

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Reetobroto Kumar Mitra

FMA 1980 of 2014

Pawan Kumar Sharma (Alias P. K. Sharma)
Versus
Union of India & Ors.

For the Appellant : *Mr. Pinaki Dhole,*
Mr. Rabindra Kumar Pathak,
Mr. Ziaur Rahaman,
Ms. Srijita Mandal.

For the Respondents : *Mr. Victor Chatterjee,*
Mr. Paritosh Sinha,
Mr. Amitava Mitra,
Ms. Urmi Sengupta,
Ms. Sonia Nandy.

Hearing is concluded on : *28th March, 2025.*

Judgment On : **30th April, 2025.**

Tapabrata Chakraborty, J.

1. This appeal carried by the writ petitioner/appellant, namely, Pawan Kumar Sharma (in short, Pawan) takes exception to the order dated 12th March, 2013 passed by the learned single Judge in the writ petition being CO 1793 (W) of 1996 which was preferred by Pawan, *inter alia*, praying for

issuance of necessary direction upon the respondents for fixation of his seniority in the post of Middle Management Grade/Scale-II (in short, MMG/S-II) with effect from 19th September, 1977 with all consequential benefits as has been enjoyed by similar circumstanced staff of Punjab National Bank (in short, PNB), *Sri. Sainathan and others*. By the order impugned in the present appeal such prayer of Pawan was refused and the writ petition was dismissed.

2. This case has a chequered history. Pawan was initially appointed as a Development Officer at New Bank of India Limited (in short, NBI), which subsequently stood merged with PNB. He was thereafter posted as a Manager in the proposed sub-office at Bhamukhari in the scale of pay of Rs. 400/- to 1020/-. By an order dated 24th May, 1978 he was again transferred as a Manager to the sub-office Dhablan where he joined on 19th September, 1977 and was confirmed in the said post with effect from 1st June, 1979 by an order dated 7th March, 1983. In terms of Regulation 7 of the New Bank India (Officers Service) Regulation 1982 (hereinafter referred to as the said Regulations) he was placed in Junior Management Grade 1 (hereinafter referred to as JMG/G-I) in the scale of Rs. 700/- to 800/- which was the grade for Accountant and Assistant Manager only. By a letter dated 1st July, 1987 he submitted a representation for fitment in MMG/S-II pursuant to the case of one *Sri. Sainathan -vs- New Bank of India* decided by the Hon'ble Andhra Pradesh, High Court on 30th January, 1987. A reminder was issued on 27th November, 1989. Such prayer was however, rejected by a letter dated 19th February, 1990. Pawan thereafter preferred an appeal under the

said Regulations on 3rd March, 1990 followed by a further representation on 31st October, 1992 in response to which by a letter dated 9th November, 1992 he was informed that New Bank of India had filed a review petition before the Hon'ble Supreme Court in the case of *Sainathan* and as such his claim cannot be considered '*at this stage*'. In the midst thereof, by a memo dated 6th May, 1991 Pawan was promoted in the MMG/S-II with effect from 6th May, 1991. The said review petition was, however, dismissed on 15th March, 1993 and thereafter Pawan again submitted repeated representations but in vain. Challenging such inaction Pawan preferred the writ petition which was initially allowed by an order dated 4th April, 2002 observing, *inter alia*, that '*it is well settled principles of law that a similarly circumstanced person is entitled to such leave even without approaching the Court of law*' and directing the respondents to grant adequate relief to Pawan '*which he is entitled to in the light of the decision of the Andhra Pradesh High Court as affirmed by the Supreme Court*'. Challenging the said order PNB preferred an appeal being FMA 729 of 2004 and by an order dated 25th July, 2007 the Hon'ble Appeal Court remanded the matter to the learned single Judge framing the following two issues as follows:

(1) *whether after such long delay, any relief could be granted to the writ petitioner when admittedly the writ petitioner moved the writ application in the year 1996 claiming his right of seniority in the post of Middle Management Grade/Scale II with effect from 19th September, 1977;*

(2) whether the case of Sainathan is identical on the question of law as has been urged and the factual matrix of the case as has been placed by the writ petitioner'.

3. Pursuant to the said order, the learned single Judge re-heard the writ petition and passed the order dismissing the writ petition on 12th March, 2013 which has been impugned in the present appeal.

