

2019 challenging the act of the bank in not granting him promotion from scale-‘IV’ to scale-‘V’.

4. A Departmental Promotion Committee was constituted and interview of eligible officers was taken in between 16th to 22nd May, 2015. Based on the recommendation of the said Committee, the authority declared the result of promotion on 5th June, 2015 and published a list of twenty three officers fit for promotion from scale-IV to scale-V.
5. The name of the petitioner featured at serial number nine of the said list of recommended officers. The effective date of promotion of the petitioner was mentioned as ‘as and when vacancy arises’.
6. On 8th June, 2015, the petitioner was issued an order of transfer. He was relieved from his place of posting on 13th June, 2015 and he was directed to report to his transferred place of posting on 15th June, 2015. The petitioner did not join the transferred place of posting citing medical reason.
7. The petitioner was requested to produce a medical certificate from the Chief Medical Officer of a government hospital of New Delhi stating his disease and the period of leave required. As the petitioner was unable to produce any such medical certificate, his absence was treated as unauthorised.
8. A disciplinary proceeding was initiated against him and a charge-sheet was issued on 30th January, 2016. Punishment of reduction in basic pay by one stage for a period of six months without

cumulative effect was imposed. The petitioner did not wish to enter into litigation challenging the said punishment and he accepted the punishment imposed upon him.

9. Though the bank recommended the petitioner for promotion, but in view of the disciplinary proceeding initiated against him and the punishment imposed thereon, did not give effect to the order of promotion by treating the candidature of the petitioner as a 'sealed cover' case.
10. The petitioner is aggrieved by the same.
11. It has been submitted that the bank could not have given retrospective effect to the disciplinary proceeding and the punishment imposed thereon. On the date the petitioner was considered for promotion, there was no litigation pending against him before any forum. It has been contended that the sealed cover procedure may be applied only when any litigation is pending against an officer.
12. The sealed cover procedure as mentioned in para 3.18 and 3.10 of the Promotion Policy for officers of the bank has been relied upon to impress that the said procedure may be adopted only when – (a) officers are under suspension, (b) officers in respect of whom a charge-sheet has been issued and disciplinary proceeding is pending and (c) officers in respect of whom prosecution for a criminal charge is pending.

13. It has been argued that as none of the above three options was available to the bank on the date he was considered for promotion, adoption of sealed cover procedure is bad in law.
14. The Office Memorandum No. 22011/4/2007-Estt.(D) dated 28th April, 2014 issued by the Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training has been relied upon. It has been submitted that the said Office Memorandum is *pari materia* with the sealed cover procedure of the bank. The action of the bank is contrary to the guidelines prescribed in the aforesaid Office Memorandum.
15. It has been submitted that his immediate junior had been promoted on 1st June, 2015 and all officers from serial numbers ten to twenty-two in the promotion list had been promoted prior to the issuance of the charge-sheet against him.
16. It has been submitted that the petitioner was all along willing to work in the promotional post but the authority did not permit the petitioner to work in the promotional post citing pendency of the disciplinary proceeding. According to the petitioner, the same is illegal and arbitrary. He contends that the benefits of the promotional post ought not to have been withheld.
17. The petitioner prays for a direction upon the bank to grant him notional promotion to the next higher post of Assistant General Manager with effect from 1st June, 2015 and further notional promotion to the post of Deputy General Manager with effect from

1st March, 2018 and General Manager with effect from 1st April, 2021 in the same line as his immediate junior.

18. Prayer has also been made to re-fix his pay and terminal benefits relying upon the notional promotions to be granted in his favour.
19. The petitioner has also prayed for payment of arrears which would be due on account of notional promotion granted to him.
20. In support of his prayers the petitioner relies upon the judgments delivered by the Hon'ble Supreme Court in the matter of **Union of India & Ors. Vs. K.V. Jankiraman & Ors.** reported in **(1991) 4 SCC 109**, **Union of India & Ors. Vs. Anil Kumar Sarkar** reported in **(2013) 4 SCC 161**, **Union of India & Ors. Vs. Dr. (Smt.) Sudha Salhan** reported in **1998 SCC (L&S) 884**, **Union of India & Ors. Vs. K.B. Rajoria** reported in **(2000) 3 SCC 562**.
21. Learned advocate representing the bank opposes the prayer of the petitioner.
22. Para 3.18 of the Promotion Policy has been referred to which mentions that an officer who is considered eligible for promotion in the promotion process but in whose case any of the circumstances mentioned in Para 3.10 arises after he was found eligible for promotion but before he is actually promoted, will be considered as if his case has been placed in the sealed cover.
23. It has been submitted that though the petitioner was found eligible for promotion on 5th June, 2015 but prior to giving effect to the promotional order, the petitioner was charge-sheeted on 30th

January, 2016. Relying on Para 3.18 of the Promotional Policy, the petitioner's case has been placed in the sealed cover.

24. It has been submitted that the petitioner was ultimately imposed punishment in the disciplinary proceeding initiated against him. He accepted the punishment and did not challenge the same. The petitioner, thereafter, did not participate in any other promotional examinations.
25. Reliance has been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of **Union of India & Ors. Vs. A.N. Mohanan** reported in **(2007) 5 SCC 425**.
26. Prayer has been made to dismiss the writ petition.
27. I have heard and considered the rival submissions made by both the parties.
28. Certain facts which appear to be admitted and are extremely relevant for proper adjudication of the instant case are, (i) the interview for selecting the eligible officers for promotion was conducted in between 16th to 22nd May, 2015, (ii) the result of the promotional examination was declared on 5th June, 2015, (iii) the petitioner's name featured at serial number nine of the promotional list, (iv) the date of giving effect to the promotion was 'as and when vacancy arises', (v) no litigation was pending against the petitioner on the date the interview was conducted for selecting the officers for promotion, (vi) no litigation was pending against the petitioner on the day the result of promotion was declared, (vii) no litigation was

pending against the petitioner when promotion of his immediate junior was given effect on and from 1st June, 2015 and (viii) charge-sheet was issued to the petitioner on 30th January, 2016.

