



2024:DHC:2079



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 18th December, 2023

Pronounced on: 15th March, 2024

+ **W.P.(C) 1013/2022**

DINESH SINGH SAINI

..... Petitioner

Through: **Mr.Zeyaul Haque, Advocate**

versus

STATE BANK OF INDIA

..... Respondent

Through: **Mr. Rajiv Kapur, Adv and Mr. Akshit Kapur, Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“A. Issue an appropriate writ under Article 226 of the Constitution of India for issuance of an appropriate Writ of Mandamus and any other appropriate order or direction to the Respondents promote the petitioner to the post of JMGS-1 w.e.f. from 01.05.18 in view of the notification dated 18.05.18 for the promotion exercise carried out in the Promotion Year 2018-19, with all benefits, or as deemed fit by this Hon'ble Court in the forthcoming promotion year.



B. Issue a direction calling for the records of the promotional Exercise carried out in the promotion year 2018-19 to ascertain and fix the accountability for anomaly in the promotional exercise which was done mechanically without application of mind and also gross negligence in not recommending the name of the petitioner for the said promotion exercise for the PY 2018-19.

C. Pass any such other order or directions may deem fit and proper in the interest of justice.”

FACTUAL HISTORY

2. The petitioner, presently working as a Senior Associate in Shivaji Nagar Branch, Gurgaon, State Bank of India, joined the respondent Bank as an Assistant pursuant to his retirement from the Indian Air Force after a mandatory service period of 20 years in the ex-servicemen category on 16th December, 2010.

3. On 31st March, 2017, the Jaipur Circle of State Bank of India (hereinafter “SBI”) was carved out from the existing Delhi Zone, thereby, covering the state of Rajasthan, pursuant to the creation and reorganization of circles upon acquisition of associate banks by the SBI.

4. Meanwhile, on 30th November, 2017, the SBI notified and issued the Out of Cadre promotion exercise for the promotion year 2018-2019. The said promotion exercise was for promotion from the clerical post to Junior Management Scale – 1 (hereinafter “JMGS-1”). As per the said notification, the last date for recommending the name of eligible employees of different SBI branches in Delhi circle, to the respective Controllers by the Branch Heads was 4th December, 2017. Further, the last date for sending the



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recommended names to the Human Resource Department, Local Head Office, Sanas Marg, New Delhi by the respective controllers was 28th December, 2017.

5. On 28th December, 2017, the SBI vide its e-circular notified the revised eligibility criteria *qua* age for Out of Cadre promotion in the Staff Award under different channels. The two different relevant channels for the purpose of the present case are 'merit channel' and 'normal-cum-seniority channel'. Thereafter, on 28th January, 2018, the online examination for the promotion exercise of the year 2018-2019 was conducted.

6. Subsequently, the petitioner addressed an online query to the State Bank Learning Centre (hereinafter "SBLC"), thereby, asking for clarification regarding his eligibility to apply for the promotion year 2018-2019, for the promotion exercise of clerical care to officer cadre of JMGS-1.

7. On 19th March, 2018, the SBLC replied by stating that '*Kindly refer to HT handbook Vol-2 available in SBI Time-Manuals.*' As per the reply of the SBLC and reference to the chapter 4 of the above said Manual, the petitioner was not eligible for the promotion exercise that was carried out in the promotion year 2018-2019, but was only eligible in the promotion year 2021-2022. Thereafter, the SBI vide its letter dated 18th May, 2018 *inter alia* notified all the Branch Heads regarding the completion of promotion exercise and selection of 656 candidates and further intimated that the promotion is effective from 1st May, 2018.

8. After the results were out and the promotion exercise was completed, the petitioner was asked by the SBI to avail an In-cadre promotion from the



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then post of Associate to Senior Associate, i.e. the present position. The petitioner refused the offer for In-cadre promotion stating that he will be eligible for a JMGS-1 promotion in the promotion year 2021-2022 as per the revised policy.

9. After the completion of promotion exercise of year 2018-2019, the petitioner came to know about the revised policy that was notified on 28th December, 2017. When the petitioner noticed that the eligibility criteria *qua* the age was reduced and he had already become eligible for the promotion exercise of year 2018-2019, he addressed a letter dated 23rd May, 2018 to the Regional Manager, Regional Business Office, Gurgaon, stating that his name was neither recommended nor was his 'opting out' taken by the Branch Head. In the said letter, the petitioner had further stated that he was eligible to apply for the promotion exercise for the year 2018-2019 under both the 'merit' and 'normal-cum-merit channel', but he was not recommended and considered for the same in the eligibility list.

10. On 3rd November, 2018, the respondent Bank, i.e., SBI announced the an advertisement for the promotion year 2019-2020 for the Delhi zone and the date for online examination was scheduled for 24th February, 2019 in which the petitioner appeared and passed.

11. Thereafter, an advertisement was published by the Jaipur Zone for the promotion exercise from clerical cadre to officer cadre, JMGS-1 for the promotion year 2019-2020. Pursuant to the carving out of a separate zone from the Delhi circle, the SBI Jaipur Zone notified 729 vacancies for the promotion year 2019-2020 in clerical to officer cadre of JMGS-1. The



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petitioner kept orally requesting the management that he is ready to even go to Jaipur and change his place if they consider the promotion for the promotion year 2018-2019.