4. Mr. Dhole learned advocate appearing for Pawan submits the issue as regards delay, as framed by the Hon'ble Appeal Court, was decided against Pawan observing, *inter alia*, that having accepted the promotion to the post of MMG/S-II with effect from 6th May, 1991, he could not have turned back and claimed the benefits of the promotion retrospectively with the effect from 19th September, 1977. The learned single Judge failed to appreciate that such claim of Pawan was not turned down on the ground of delay and such consideration was only deferred due to pendency of the review application in the case of *S. Sainathan*, as would be explicit from the letter dated 9th November, 1992. Acceptance of the order of promotion thus did not refrain Pawan from detailing the grounds on the rudiments of which he claimed fixation of his seniority in the post of MMG/S-II with effect from 19th September, 1977 and he is entitled to the scale of MMG/S-II during the intervening period from 19th September, 1977 till his placement in the scale of MMG/S-II with effect from 6th May, 1991.

5. He submits that immediately after dismissal of the review application on 5th March, 1993, Pawan submitted representations but the same were not considered and as such he preferred the writ petition in the

year 1996. For non-preference of the writ petition immediately in the year 1993, Pawan's claim could not have been denied since right to be considered for promotion is a fundamental right and that cannot stand defeated by limitation.

6. Mr. Dhole argues that the learned single Judge erroneously observed that Pawan had '*waited for a long 13 years till February, 1996*' and that '*there is no acceptable explanation for delay in the writ petition*'. While arriving at such finding the learned single Judge was oblivious of the entire sequence of facts as regards pendency of the case of *Sainathan* before the Hon'ble Andhra Pradesh High Court and thereafter before the Hon'ble Supreme Court till the year 1993. Such efflux of time and the consequential delay is, thus, not attributable to Pawan. Such arguments, as advanced, were glossed over by the learned single Judge and no findings were returned on the same. Such infirmity warrants of this Court.

7. He further argues that the second question remanded for consideration afresh was also not properly dealt with by the learned single Judge. The said issue was answered observing that '*from a bare perusal of the writ petition as well as reply, the writ petitioner could not explain before this Court in what manner he is similarly situated*'. Such observation is contradictory to the observations made by the Hon'ble Andhra Pradesh High Court in the case of *S.Sainathan* which was ultimately affirmed by the Hon'ble Supreme Court. Pawan's argument as advanced detailing his similarity with *S. Sainathan* was shut down by a cryptic observation.

8. Mr. Chatterjee, learned advocate appearing for the respondents denies and disputes the contention of Pawan and submits that in terms of the norms applicable to all, the branch where the petitioner was working could not be upgraded from its sub-office status to branch office category.

9. He contends that Pawan's case is materially different from that of *Sri Sainathan*. It is pertinent to mention that *Sri Sainathan* had filed an appeal within 30 days as per Regulation 13 of OSR and that he did not accept his position in JMG, Scale-I. On the other hand, Pawan never filed any such appeal and he accepted his fitment, grade and seniority. Thus, Pawan clearly acquiesced him to a seniority position given to him and the fitment given to him in JMG, Scale-I. He is therefore estopped from filing the present petition and this factor makes his case different from that of *Sri Sainathan*.

10. He argues that if the Bank had turned down one representation, the making of another representation on similar lines would not enable the Pawan to explain the delay. It is now a trite law that where a person approaches the High Court after a long delay, reliefs prayed for may be denied to him on the ground of delay and laches irrespective of the fact that he is similarly situated to the other candidates who obtained the benefit of a judgment. Having remained complacent for a long number of years, the appellant cannot turn round and say that notwithstanding his inaction, he should be granted promotion from deemed dates on the basis of seniority. The grant of the benefits claimed would have the effect of disturbing the rights secured by others who had also not been impleaded. In other words a

settled state of affairs among the employees cannot be unsettled now. In support of such contention reliance has been placed upon the judgment delivered in the cases of *Rabindranath Bose and Ors. Vs. The Union of India and Ors.*, reported in 1970 (1) SCC 84, *T.R. Kapoor and Ors. Vs. State of Haryana and Ors.*, reported in (1989) 4 SCC 71.

11. He argues that merely because the Bank in its letter dated 9th November, 1992 had stated that Pawan's claim cannot be considered due to pendency of a proceeding, such statement would not have the effect of vesting any right upon Pawan. Such statement can hardly be of any material consequence. In support of such contention reliance has been placed upon the judgment delivered in the case of *Naresh Kumar Vs. Department of Atomic Energy and Ors.*, reported in (2010) 7 SCC 525.

12. Records clearly reveal that Pawan's claim for fixation of seniority in the post of MMG/S-II with effect from 19th September, 1977 with all consequential benefits could not be finally decided due to pendency of *Sainathan's* case, as would be explicit from the letter dated of 9th November, 1992 wherein the respondents stated that Pawan's claim cannot be considered 'at this stage' due to pendency of the review petition before the Hon'ble Supreme Court. The said review petition was ultimately dismissed in the year 1993.

