direct recruitee was granted the benefit of promotion with all consequential pecuniary and other benefits, on the other hand, similar treatment was denied to the petitioner. Request of the petitioner for parity with the similarly situated co-accused officer was turned down on the ground that the petitioner is not at par, since the Officer concerned is a direct recruitee and petitioner is a promotee.

15. I am in agreement with the contention of learned counsel for the petitioner that once the petitioner was exonerated of all the criminal charges, as in the case of the similarly situated Officer, he too was entitled to the benefit of his promotion on the ground of parity with directly recruited Officer.

16. Learned counsel for the petitioner rightly points out that the petitioner was considered for the promotion and outcome thereof was kept in abeyance in a sealed cover, awaiting the decision of the criminal charges. Once the petitioner was acquitted of the criminal charges, he is entitled to the benefit of notional promotion w.e.f. effective date i.e. 01.01.1995 and the denial of the same to him on the ground that since he was promoted from Clerical cadre to Officers Cadre, is

not justified.

17. The plea of learned counsel for the respondent is that the petitioner could not have been granted promotion pursuant to his application, as departmental enquiries were pending against him. This argument too does not cut any ice. After conclusion of departmental proceedings and on being exonerated therein, the petitioner again approached the respondents vide his application/representation dated 09.09.2009(Annexure P-9), followed by yet another representation dated 03.05.2011(Annexure P-10) seeking benefit of promotion. However, promotion was not granted to him with effect from due date. The plea of pendency of departmental proceedings is, therefore, a complete euphemism.

18. A perusal of impugned order, Annexure P-12 would show that it does not disclose any reasons of disentitlement of petitioner for promotion to the cadre of MMG-II, III and Senior Manager while reckoning his seniority w.e.f. 01.01.1995, which ought to be his effective promotion date. As against effective date, the promotion was notionally granted on 16.05.2008.

19. I am not in agreement with the argument of learned counsel for the respondent that the petitioner had acquiesced to non grant of promotion w.e.f. 01.01.1995 as despite his being eligible, per his own volition he did not apply for his promotion. The same is, however, belied from the application dated 04.09.2004, Annexure P-3/A filed by the petitioner seeking promotion.

20. Even otherwise, I am of the opinion that reliance of learned counsel for the respondents on Clause 19(c) of the Bipartite Settlement is totally misplaced. For better appreciation, the said clause is reproduced hereinbelow:-

“Ultimately, if the employee is found not guilty or if he is not punished or if it is decided not to go for appeal against acquittal and not to initiate disciplinary action for the same

charges, the Management will promote such employee notionally from the date his promotion was kept in abeyance. However, the employee so promoted notionally would not be entitled for salary as General Banking Officer or as Agricultural Officer for the period for which his promotion was kept in abeyance but the same period shall be counted for the purpose of calculation of his inter-se seniority only.”

A perusal of the above shows that it is only monetary benefits which are to be confined w.e.f. the date when the promotion was kept in abeyance and not the promotion which was to be granted w.e.f. the date of entitlement. In any case, if the interpretation resorted to by learned counsel for the respondents is accepted, it would be highly discriminatory. The same cannot be sustained on the ground that while the directly recruited Officer is held entitled to all the monetary benefits, on the other hand, a promoted Officer from Clerical cadre will be dis-entitled to the promotion w.e.f. the date of entitlement merely on the ground of being promotee.

21. Therefore, I am of the considered opinion that the respondents were unjustified in not granting promotion to the petitioner to the next higher grade by treating his promotion in general banking officer cadre w.e.f 01.01.1995 and further the respondents went wrong in denying the promotion to the petitioner to the post of MM Scale-II though he was eligible for the same w.e.f. 31.03.2002.

22. So far as monetary benefits, as contemplated under Clause 19(c) of the Settlement dated 05.05.2008, are concerned, a perusal of order dated 07.01.2015 reveals that the petitioner had foregone the same and confined the prayer to the benefit of seniority and consequential promotion on the basis of his notional promotion w.e.f. 01.01.1995.

23. In view of the discussion above and reasoning contained therein, the

impugned order dated 10.10.2013(Annexure P-12) is set aside. The respondents are directed to grant the benefit of consequent promotions to the petitioner to the cadre of MMG-II, III and Senior Manager while taking the seniority w.e.f. 01.01.1995 which is the promotion date for JMG-I.

24. Respondents are directed to do the needful within a period of three months.

25. No costs.

(ARUN MONGA)
JUDGE

May 02, 2019
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| 1. | Whether speaking/ reasoned: | Yes/ No |
| 2. | Whether reportable: | Yes/ No |