12. Being aggrieved by not having been recommended for the promotion exercise by the SBI for the Promotion year 2018-2019 and having been left out, the petitioner addressed a letter dated 14th April, 2019 to the Chief General Manager, Local Head Office, Sansad Marg, New Delhi, through the Assistant General Manager, explaining the facts and circumstances under which his name was not recommended in the eligibility list. The petitioner sent another letter dated 22nd April, 2019 to the Chairman, SBI, Mumbai for redressal of his grievance and requested to be recommended to the zone of selection carved out for Jaipur zone as a one-time special measure as he qualified the written examination for the promotion year 2019-2020 but was not called in the zone of selection erroneously. He also stated that he is willing to serve in any part of the country in officer cadre, JMGS-1.

13. On 26th April, 2019, the interview for the candidates considered in the zone of selection for the promotion year 2019-2020 was held. The final list of successful candidates for promotion from clerical to JMGS-1 was announced for the promotion year 2019-2020, wherein, 97 candidates were selected against the vacancy of 100 and the zone of selection of 174 candidates. Pursuant to the same, the AGM, HR of the Local Head Office, Sansad Marg, New Delhi, addressed a letter to the petitioner through the Branch Manager. The letter warned the petitioner not to write letter to the CGM, Sansad Marg, directly and was also informed that his name had not



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been included in the zone of selection on the basis of marks obtained by him in the examination. The petitioner alleges that the explanation and reason provided by the respondent Bank for not including in the zone of selection was vague.

14. Subsequently, on 13th May, 2019, the SBI Delhi Zone declared a list of all the candidates who were selected for the promotion in the year 2019-2020 and the said list showed only 97 candidates against 100 vacancies from the 174 candidates.

15. On 7th June, 2019, the Regional Manager, HR Section, Regional Business Office, Gurgaon issued a show cause notice to the petitioner's Branch Manager, calling for an explanation as to why the petitioner's name was not recommended for the promotion year 2018-2019. Then, the petitioner addressed a communication to the Regional Manager, SBI, RBO, Gurgaon, in reference to the letter dated 7th June, 2019 and sought for steps taken in that regard. Thereafter, the petitioner addressed several other communications including letters dated 31st October, 2019 and 18th March, 2020.

16. The petitioner's letter dated 18th March, 2020 was responded by the Local Head Office (l-1) of SBI at Parliament Street, New Delhi, stating that *'With reference to your complaint, enquiry was already completed in July, 2019 therefore, we treat the matter as dealt with'*. The petitioner, not being satisfied by the said response, on 4th April, 2020, again reopened his grievance to which the Corporate Office, Mumbai, responded in similar terms.



17. Being aggrieved by the above-stated chain of events, the petitioner has approached this Court under the extraordinary writ jurisdiction conferred upon this Court under Article 226 of the Constitution of India seeking directions against the respondent to promote him to the post of JMGS-1 w.e.f. 1st May, 2018 in view of the notification dated 18th May, 2018 for the promotion exercise carried out in the promotion year 2018-2019 with all the consequential benefits.

PLEADINGS

18. The petitioner has filed the instant writ petition on 18th December, 2021 and has submitted below extracted arguments:

“....A. Because the respondent SBI failed and demonstrated negligence in not sending the name of the petitioner in the list of recommended eligible candidates for the promotion exercise 2018-19. The respondent has not taken any step to redress the grievance of the petitioner that was raised to them vide representations dated 23.05.2018, 14.04.2019, 22.04.2019, 25.04.2019, 31.10.2019 and 18.03.20.

B. Because the letter dated 04.04.2020 of the respondent Bank from its Local Head Office (L-l), and the Corporate office Mumbai is vague and evasive as they miserably failed in adhering to and appreciating their own policy on Staff Award-Out of Cadre Promotion which has laid down in Chapter 4 under the heading "other guidelines" in clause "iv" that, "HR Department at Local Head Offices will prepare list of eligible candidates in respect of all employees from all branches/offices located in the geographical area of the Circle. The HR Department of LHO will also make other arrangements for conducting tests and interviews. ". The corporate office failed



to acknowledge the failure on the part of the Bank Manager that it was his sole responsibility to recommend the name of petitioner in the list of eligible candidates.

c. Because the respondent evaded to respond to the grievance\ by ignoring the clause 8 of the Advertisement dated 30.11.17 for the promotion year 2018-19 which specifically and emphatically mandates the Head of all Branches in Delhi Circle to "Please ensure to send the recommendations of the eligible employees to your Controller latest by 4.12.2017. If you have no names to recommend, please send NIL statement. In case, name of any eligible employee is omitted, the responsibility for not submitting his particulars will rest with respective Branch Manager/Head of the Department. "

D. Because the respondent is attempting to wriggle out of its responsibility and demonstrated failure by taking refuge under a cryptic statement in the reply dated 04.04.2020 that "In the matter, we advise that several announcements were published by Delhi circle regarding amendment in eligibility and verification of data wherein all eligible candidates were instructed to verify the data for correction/addition/deletion and no response was received from you or Branch regarding announcements." The statement is misleading, as the State Bank Learning Centre (SBLC) in its own communication dated 19.03.18 referred to the HR Hand Book, which redirects to the old pre revised policy.