29. Para-3.18 of the Promotional Policy heavily relied upon by the bank to withhold promotion clearly mentions that, an officer if found eligible for promotion and, if, involved in any litigation prior to he being actually promoted, his case may be placed in the sealed cover.
30. Promotion was to be given effect as and when vacancy arose. The date of promotion of the immediate junior of the petitioner is 1st June, 2015. The same implies that vacancy was available on 1st June, 2015, even prior to the declaration of the result of promotion. No litigation was pending against the petitioner on the said date. There was no impediment on the part of the bank to promote the petitioner on the said date.
31. For applying the provision of Para-3.18, the bank has to show that litigation was pending against the petitioner on the day the vacancy arose and certainly prior to his junior being granted promotion. Such is not the case here.
32. As per settled law, a disciplinary proceeding commences only on the day the charge-sheet is issued to a delinquent employee. As the charge-sheet against the petitioner was issued on 30th January, 2016, i.e., long after vacancy arose, it cannot be said that disciplinary proceeding or any litigation was pending against the petitioner prior to the said date.

33. The three Judges Bench of the Hon'ble Supreme Court in the matter of K.V. Jankiraman (supra) clearly laid down that the sealed cover procedure is to be resorted only after the charge-sheet is issued. In the instant case, charge-sheet was issued long after the vacancy in the promotional post arose and the immediate junior of the petitioner was given promotion.
34. In Anil Kumar Sarkar (supra) the Court reiterated the law as laid down by the Hon'ble Supreme Court in the matter of K.V. Jankiraman (supra).
35. In Dr. (Smt.) Sudha Salhan (supra) the Court, relying on the ratio laid down in K.V. Jankiraman (supra) clearly held that, if on the date on which the name of the person considered by the Departmental Promotion Committee for promotion to the higher post is neither under suspension nor has any departmental proceeding initiated against him, the sealed cover procedure cannot be adopted. The said procedure can be adopted only if, on the date of consideration of the name for promotion, the departmental proceeding had initiated or was pending.
36. In K.V. Rajoria (supra) the Court observed that notional promotion may be allowed to right the wrong that had been done.
37. Assuming that no disciplinary proceeding was pending against the petitioner, then the petitioner would have been promoted on and from 1st June, 2015, that is the date on which promotion was granted to his immediate junior.

38. The very cause of action for which disciplinary proceeding was initiated against the petitioner arose subsequent to the publication of the result of promotion. Had it been that vacancy in the promotional post arose after issuance of the charge sheet against the petitioner, then the stand of the bank to withhold promotion may have been available for argument. In this case, vacancy in the promotional post arose long prior to the date of initiation of the disciplinary proceeding. Therefore, it was absolutely improper for the bank to not promote the petitioner on the day vacancy arose.
39. For considering the suitability of an employee for promotion, the efficiency of the employee for a particular period is taken into consideration. As per the law laid down by the Hon'ble Supreme Court, any event which occurs beyond the said period ought not to have any bearing on the consideration made on the day the employee was considered for promotion.
40. Here, the event which was taken into consideration to withhold promotion of the petitioner took place long after the list of employees eligible for promotion was published. The fact of invocation of the sealed cover procedure was intimated to the petitioner by a letter dated 4th October, 2017 i.e. long after the promotion process concluded.
41. The immediate junior of the petitioner was thereafter considered for subsequent promotion, but as the petitioner's promotion stood

withheld, he failed to avail opportunity to be considered for further promotion.

42. The penalty which was imposed upon the petitioner on 4th October, 2016 was reduction in basic pay by one stage for a period of six months without cumulative effect. No order was passed for withholding promotion. The petitioner was, however, not considered for future promotions at all.
43. The same is impermissible as per the service rule of the petitioner.
44. In A.N. Mohanan (supra) the sealed cover procedure was adopted as an enquiry was pending against the employee when the Departmental Promotion Committee made the selection. In the instant case no proceeding was pending against the petitioner on the day the selection was made in his favour for promotion.
45. The date of initiation of the departmental proceeding is very vital for adjudicating as to whether the sealed cover procedure can be adopted or not. Had the departmental proceeding been pending against the petitioner on the day he was selected for promotion or prior to given actual effect to the order of promotion. Such is not the case here. A.N. Mohanan (supra) does not have any manner of application in the instant case.
46. In view of the discussions made herein above, the Court is constrained to hold that withholding promotion of the petitioner relying on the sealed cover procedure was erroneous and liable to be set aside. The petitioner would be liable to be promoted notionally

from scale IV to scale V on and from 1st June, 2015, the day his immediate junior was promoted. The petitioner would be entitled to receive his pay and allowances and thereafter his terminal dues in scale V on and from 1st June, 2015.

47. As the petitioner did not press for any further promotion, accordingly, his prayer for grant of consequent promotions cannot be allowed.
48. The competent officer of the bank is directed to take necessary steps to re-fix and recalculate the dues of the petitioner in scale V on and from 1st June, 2015 and disburse the same in his favour at the earliest but positively within a period of twelve weeks from the date of communication of this order. Pension, gratuity and all other retiral dues of the petitioner on the basis of the re-fixed pay shall be disbursed within the aforesaid time limit.
49. The writ petition stands disposed of.
50. No costs.
51. Parties to act on the basis of the server copy of this judgment duly downloaded from the official *website* of this Court.
52. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)