

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6004-1996

Date of Decision:-30.01.2020.

Bant Singh Rahi

.....Petitioner

Versus

Punjab & Sind Bank and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. H.C. Arora, Advocate for the petitioner.

Mr. M.S. Rana, Advocate for the respondents.

SANJAY KUMAR, J. (Oral)

Mr. M.S. Rana, learned counsel, entered appearance on behalf of the respondents and filed his *Vakalatnama*. The same is taken on record.

The petitioner, a Manager in the service of the Punjab and Sind Bank at the relevant point of time, assails its order dated 15.09.1994 (Annexure P-4), whereby he was reverted from Middle Management Grade Scale-III (MMGS-III) to Middle Management Grade Scale-II (MMGS-II). This Court is informed that the petitioner thereafter sought and was permitted to avail voluntary retirement on 28.02.2001.

Perusal of the impugned order dated 15.09.1994 (Annexure P-4) reflects that the petitioner's promotion result was kept in a sealed cover owing to pendency of disciplinary proceedings against him and was only opened on 17.09.1993. Thereupon, he was promoted as a MMGS-III Officer

w.e.f. that date and was placed on probation for a period of one year. This

was intimated to him under letter dated 17.09.1993. His confirmation in the promotion post was subject to his being found suitable during the period of probation. However, upon review of his case, the competent authority opined that his performance during the probation period was unsatisfactory and it was accordingly decided that he should be reverted to the post of MMGS-II Officer, from which he was promoted.

Mr. H.C. Arora, learned counsel, would contend that the aforestated reversion was arbitrary and discriminatory inasmuch as a similarly situated officer, viz., Mr. K.S. Arora, was not subjected to the same treatment as he was not even placed on probation after being promoted.

In this regard, reference may be made to Regulation No.15 in Chapter 4, titled 'Appointment, Probation, Confirmation, Promotion, Seniority and Termination' of the Punjab & Sind Bank (Officers) Service Regulations, 1982. Regulation 15 deals with probation and reads as under:-

“15. (1) An officer directly appointed to the Junior Management Grade shall be on probation for a period of two years.

(2) An employee of the Bank promoted as an officer in the Junior Management Grade shall be on probation for one year.

(3) An officer appointed to any other grade shall be on probation for such period as may be decided by the Bank.

Provided that the Competent Authority may, in the case of any officer reduce the period of probation or dispense with probation.”

The aforestated Regulation therefore makes it clear that an officer appointed to any grade other than Junior Management Grade can be placed on probation for such period as may be decided by the Bank.

However, Mr. H.C. Arora, learned counsel, would contend that as the aforestated norm in Regulation 15 (3) speaks of only 'an officer appointed' and not 'an officer promoted', the same can have no application to an officer promoted from MMGS-II to MMGS-III. This contention, though seemingly attractive, necessarily has to be rejected in the light of Regulation 16. Regulation 16 deals with confirmation and Regulation 16 (3) (b) reads thus:-

“(3) Where during the period of probation, including the period of extension, if any, the Competent Authority is of the opinion that the officer is not fit for conformation:

(a) in the case of a direct appointee, his services may be terminated by one month's notice, or payment of one month's emoluments in lieu thereof; and

(b) in the case of a promotee from the Bank's service, he may be reverted to the Grade or Cadre from which he was promoted.”

Regulation 16 (3) (b) makes it clear that in the case of a promotee from the Bank's service, he may be reverted to 'the Grade or Cadre' from which he was promoted. If Regulation 15 is to be given a narrow interpretation to mean that only an employee promoted to Junior Management Grade alone is liable to be placed on probation and not an Officer promoted from MMGS-II to MMGS-III, Regulation 16 (3) (b) would have only spoken of a Junior Management Grade Officer alone and no reference would have been made to 'the Grade or Cadre' from which he was promoted. The use of the word 'Grade' in the aforestated Regulation therefore, makes it clear that an Officer promoted from MMGS-II to MMGS-III is also liable to be reverted if his services are not found to be fit for confirmation during the probation period. The argument of Mr. H.C. Arora, learned counsel, to the contrary, is therefore rejected.

Insofar as the issue of arbitrariness and discrimination is concerned, this Court cannot sit in appeal over the comparability of the cases of the petitioner and Mr. K.S. Arora, the other officer who is stated to have been promoted in like circumstances. It would be within the discretion of the Bank to decide as to how it should ensure proper discipline and efficiency in its ranks and this Court cannot interfere with such exercise of discretionary power unless specific grounds are made out warranting such interference. Be it noted that the petitioner does not allege any *malafides* against any officer of the Bank in relation to his reversion. That being so, this Court does not find any grounds to draw an adverse inference against the Bank on the ground that it discriminated against the petitioner by subjecting him to special treatment.

Mr. H.C. Arora, learned counsel, lastly submitted that though the petitioner was reverted by letter dated 15.09.1994, he was commended for his services during the relevant period. Reliance is placed on the letter dated 10.11.1994 addressed by the Assistant General Manager (Planning & Development) of the Bank. By the said letter, the Assistant General Manager noted that the branch where the petitioner was working as a Manager, which had incurred losses during the financial year 1993-94, came into profit earning category as on 30.09.1994 and the petitioner was asked to continue his efforts to develop the business of the branch so that it showed still higher profits. Mr. H.C. Arora, learned counsel, would further state that even after his reversion, the branch continued to prosper under the supervision and managerial skills of the petitioner. However, Mr. M.S. Rana, learned counsel for the Bank, would point out that assessment of the services of the petitioner during his probation period in the promoted post

would not be limited only to the financial aspect and several other parameters would have to be taken into consideration. For this purpose, he would place reliance on the letter dated 31.07.1994 addressed to the petitioner by the Zonal Manager of the Bank, wherein various shortcomings on the part of the petitioner were set out and he was cautioned not to give another chance for complaint in future. The subsequent letter dated 22.08.1994 addressed by the Zonal Manager of the Bank also runs on the same lines and the petitioner was asked to show-cause as to why he should not be subjected to disciplinary action for non-compliance with the orders of the competent authority and for non-submission of pending returns. Though Mr. H.C. Arora, learned counsel, would assert that the petitioner denied the allegations levelled against him under the aforestated communications in the replication filed before this Court, such disputed questions of facts cannot be subjected to review by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution.

It is well settled that a probationer can be discharged if he is found to be unsuitable for the post which he is holding. Suitability, in this regard, would not depend merely on excellence or proficiency in work as a particular attitude or tendency displayed by such employee can also influence the decision of the confirming authority while judging his suitability or fitness for confirmation. [See **Dr. T.C.M. Pillai. Vs. The Indian Institute of Technology, Guindy, Madras** {1971 AIR (SC) 1811}]. It is also well settled that during the period of probation, the employer is entitled to assess the suitability of the employee for remaining in service and to record a finding of unsatisfactory performance of work and duties during such period. Any such finding on their part would not amount to a stigma

and cannot be found fault with. [See **Kunwar Arun Kumar Vs. U.P. Hill Electronic Corporation Limited and others** {1997 SCC (L&S) 558}].

On the above analysis, this Court finds no grounds to interfere with the reversion of the petitioner effected under the impugned order dated 15.09.1994 (Annexure P-4).

The writ petition is therefore devoid of merit and is accordingly dismissed.

No order as to costs.

(SANJAY KUMAR)
JUDGE

January 30, 2020.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.