E. Because the respondent has committed illegality in changing the eligibility criteria for Out of Cadre promotion in the promotion year 2018-19 after the recommendation process was complete. Because in the Notification dated 30.11.17 for the promotion exercise of the Promotion year 2018-19, the date of online examination was 28.01.18 and the recommendation process was completed by 11.12.17 but the amendment in the



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eligibility criteria was notified to the head of Branches on 28.12.17 just 30 days before the examination and 17 days after the recommendation process was complete...”

19. In response to the present petition, the respondent Bank filed its counter affidavit dated 23rd November, 2023 opposing the contentions advanced in the present petition by way of the following arguments:

“...9. The petitioner had applied and appeared in the promotional test for promotion year 2019-20, however his name did not appear in zone selection which was advised by letter dated 03.05.2019 i.e., his name is not included in the merit list of zone of selection on the basis of marks obtained by him in the examination. Therefore, the petitioner could not get selected for the promotion from clerical to JMGS-1 during promotion year 2019-20.

PARAWISE REPLY

5. That the contents of para 5 of the petition refers to the notification dated 30.11.2017; whereby as per Annexure-C the employee who wanted to opt out of the said promotion exercise could also have submitted the letter to the bank. However, the petitioner failed to opt for in the promotional exercise, hence his case could not be recommended to the controller. It is submitted that in the case the petitioner failed to opt for the promotion and had also failed to submit the Annexure-C (for opting out from the promotion exercise). It is pertinent to note that as per the bank's instructions, an employee may opt out of the promotion exercise for the concerned promotion year.



7. That the contents of para 7 of the petition it is admitted that the petitioner was not eligible under normal cum seniority channel for promotion exercise for the year 2018-19 as per the eligibility criteria in terms of the Notification dated 30.11.2017, as the petitioner had not fulfilled the criteria nor submitted/ opt for the promotional exercise of 2018-19 hence could not be recommended. The petitioner had served for 7 years 3 months- and 15 days thereby not fulfilling the criteria for promotional exercise before amendment.

11. That the contents of Para 11 of the present petition, it is submitted that just because of the fact that the petitioner was not aware of the revised policy does not give him the right to claim any relief. It is a well settled law that ignorance of law is not an excuse and the respondent bank has duly/responsibly issued the revised circular. The SBI HR manual Vol 2 provide all detail for selection and the same is enclosed herewith as **Annexure R-6**.

12&13. That the contents of Para 12 and 13 of the present petition are a matter of record and needs no reply on behalf of the respondent bank. The bank identifies the number of vacancies on circle bases and select the candidates who become eligible. It is submitted that for the promotion year 2018-2019, 656 candidates were finally selected against 618 vacancies due to back log of vacancies of the previous year....”

20. In response to the counter affidavit of the respondent no. 1, the petitioner filed a rejoinder dated 3rd August, 2023, refuting the submissions advanced by the respondent Bank. Relevant extracts are as under:



*“...4. The averments here in the corresponding Para 4 of the counter affidavit is denied being false misleading and evasive. The respondent has used the term “seeking recommendation” for promotion to JMGS-I. This is a clever drafting in order to shift the entire responsibility from the Branch head to the petitioner, which is in clear violation of the e-circular (Pg 47, 64 petition) and the Show cause notice dated 07.06.2019 (Pg-98 99 Petition) issued by the Regional Manager to the Branch head of the petitioner. Eligible employee is always recommended and he doesn’t seek recommendation. Further, the petitioner knew that he is going to be eligible only in the Promotion year 2021-22 with the date of eligibility falling on 01.04.2021. After this promotion exercise suddenly the policy was changed on 28.12.2017 the effect of which was that the petitioner became eligible. This sudden change in the policy midway, once the selection process has begun with the announcement of this circular dated 30.11.2017, the responsibility was fastened on the Branch heads therefore the amended policy dated 28.12.2017 made it specific for all the branch heads to **“Please arrange to bring the contents of this circular to the notice of all employees working at your branch.”** The circular did not say that the bank shall not be responsible if any of the eligible employees do not notice this amendment as it is available on the SBI Times online, which case the respondent is trying to build up.....*

9. In response to the corresponding para 9 of the Counter Affidavit it is submitted that the Petitioner’s name was not there in the zone selection for the reasons mentioned in the writ petition and is not being reproduced herein for the sake of brevity and leave is craved to refer and rely upon the same during the course of argument.



10. In response to the corresponding para 10 of the Counter Affidavit it is submitted that the respondent's failure led to the deprivation of petitioner from the promotion exercise of the PY 2018-19. The Branch manager is the custodian of necessary documents that are required for the purpose of promotion exercise, which is also recorded in the Show Cause Notice dated 07.06.2019 issued by the Regional Manager, annexed at page 98-88 of the petition.

