

OD-06

ORDER SHEET
APO/63/2022
WITH
WPO/492/2019
IA NO:GA/1/2022
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

SUKLA BAGCHI
-VS-
UCO BANK AND ORS

BEFORE:
HON'BLE JUSTICE RAJASEKHAR MANTHA
HON'BLE JUSTICE SUPRATIM BHATTACHARYA
DATE: 29TH AUGUST 2023.

APPEARANCE:
Mr. A. Ray Mukherjee, Adv.; Ms. S. Sha, Adv., for appellant.
Mr. S. Das, Adv., for UCO Bank.

1. THE COURT: The instant appeal is directed against the judgment and order dated April 23, 2022, passed by a learned Single Judge of this Court in WPO/492/2019 (Sukla Bagchi –vs- UCO Bank & Ors.).

Facts of the case

2. The appellant/writ petitioner participated in the promotion process from MMGS Scale-3 to SMGS Scale-4 in the merit category. The petitioner held the position of Branch Manager at several branches of the UCO Bank.

3. The reporting and reviewing authority gave 7 marks to the petitioner in the “Annual Performance Appraisal Report” (APAR). The accepting authority, however, reduced and gave her one mark.
4. As a consequence thereof, the petitioner secured a total of 69.5 marks and missed the promotion by .5 marks.
5. The petitioner challenged the said order declining her promotion, before a learned Single Bench of this Court in WPO/98/2018.
6. The said writ petition was allowed by a learned Single Bench of this Court by order dated June 18, 2019. Not only was the APAR of the petitioner interfered with but the entire promotion of 247 officers, was also set aside. The said officers were not parties to the writ petition.
7. The said order was carried in appeal by the UCO Bank in APO/101/2019. By a judgment and order dated July 16, 2019, decision of the learned Single Bench dated June 18, 2019 was set aside. The petitioner was, however, granted liberty to make a representation before the Grievance Redressal Authority thereunder.
8. The Executive Director of the bank being the Grievance Redressal Authority was directed to take a decision in the matter giving justifiable reasons after adequate opportunity of hearing to the petitioner.
9. The Executive Director considered the petitioner’s representation. In the representation, the petitioner raised the following:
 - (a) Persons subordinate to the petitioner in the branch have been given higher marks than her.
 - (b) The accepting authority acted contrary to the findings of the reporting and reviewing authorities.

- (c) The authorities had held that there was no positive growth in advances, which is contrary to record.
 - (d) The entire process of the performance appraisal in the promotion policy of the UCO Bank is ridden with subjectivity.
 - (e) This has led to factors other than merit being considered while awarding marks for performance by the accepting authority.
 - (f) Even assuming for the sake of argument that the accepting authority's decision involves a subjective element, there is no uniformity maintained in awarding marks to the petitioner.
10. The Executive Director, after having carefully considered the petitioner's representation and having given a personal hearing, did not find favour with the petitioner.
 11. The writ petitioner challenged the said order passed by the Executive Director dated August 27, 2019 before a learned Single Bench in a second writ petition being WPO/492/2019.
 12. By a judgment and order dated April 27, 2022, the learned Single Bench dismissed the said writ petition. It is this order that is the subject matter of challenge in this appeal.
 13. The appellant has superannuated from service during the pendency of the proceedings.

Discussion and Analysis of this Court

14. This Court has carefully heard the arguments of counsel for the appellant, Mr. Ray Mukherjee as well as Mr. Das, counsel for the Bank.
15. It is now a well settled principle of service jurisprudence that an employee can only claim a right to participate in a promotion process. The promotion itself cannot be claimed as a matter of right. The thrust of the petitioner's contentions, in the two writ petitions appears, in essence a right to be promoted.
16. The learned Single Bench has very rightly found that the grievances of the petitioner against the Rules of promotion, i.e. award of 7 marks by the reviewing authority in the APARs has

never ever been questioned by the writ petitioner. She has also participated in the promotion process under the same Rules. Hence, the writ petitioner is estopped from raising any grievance with the rules themselves. Such rules, in fact, apart from self-appraisal and other parameters involved cover only marks of 10 to be awarded by the accepting authorities.

17. The element of subjectivity in any decision making process of public employment, in terms of the dicta of the Supreme Court, has been curtailed by reducing the total number of marks for subjective appraisal limited to 10. The majority of the heads of marking are, therefore, outside the domain of subjectivity.
18. It must therefore be construed, accepted and understood as part and parcel of the promotion process that there is an element, albeit to a limited extent of subjectivity in the assessment of the performance of a Branch Manager by the assessing authority.
19. The authority which reduced the marks from 7 to 1 was well within its authority to do so. The writ court cannot substitute its own views when two views are possible and all the more so when the marks are awarded on the basis of a subjective satisfaction of an authority. Parameters of subjectivity cannot be defined. By its very nature such part of the averment, therefore, cannot be objective.
20. There is evidence on record to indicate that the petitioner was guilty of absenteeism and other erratic behaviour. It is quite possible that the increase in the performance of the branch during the one year tenure of the petitioner as a Branch Manager could have been a result of the performance of the subordinates. It is equally possible that such increased part of loans and advances have not actually increased the actual business of the Branch. These are matters best left to the administrative authority and in the instant case, the Bank. A Writ Court cannot conjecture or surmise in this regard.

21. The controlling authority of a branch of a bank, located in the Regional Office is best placed to determine the actual performance of a Branch Manager. It would lead to gross impropriety and serious fallacy for a writ court to sit in appeal over the findings of matters of such nature.
22. It is equally well settled in administrative law that a writ court, in exercise of powers of judicial review, tests the decision making process and not the decision itself. The argument of perversity in the decision advanced by Mr. Ray Mukherjee, learned counsel for the appellant, does not inspire confidence for the reasons already discussed above.

Conclusion

23. In those circumstances, this Court is of clear and unequivocal view that the impugned judgment and order calls for no interference whatsoever. The decision of the Executive Director i.e. the Grievance Redressal Authority, is sustainable in law.
24. APO/63/2022 is dismissed along with all pending applications. Interim orders, if any, stand vacated.

(RAJASEKHAR MANTHA, J)

(SUPRATIM BHATTACHARYA, J)

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