

OD-1

ORDER SHEET

WPO/492/2019

THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SUKLA BAGCHI
Versus
UCO BANK AND ORS.

BEFORE:

The Hon'ble JUSTICE SAUGATA BHATTACHARYYA

Date: April 27, 2022.

Appearance

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Arjun Ray Mukherjee, Adv.
Ms. Saheli Mukherjee, Adv.
Ms. Sarda Sha, Adv.
...for the petitioner

Mr. Soumen Das, Adv.
.....for the respondents

The Court: In the writ petition, the petitioner has claimed promotion from MMGS-III to SMGS-IV. Since at the material point of time she was serving as branch head at Habra, the petitioner participated in the promotional process and as per the promotional policy which is at page 49 onwards of the writ petition, petitioner's Annual Performance Appraisal Report (for short 'APAR') for three consecutive years 2015, 2016 and 2017 were considered by the Appropriate Authority in terms of the said promotional policy and marks were allotted accordingly. The grievance of

the petitioner is for the year 2017, though the Reviewing Authority and the Reporting Authority awarded 75.5 marks separately, whereas the Accepting Authority has awarded 69.5 marks which threw the petitioner out of zone of consideration for being promoted.

Such reduction of marks on APAR of the petitioner for the year 2017 was questioned by the petitioner and ultimately the matter travelled before the Hon'ble Division Bench as submitted by Mr. Bikash Ranjan Bhattacharya, learned senior counsel representing the petitioner. The Hon'ble Division Bench while disposing of the appeal preferred by the UCO Bank vide order dated 16th July, 2019, passed following order:

Perusing the writ petition we notice that there were several grievances sought to be raised by the writ petitioner which were not addressed by the Grievance Redressal Mechanism which prompted the writ petitioner in approaching the writ Court. We are, therefore, of the view that in the facts and circumstances of the instant case, the impugned judgment and order can be set aside while granting liberty to the respondent no.1/writ petitioner to re-approach the Grievance Redressal Mechanism (being the Executive Director of UCO bank) who shall have a fresh look at the matter-objectively-without being influenced in any manner by the previous decision of the Grievance Redressal Mechanism which went against her and take a decision in the matter supported with cogent and justifiable reasons, after giving adequate opportunity of hearing to the respondent no. 1/writ petitioner.

The entire exercise, in terms of this order, shall be completed by the Executive Director of the appellant no. 1, being the UCO Bank, as expeditiously as possible preferably within a period of four weeks but not later than six weeks from date of communication of a photostat certified copy of the order.

We wish to make it clear that the decision to be rendered by the Executive Director of UCO Bank in terms of this order shall not be affected by the vacancy position. Non-availability of vacancy to accommodate the respondent no. 1/writ petitioner shall not stand in the way of a decision in the matter.

Needless to mention that we have not gone into the merits of the controversy in issue and the Executive Director of UCO bank – while deciding the matter in terms of this order – shall not be influenced in any manner by any observation made either by the First Court or by us, except to the extent indicated above.”

Pursuant to the said order of the Hon’ble Division Bench dated 16th July, 2019, the Executive Director of the Bank passed order which has been quoted in the letter dated 27th August, 2019 issued by the Assistant General Manager, HRM Department addressed to the petitioner. From the said letter dated 27th August, 2019 of the Assistant General Manager, it appears that the Executive Director in terms of the order of the Hon’ble Division Bench considered the entire issue and passed an order whereby the claim of the petitioner for awarding higher marks against APAR of 2017 was rejected. The said communication letter dated 27th August, 2019 of the Assistant General Manager whereby the decision of the Executive Director was communicated is the subject matter of challenge in the present writ petition.

Mr. Bhattachaya appearing on behalf of the petitioner has submitted that the petitioner retired on 31st October, 2019 on superannuation and if Court finds that the benefit of promotion can be

accorded to her, such benefit can be granted notionally. On pointing out relevant part of the order of the Executive Director as contained in the communication letter dated 27th August, 2019, it has been contended on behalf of the petitioner that the authority of the Bank was required to assess the marks awarded by the Accepting Authority on the basis of objective consideration, which has not been done in the present case. It has further been submitted that on business dimensions, different marks have been awarded to the petitioner who was the branch head at the material point of time and the subordinate staff, which is impermissible since on business dimensions, marks are required to be allotted in terms of the promotional policy. General perception is uniform marks are required to be allotted. It has further been submitted that the authority of the Bank was required to decide the issue strictly in accordance with the directions given by the Hon'ble Division Bench by keeping all points open and on clean slate the issue ought to have been decided, but the Bank authority in its turn merely dotted the line on the slate. Upon drawing attention to page 43 of the writ petition, Mr. Bhattacharya has invited the attention of this Court on the marks which were required to be awarded in favour of the petitioner under business dimensions and according to the petitioner, such requirement has not been followed in the present case and, therefore, the order of the concerned authority of the Bank as communicated vide letter dated 27th August, 2019 is not sustainable.