11. The averments herein the corresponding para 11 of the Counter Affidavit are a matter of record and hence need no response. The respondent came to know about the amended policy only in march 2018, after the entire promotion exercise was over. The respondent's stand is absurd, because there was no occasion for him to ask for verification of his data or addition or deletion when his recommendation was not even sent. It is unfathomable as to which data the respondent is talking about...."

21. Written Submissions dated 15th December, 2023 filed on behalf of the petitioner and Written Submissions dated 6th October, 2023 filed on behalf of the respondent Bank is also on record.

SUBMISSIONS

(submissions on behalf of the petitioner)

22. Learned counsel appearing on behalf of the petitioner submitted that the respondent Bank failed and demonstrated negligence in not sending his name in the list of recommended eligible candidates for the promotion exercise for the year 2018-2019. The respondent has not taken any step to redress the grievance of the petitioner raised vide representations dated 23rd



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May, 2018, 14th April, 2019, 22nd April, 2019, 25th April, 2019, 31st October, 2019 and 18th March, 2020.

23. It is submitted that respondent Bank erroneously evaded to respond the grievance of the petitioner by ignoring Clause 8 of the advertisement dated 30th November, 2017 for the promotion year 2018-2019 which specifically mandates the heads of all the branches in Delhi Circle to send recommendations of the eligible employees.

24. It is submitted that the respondent is attempting to wriggle out of its responsibility and demonstrated failure by taking refuge under a cryptic statement in the reply dated 4th April, 2020 that *'In the matter, we advise that several announcements were published by Delhi circle regarding amendment in eligibility and verification of data wherein all eligible candidates were instructed to verify the data for correction/addition/deletion and no response was received from you or Branch regarding announcements.'* which is misleading, as the SBLC, in its own communication dated 19th March, 2018, had referred to the HR Hand Book, which redirected to the old *pre revised* policy.

25. It is submitted that the respondent has committed illegality in changing the eligibility criteria for Out of Cadre promotion in the promotion year 2018-2019 after the recommendation process was complete.

26. It is further submitted that in the notification dated 30th November, 2017, for the promotion exercise of the promotion year 2018-2019, the date of online examination was 28th January, 2018 and the recommendation process was completed by 11th December, 2017, the amendment in the



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eligibility criteria was notified to the heads of branches on 28th December, 2017, i.e., just 30 days before the examination and 17 days after the recommendation process was complete.

27. It is submitted that if the respondent Bank decided to change the eligibility criteria, an effective and reasonable publication should have been made by giving maximum coverage to the said amendment and ample opportunity to the employees.

28. It is submitted that the branch manager had to send recommendation to the respective controller by informing the consenting employee of his eligibility and then collecting Annexure-1 accompanied with the Circular. In case the employee opts out of the promotion exercise out of his own volition then the branch manager was to collect the Opt out application as mentioned in the circular.

29. It is also submitted that in both the cases, the Circular makes the branch manager duty bound to collect either Annexure-1 or the Opting out application from an employee and then send the final list of candidates to the controller.

30. It is further submitted that the respondent is trying to convolute the facts contrary to the record. It never happens in the government department that an employee recommends himself; rather it always has to be recommended by the authorized officer, which in this case is the branch manager. Therefore, for the respondent to say that the petitioner failed to submit Annexure-1 is incorrect, misleading and contrary to the circular and is only an attempt to save face.



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31. It is submitted that the HR department of the respondent Bank, at serial no. 5 in the circular dated 28th December, 2017, obligated the branch heads to bring the revised policy to the notice of all the employees in addition to the online publication. It is submitted that the same is evident from Clause 8 of the circular dated 30th November, 2017, wherein, it has been clarified that in case, name of any eligible employee is omitted, the responsibility for not submitting the same rests upon the respective branch manager/head of the department.

32. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs, as prayed, may be granted.

(submissions on behalf of the respondent)

33. *Per Contra*, learned counsel appearing on behalf of the respondent Bank vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merit.

34. It is submitted that the petitioner has filed the present petition under Article 226 of the Constitution of India seeking direction to the respondent to promote the petitioner to the post of JMGS-1 w.e.f. 1st May, 2018 in view of the notification dated 18th May, 2018 for the promotion exercise carried out in the promotion year 2018-2019; however, the petitioner has wrongly relied upon the notification dated 18th May, 2018 for the promotion exercise for the year 2018-2019, whereas the notification for the promotion in the year 2018-2019 was issued on 30th November, 2017, which is applicable in the present case.



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35. It is submitted that by way of the present petition, the petitioner is seeking promotion w.e.f. 1st May, 2018; however, the promotion exercise carried out for the promotion year 2018-2019 was completed on 18th May, 2018. The petitioner during the said period failed to raise any objection regarding his participation or his name not been included in the list of promotion for the promotion year 2018-2019 and it is only after the completion of the promotion exercise on 18th May, 2018, the petitioner approached the bank on 23rd May, 2018.

36. It is submitted that the present petition is barred by limitation since the petitioner filed the present petition in the year 2022 alleging that his name was not included in the list for promotion year 2018-2019. It is further submitted that the petitioner woke up from slumber after a considerable lapse of time without providing any cogent reasons for the said delay.