13. Debarment of such relief till the year 1993 forms a continuous cause of action irrespective of the fact that he was granted promotion in the year 1991. A cause of action is continuing when the act alleged to be wrongful is repeating over a period of time and consequently extending the

limitation period. Cause of action is a bundle of facts giving rise to a legal right. The order of denial and the related events form a continuous chain finding its genesis in the order of appointment to the post of Manager with effect from 1977. The denial and debarment all arise as a part of the same event and hence, its effect on the claim of Pawan needs to be adjudicated together. Unless there is a complete cause of action, limitation cannot run and there cannot be a complete cause of action. [See the judgment delivered in the case of *Indian Evangelical Lutheran Church Trust Association Vs. Sri Bala & Co.*, reported in 2025 (1) Supreme 297].

14. No hard and fast rule can be laid down as regards the length of delay, which can be said to be inordinate. It all depends on the facts of the case. The terms ‘undue’ or ‘inordinate’ cannot be interpreted by applying the rules of mathematics. What delay is inordinate must depend on the facts of the case. It is not a case that Pawan, without adequate reason, approached the Court at his own leisure or pleasure. [See the judgment delivered in the case of *State of Maharashtra & Others versus Pradeep Yash want Kokade & Another*, reported in 2025 (2) Supreme 347].

15. The review application preferred by Bank was dismissed on 5th March, 1993 and the writ petition filed by Pawan in the year 1996 was entertained and not dismissed on the ground of delay. The said writ petition being C.O. 1793 (W) 1996 was disposed of after about four years on 4th April, 2002. About two years thereafter, the appeal being FMA 729 of 2004 preferred by the Bank was disposed of about three years thereafter on 5th July, 2007 and the matter was remanded. About six years thereafter the

writ petition was dismissed on 12th March, 2013. In the said conspectus, it appears that the delay is not attributable to Pawan and his claim could not have been turned down on the ground of delay.

16. Negation of even the chance of promotion certainly amounts to variation in the conditions of service attracting infraction of Articles 14 and 16 of the Constitution of India. There cannot be any waiver of fundamental right conferred under Article 14 of the Constitution of India. [See the judgment delivered in the case of *Madhumita Das vs. University of Calcutta*, reported in 2005 1 CHN 313; 2004].

17. In the said conspectus, we are unable to accept of the finding of the learned single Judge that there is no acceptable explanation for the delay in preferring the writ petition. We are also unable to accept the reasoning provided in the order impugned on the point of similarity in status in between Pawan and *Sainathan*. The observation of the learned single Judge in the impugned order is at loggerheads with the findings of the Hon'ble Andhra Pradesh, High Court which stood affirmed through dismissal SLP preferred by Bank. Whenever a conflict arises between the powerful and the powerless, social justice commands the Courts to lean in favour of the weaker and poorer sections. [See the judgment delivered in the case of *Chaudhary Charan Singh Haryana Agricultural University versus Monika & Others*, reported in 2025 (1) Supreme 457].

18. It is also not a case that Pawan had been a fence sitter. He was granted promotion to the post of MMG/S-II only in the year 1991 without furnishing any reason as regards non-consideration of his claim on and

from 13th September, 1977. The contention of the Bank was criticized in the order dated 30th January, 1987 observing, *inter alia*, that the application of the guidelines was universal and could not have been restricted to certain branches categorized on the basis of '*deposits of the specified minimum*'. It was further observed that '*unless the branch starts functioning, deposit will not be attracted*' and that '*it is totally unrealistic to say that before a Bank is started there could be deposits*'. The placement of Pawan in a new branch therefore could not have been treated as a disabling factor towards grant of the relief as claimed. It is not a case that Pawan is claiming any negative equality. It has never been urged on behalf of the Bank that promotional benefits were wrongly given to *Sainathan*. Such benefits were granted to *Sainathan* on the basis of the order passed by the Court. In view thereof, no different yardstick can be applied in respect of Pawan.

19. For the reasons discussed above, the order impugned in the writ petition is set aside.

20. In course of hearing, we have been informed that Pawan had already retired in the year 2011 and he has got his pensionary benefits calculated on the basis of his placement in the scale of MMG/S-II with effect from 6th May, 1991.

21. Accordingly, the respondents are directed to fix Pawan's pay in the scale of MMG/S-II with effect from 19th September, 1977 and to calculate his pensionary benefits on the basis of such placement notionally and to grant consequential revised benefits of pension, including arrear pension.

22. The above directions shall be complied with by the respondents within a period of eight weeks from the date of communication of this judgment.

23. The appeal being, FMA 1980 of 2014 is, accordingly, disposed of.

24. There shall, however, be no order as to costs.

25. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Reetobroto Kumar Mitra, J.)

(Tapabrata Chakraborty, J.)