Mr. Das, learned counsel appears on behalf of the Bank and has submitted that the promotional policy of the Bank has not been challenged in this writ petition. It has also been submitted that pursuant to the said policy relating to promotion, petitioner offered her candidature and when it was found that she was not selected for promotion, she filed writ petition challenging the marks awarded by the Accepting Authority on reducing the same as awarded by the Reviewing Authority and Reporting Authority. Such stand, according to the Bank, is impermissible. Mr. Das has defended the decision of the Executive Director as contained in the letter dated 27th August, 2019 and has submitted that there is no anomaly in such decision making process and such decision may not be interfered with.

This Court has considered the rival submissions of parties and perused the relevant materials and pleadings available on record. The matter relates to promotion from MMGS-III to SMGS-IV in terms of the promotional policy of the Bank. Vide notification dated 1st June, 2017, a list of 247 selected officers were found eligible to be promoted wherein name of the petitioner did not feature, since on appraisal of APAR for the year 2017, it was found that petitioner was entitled to receive 69.5 marks as awarded by the Accepting Authority. Said 69.5 marks were awarded by the Accepting Authority upon reducing the marks of the petitioner which was awarded by the Reviewing Authority and the Reporting Authority, i.e. 75.5. It is the case of the petitioner that had the marks of the Reviewing Authority and

Reporting Authority for the year 2017 on APAR been maintained, which was 75.5, then the petitioner would have come within the zone for consideration for the said promotion.

The Hon'ble Division Bench while considering the entire gamut of the issue, directed the petitioner herein to re-approach the Grievance Redressal Mechanism being the Executive Director of the UCO Bank who shall have a fresh look at the matter objectively without being influenced in any manner by the previous decision of the Grievance Redressal Mechanism. Pursuant to such direction, the appropriate authority of the Bank took up the issue and passed order, which is quoted in the letter dated 27th August, 2019 and relevant part of the said decision of the Executive Director is quoted below:

- "1. Ms.Sukla Bagchi was the Branch Head of Habra Branch and her performance need to be assessed on the parameters/ performance indicators applicable to Branch Heads. It cannot be compared with other subordinate officers working in the Branch. So, her contention that because subordinate officers have got around 80% marks so she should also get almost equivalent to that, is not tenable.*
- 2. The main role of the Branch head is developmental role particularly development of the credit/advances business of the branch. She has miserably failed in that during 2016-2017 in Habra Branch as the advances growth of the branch was negative during that particular year.*
- 3. In-spite of negative growth of advances, the Reporting and Reviewing Authority of Ms. Bagchi have awarded her 7/10 for deployment of funds, which was not justified.*
- 4. The Accepting Authority has only corrected the higher marks given by the Reporting/Reviewing Authority for deployment of funds by reducing it by 6(six). He has given justification also in the APAR format for reducing her APAR marks from 75.5 to 69.5.*

5. *Considering all the above points, the decision of the Accepting Authority appears to be justified and based on performance of Ms. Bagchi in delivering her duties as Branch Head.”*

On perusal of such decision of the Executive Director, it appears to this Court that the said authority of the bank applied its mind while reassessing the marks awarded by the Accepting Authority in consideration of the grievance of the petitioner as ventilated through writ petition that under business dimensions when sub-ordinate staff were awarded higher marks, how being the Manager of the same bank lower marks can be awarded to her. While answering this salient point as taken by the petitioner, it has been explained by the Executive Director that since the petitioner was the branch head, her performance needs to be assessed on the parameter/performance indicator applicable to branch head and may not be compared with other sub-ordinate officers working in the branch. It appears to this Court that such finding of the Executive Director has logic, since the petitioner was manning the post of branch head, the parameter required to be applied on her APAR may not be akin to that of the subordinate officer. While assessing performance of the petitioner based on APAR, it was also observed by the bank that in spite of negative growth of advance, the Reporting and Reviewing Authorities of the petitioner have awarded 7 out of 10 marks on deployment of funds, same cannot be countenanced.

On behalf of the petitioner, attention has been drawn to page 43 of the writ petition wherein a formula has been indicated for awarding marks under business dimensions. It has been argued that this Court is required to consider whether such formula as contained under business dimensions relating to awarding of marks has been followed or not by the respondent bank while appraising the APAR of the petitioner for the year 2017. This court is not in agreement with such submission made on behalf of the petitioner, considering the issue involved in this writ petition. The Writ Court being a Court of judicial review should restrict itself to the point whether the petitioner was assessed under business dimensions or not and whether fair opportunity was granted to offer her candidature for being appraised by the bank authority for the purpose of promotion. Therefore, the contention of the petitioner in this regard is negatived.

Another aspect does not escape notice of this Court that the petitioner has not challenged the promotional policy, which was applied for considering the candidature of the petitioner and participated in the process of promotion subsequently when it was found that she has not been selected, she filed writ petition challenging the marks awarded by the Accepting Authority. Such stand of the petitioner can also not be countenanced.

In view of the above discussions, this Court does not find any merit in the present writ petition and the same is dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order be made available to the parties, if applied for, upon compliance of all requisite formalities.

(SAUGATA BHATTACHARYYA, J.)

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