37. It is submitted that in terms of the notification dated 30th November, 2017 *qua* the promotion for the year 2018- 2019, the promotion through Merit Channel required minimum service of 6 years and not exceeding 45 years of age and through Seniority Channel the minimum service required is of 12 years and not exceeding 55 years of age. Admittedly, the petitioner did not fulfill any of the criteria in terms of the said notification *qua* promotion for the year 2018-2019.

38. It is submitted that in terms of the amended notification dated 28th December, 2017, the petitioner was eligible to apply for participation; however, he failed to submit his application for participation. It is further submitted that all the candidates who wish to participate in the promotion



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exercise for the year 2018-2019 were to submit Annexure-1 duly signed to the respective branch and, thereafter, the branch was to provide up to date service sheet and the performance appraisal report/grade to the controller.

39. It is submitted that the petitioner having failed to submit Annexure-1 of the notification dated 30th November, 2017 (as amended on 28th December, 2017) by providing the requisite details to the respective branch seeking recommendation for promotion to JMGS-1, which was to be forwarded for onward submission to the controller, the petitioner cannot shift the burden to apply for participation in the promotion process under the said circular on the respective branch.

40. It is submitted that the contention of the petitioner that he did not have the knowledge about the amended notification dated 28th December, 2017 is wrong and misconceived as the said amended notification was very much available on SBI Times which is accessible to all the employees of the bank and the petitioner was eligible only as per the notification dated 28th December, 2017 and not prior thereto.

41. It is further submitted that the respondent Bank had issued several announcements regarding amendment in the eligibility criteria by issuing notices dated 30th December, 2017, 6th January, 2018 and 8th January, 2018; however, due to the fault and negligence on part of the petitioner in having failed to submit the details or any objection during the promotion process for the year 2018-2019, the petitioner cannot now raise any objection and seek relief.



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42. It is submitted that the respondent Bank had issued a notice dated 30th December, 2017, 6th January, 2018 and 8th January, 2018 in SBI Times, Delhi Circle, for verification of data of all the eligible candidates regarding promotion for the year 2018-2019; however, the petitioner failed to seek any verification and apply to participate in the promotion exercise for the said year. The petitioner, on 18th May, 2018 for the year 2018-2019, had approached the respondent Bank vide letter dated 23rd May, 2018, i.e., after the completion of promotion exercise.

43. Therefore, in view of the submissions made above, it is submitted that instant petition being devoid of any merit may be dismissed.

ANALYSIS AND FINDINGS

44. The matter was heard at length with arguments advanced by the learned counsel on both sides. This Court has also perused the entire material on record and has duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties, and pleadings presented by the learned counsel for the parties.

45. The petitioner is aggrieved by the alleged failure and negligence of the respondent Bank in promoting him from the post of Senior Associate (Clerk) to JMGS-1 (Officer). It has been submitted on petitioner's behalf that his name was not included by his Branch Manager in the list of eligible candidates for the promotion exercise in the year 2018-19. The concerned Branch Manager of each branch in a circle had been given the responsibility by the HR Policy handbook to prepare a list of all the eligible candidates



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who wished to be included in the promotion exercise and also make a list of all those candidates who wished to opt-out of the promotion exercise. The list of all the eligible candidates were to be recommended to the HR department of the Local Head office (hereinafter “LHO”).

46. It has been contended on behalf of the petitioner that he kept raising his grievance in this regard from time to time, to which the respondent Bank or its higher authorities either did not answer or were evasive in owning their responsibility. In response to the petitioner's grievance dated 18th March, 2020, the respondent finally sent a communication dated 4th April, 2020, denying the promotion, with the reasoning which is alleged to be absolutely false, misleading, incorrect, evasive and in complete deviation from its own internal communications, policy on promotion and the terms and condition of the promotion advertisement dated 30th November, 2017.

47. The notification dated 30th November, 2017 determined the cut-off date for eligibility to be 1st April, 2018 for the promotion exercise of promotion year 2018-2019 in accordance with the Out of Cadre promotion policy dated 31st March, 2016 (*pre-revised*). As per this cut-off date, in accordance with the *pre-revised* policy, as on 1st April, 2018, in order to seek promotion under the normal-cum-seniority channel, the petitioner should have completed minimum 10 years of service (*ex servicemen category*) and must not be above 55 years of age. However, as on 1st April, 2018, the petitioner had attained 50.9 years of age against the upper age limit of 55 years but had served the respondent Bank only for 8 years against the required 10 years of minimum services (*12 minus 2 for ex servicemen*



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category) and hence, he was not eligible under the normal-cum-seniority channel for the promotion exercise for the year 2018-2019, as per the *pre-revised* policy, however, the petitioner would have been eligible only in the promotion year 2021-2022.

48. In rival submissions, the respondent Bank has submitted that it had made an amendment in the eligibility criteria for promotion vide its *revised policy* circular dated 28th December, 2017. In terms of the amended notification, the petitioner was eligible to apply for participation in the promotion process but he failed to submit his application i.e. Annexure-1 of the notification dated 30th November, 2017 in terms of paragraph 8 of the circular, as amended on 28th December, 2017, to his Branch Manager for forwarding the same to his controlling office. All the candidates who wish to participate in the promotion exercise for the year 2018-2019 had to submit the said Annexure-1 duly signed, to the respective branch and thereafter, the branch had to provide up to date service sheet and the performance appraisal report/grade to the controller.

49. It has been contended that the SBI HR Manual Vol-II provides the details of selection which have been followed by the respondent Bank. The number of vacancies is identified circle wise and keeps on varying from year to year and circle wise. The zone of selection is prepared on the basis of performance on the written test. The candidates are to be called for interview in the ratio of 2 candidates for every 1 vacancy in the descending order of merit to form the Zone of Selection.



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50. The petitioner failed to submit Annexure-1 of the notification dated 30th November, 2017 (as amended on 28th December, 2017) by not providing the requisite details to the respective branch seeking recommendation for promotion to JMGS-1 which was to be forwarded for onward submission to the controller.

51. The contention of the petitioner that he did not have any knowledge about the amended notification dated 28th December, 2017 has been refuted by the respondent Bank submitting to the effect that the amended notification was available on SBI Times and furthermore, the respondent Bank had issued several announcements by way of notices dated 30th December, 2017, 6th January, 2018 and 8th January, 2018.

52. It has also been submitted on behalf of the respondent Bank that for the promotion year 2019-2020, it had issued a notification dated 3rd November, 2018, to intimate the promotion process from clerical to JMGS-1 and the petitioner had duly applied to participate in this promotion exercise. The petitioner's name was included in the list of eligible candidates for the promotion in the year 2019-2020 and the petitioner even appeared in the promotion test, however, his name did not appear in the zone of selection due to as he did not secure qualifying marks as required and the same was informed to him vide letter dated 3rd May, 2019.

53. It has finally been submitted on Bank's behalf that the petitioner was posted at Delhi Circle and his candidature could have been considered only in Delhi Circle and therefore, the petitioner cannot seek his candidature for Jaipur Circle. The vacancies are declared on the basis of man power of the



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specific circle and the creation of circle does not affect the selection process in any other circle.

54. Now adverting to the issue in hand.

55. The SBI carries out promotional exercise every year for promotion from Clerical cadre to JMGS- 1 (Officer's) cadre by advertising it through their Human Resource Department. For the Promotion year 2018-2019, the Human Resource Department, Local Head Office, Sansad Marg, New Delhi, notified the concerned Branch Heads of SBI in the Delhi Circle, *vide* a notification dated 30th November, 2017. The above said notification had categorical instructions to the Branch Heads of the Delhi Circle to perform their respective activities and responsibilities. Clause 5 of the notification stipulated and directed the Branch Heads that:

“..5. You are requested to arrange to send to your Controllers on the enclosed proforma (Annexure-I) the particulars and recommendations of eligible employees in Clerical Cadre, working at your Branch/Office alongwith a copy of up-to date service sheet on COS 392 and the Performance Appraisal Reports/Grades for the year ended on 31.3.2016, 31.3.2017 & 31.03.2018, respectively. The eligibility criteria for the captioned promotions has been detailed in Annexure A & B for the respective channel...”

56. The above extracted Clause 5 stipulates the Branch Heads to arrange and send a list of eligible employees working in their branches upon assessing their eligibility on the basis of their up to date service sheets and performance appraisal reports/grades for the years 2016, 2017 and 2018 after referring to their respective files.



57. Clause 4 of the above said notification is also relevant and pertinent for the purpose of the present case which stipulates the option given to the employees who want to opt out of the promotion exercise for their own personal reasons, but were fulfilling the eligibility criteria otherwise. The relevant portion of the said clause is as under:

“..4. In this connection, it has been decided that employees who fulfil the eligibility criteria for the captioned promotion but do not find themselves well equipped to participate in the promotion exercise, may opt out of the promotion process for the concerned promotion year, at their volition by submitting an application in writing on lines of Annexure C enclosed with Corporate Centre e Circular No. CDO/P&HRD-IR/114/2011-12 (Sl. No. 1146/2011-12), dated 28.03.2012. Please, therefore, ensure that APPLICATION FOR OPT OUT (ANNEXURE-'C' enclosed with this circular) from the promotion exercise is collected from the candidates who do not wish to appear in the written examination...”

58. Clause 8 of the same notification states the responsibility of any omission in carrying out the activity at the Branch level on the Branch Head, and the same reads as under:

“..8. Please ensure to send the recommendations of the eligible employees to your Controllers latest by 4.12.2017. If you have no names to recommend, please send NIL statement. In case, name of any eligible employee is omitted, the responsibility for not submitting his particulars will rest with respective Branch Manager/Head of the Department...”

59. Chapter 4 of the HR handbook of the SBI, updated as on 31st March, 2016 (*pre revised*) which *inter alia* regulates the Out of Cadre promotion, at



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Page no. 108 in Clause 'A' stipulates about promotion from Clerical Cadre to JMGS-1 (Officer Cadre). There are three different channels of promotion as laid down in Chapter 4 of the said policy viz. Trainee Officer, Merit Channel, Normal-cum-Seniority Channel.

60. The petitioner is seeking promotion to the post of JMGS-1 as per the notification dated 18th May, 2018 for the promotion year 2018-2019, whereas, perusal of the record shows that for the said year, the notification applicable was issued on 30th November, 2017.

61. This Court is of the view that in terms of the notification dated 30th November, 2017, for general candidates, promotion through merit channel required minimum service of 6 years and age should not exceed 45 years and through normal-cum-seniority channel, the minimum service required is 12 years and the age should not be more than 55 years. As per paragraph no. 7 of the counter affidavit, it has been submitted before this Court that the petitioner had served for 7 years 3 months and 15 days, thereby, not fulfilling the criteria for promotion exercise before the amendment. Accordingly, the petitioner's name was not sent in the list of eligible candidates for the promotion year 2018-2019 as he did not fulfill any eligibility criteria for the promotion year 2018-2019. The relevant paragraph of the counter affidavit is as under:

"..7.That the contents of para 7 of the petition it is admitted that the petitioner was not eligible under normal cum seniority channel for promotion exercise for the year 2018-9 as per the eligibility criteria in terms of the Notification dated 30.11.2017, as the petitioner had not fulfilled the criteria nor submitted/ opt



for the promotional exercise of 2018-19 hence could not be recommended. The petitioner had served for 7 years 3 months and 15 days thereby not fulfilling the criteria for promotional exercise before amendment...”

62. Furthermore, in view of Clause 4 of the above said notification, the option was given to the employees of the respondent Bank that in case the employees wanted to opt out of the promotion exercise for their own personal reasons, who otherwise were fulfilling the eligibility criteria, they could have withdrawn from the promotion exercise by submitting an application in terms of Annexure – C. The records reveal that no such application was filed by the petitioner.

63. Thereafter, the respondent Bank revised its policy dated 30th November, 2017 and issued amended notification dated 28th December, 2017 where it relaxed the eligibility criteria for the promotion year 2018-2019. In terms of the new amended notification, the petitioner became eligible to apply for the participation in the promotion exercise for both merit channel as well as normal-cum-seniority channel, but he failed to submit his application as per the requirement to his Branch Manager for forwarding the same to the controlling office.

64. Pertinently, it is not the function of the Court to hear appeals over the decision of the selection committee and to scrutinize the merits of the candidates. The Hon’ble Supreme Court in ***Dalpat Abasaheb Solunke v. B.S. Mahajan***¹, has held that whether a candidate is fit for a particular post

¹ (1990) 1 SCC 305



or not has to be decided by the duly constituted selection committee since it is only the committee which has the expertise on the said subject and the Court in this regard do not hold any expertise. Furthermore, the Courts can only interfere in the event there is illegality or patent material irregularity thereon. The relevant extracts of the said judgment are as under:

“12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.”



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65. The petitioner has also contended that he could not submit his application as he was not aware about the amended notification since the respondent Bank had failed to inform him about the same.

66. In this regard, it is observed that as per the records available before this Court, the said amended notification dated 30th December, 2017 was available on SBI Times which is accessible to all the employees of the respondent Bank and the petitioner ought to have been vigilant and aware about the same. Furthermore, the records also reveal that on 6th January, 2018 a second notice was also issued in SBI Times with the instructions to verify the data of all the eligible candidates and advice deletion and addition to any particulars to the bank. The third notice for verification of data was published in SBI Times on 8th January, 2018 and the petitioner again failed to seek any redressal and approached the respondent Bank only on 23rd May, 2018, i.e., after the completion of the promotion exercise on 18th May, 2018.

67. The respondent Bank has maintained that the petitioner's name was not recommended in the promotion year 2018-2019 as per the earlier policy (*pre-revised*) as he had not served in terms of the necessary experience in order to be considered. Therefore, the petitioner's contention noted hereinabove do not hold any water.

68. It is appropriate to state that in view of issuance of the amended promotion notification, the previous notification (*pre-revised*) ceased to be in operation and hence there is no quarrel about the fact that the amended notification had to be followed for the promotion exercise for the year 2018-2019.



69. At this stage, this Court deems it prudent to refer to the judgment passed by the Hon'ble Supreme Court in the matter of **Hardev Singh v. Union of India**², wherein, the Hon'ble Court has categorically held that no employee has a right to get promotion but an employee has the right to be considered for promotion. In case an employee is eligible for the promotion, he ought to be considered for the promotion but the law does not state that the said employee has to be promoted. The relevant paragraphs of the said judgment are as follows:

“17. It cannot be disputed that no employee has a right to get promotion; so the appellant had no right to get promotion to the rank of Lieutenant-General but he had a right to be considered for promotion to the rank of Lieutenant-General and if as per the prevailing policy, he was eligible to be promoted to the said rank, he ought to have been considered. In the instant case, there is no dispute to the fact that the appellant's case was duly considered by the SSB for his promotion to the rank of Lieutenant-General.

22. We also find substance in the policy that if a person has performed his duty excellently at a particular stage in his career, then that performance of excellence cannot be considered for the entire life. When an officer has to get his promotion strictly on merits, his performance should be commendable throughout and especially during the last few years. The case of the appellant was considered in 2009 for his promotion to the rank of Lieutenant-General and, therefore, the achievements of the appellant in 1985 could not have been ordinarily considered by the SSB. In the circumstances, the

² (2011) 10 SCC 121



submissions relating to not considering Kirti Chakra award would not help the appellant.

25. In our opinion, it is always open to an employer to change its policy in relation to giving promotion to the employees. This Court would normally not interfere in such policy decisions. We would like to quote the decision of this Court in Virender S. Hooda v. State of Haryana [(1999) 3 SCC 696 : 1999 SCC (L&S) 824] where this Court had held in para 4 of the judgment that: (SCC p. 699)

“4. ... When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same.”

26. Similarly, in Balco Employees' Union v. Union of India [(2002) 2 SCC 333] it has been held that a court cannot strike down a policy decision taken by the Government merely because it feels that another policy would have been fairer or wiser or more scientific or logical. It is not within the domain of the court to weigh the pros and cons of the policy or to test the degree of its beneficial or equitable disposition...”

70. In the judgment of **Hardev Singh (Supra)**, it was also held by the Hon'ble Supreme Court that it is always open to an employer to change its policy in relation to giving promotion to the employees and normally, the Courts should not interfere in such promotion policy decisions.

71. It is pertinent to mention herein that as per Annexure P-16 which is a letter dated 3rd May, 2019, the petitioner's name was not included in the



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zone of selection for the promotion exercise for the year 2019-2020 since he did not score qualifying marks in the examination. Taking the same into consideration, it is observed that any contention advanced by the petitioner alleging illegality and arbitrariness *qua* the promotion exercise for the promotion year 2019-2020 is baseless and the same is hereby rejected.

72. There is sufficient material available on record which shows that the petitioner had ample knowledge in view of which he participated in the promotion exercise and having been given the opportunity to appear in the exam, the petitioner failed to score required marks to get selected in the zone of selection. Therefore, no case with respect to the promotion year 2019-2020 is made out.

73. This Court also deems it appropriate to state that the petitioner's request transferring him at the Jaipur Circle of SBI cannot be accepted as posting to a particular branch is the prerogative of the administrative/concerned department and the same is done after scrutinizing the relevant factors. The Court cannot go into the same as the same will amount to an unreasonable and unjustified interference.

74. At this juncture, this Court shall briefly revisit the scope of this Court's power under Article 226 of the Constitution of India. The jurisdiction, of the High Court in matters where Article 226 has been invoked, is limited. It is a well settled proposition of law that it is not for the High Courts to constitute itself into an Appellate Court over the decisions passed by the Tribunals/Courts/Authorities below, since, the concerned



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authority is constituted under special legislations to resolve the disputes of a kind.

75. A writ is issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals and such errors would mean where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is against the principles of natural justice.

76. Tersely stated, *firstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, the Constitutional Court shall not exercise its writ jurisdiction to interfere when *prima facie*; the Court can conclude that no error of law has occurred. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not allow the Court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. The reasoning must be cogent and convincing. *Fourthly*, a High Court shall intervene only in cases where there is a gross violation of the rights of the petitioner and the conclusion of the authority concerned is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the



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Court to intervene. *Fifthly*, if the Court observes that there has been a gross violation of the principles of natural justice.

77. This Court is of the view that ordinarily, a right to be considered for promotion is a fundamental right which cannot be taken away from an employee and in case, the case is considered and incumbent does not qualify because of lack of criteria, the said employee cannot lay claim for promotion.

78. It is deduced that the petitioner's name, in terms of the *pre revised* policy was not recommended for the promotion year 2018-2019 to the controlling head since he was not eligible and the petitioner's name was further not recommended to the zone of selection in terms of the amended notification since he did not qualify in the written examination. Furthermore, the petitioner approached the respondent Bank on 23rd May, 2018, for the grievance related to the *pre revised* policy which is after the completion of the promotion exercise on 18th May, 2018 in terms of the amended notification.

79. Hence, this Court is of the considered view that the grounds raised by the petitioner to seek the reliefs as prayed for are insufficient and cannot be entertained by this Court.

80. Therefore, no case has been made out in order to invite the judicial review of this Court and this Court does not find any prudent reason to interfere in the present case.



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CONCLUSION

81. Considering the facts of the instant case as well as the law, the petitioner has not been able to prove any *mala fide* against the officers of the respondent Bank. In view of the same, this Court is of the view that if the concerned selection committee did not recommend the name of the petitioner for promotion to JMGS-1, it is not for this Court to enter into the merit of the decision while exercising the power of judicial review. Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly and not the decision as such.

82. In regard to the discussions of facts of the instant case as well as the law, this Court is not inclined to exercise its extraordinary writ jurisdiction under Article 226 of the Constitution of India as there is no force in the propositions put forth by the petitioner. In view of the same, the instant petition is liable to be dismissed.

83. In light of the above, the instant writ petition is dismissed being devoid of any merit. Pending applications, if any, also stands dismissed.

84. The judgment be uploaded on the website forthwith

(CHANDRA DHARI SINGH)
JUDGE

MARCH 15, 2024
sv/ryp/av