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D.C. AGARWAL

v.

STATE BANK OF INDIA AND ORS.

MARCH 11, 1994

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[S. RATNAVEL PANDIAN AND R.M. SAHAI, JJ.]

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*Service Law—State Bank of India—Deputy General Manager—Extension of service—Consideration of by Review Committee—Held, matter of extension had to be considered by a committee consisting of Managing Director and certain Deputy Managing Directors mentioned by designation—Review Committee is a recommending body only—Final order to be passed by competent authority higher in rank than Deputy Managing Director—Order having been passed by a member of Review Committee was in gross violation of procedure and guidelines—It is also violative of fairplay.*

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The appellant was a Deputy General Manager in the respondent Bank. A departmental inquiry was ordered against him, which resulted in imposing the punishment of reduction by three grades. The order was set aside by the High Court. The decision of the High Court was maintained by this Court. Since the Court's order was not complied with, the appellant initiated contempt proceedings whereas the respondents moved this Court for review of its order. The respondents also filed a special leave petition against issuance of notice in the contempt case. This Court, disposing of the matters, in August 1993, directed the respondents to consider the appellant for promotion. The appellant was due to superannuate at the age of 58 in September 1993. He could be considered for promotion only if he was in service. A Review Committee, which considered the case of the appellant for extension of his service upto the age of 60 years, did not find him suitable. The recommendation was accepted by the appropriate authority and its order refusing to grant extension to the appellant was maintained in the department appeal. The appellant challenged the order by filing a writ petition which was dismissed by the High Court.

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In appeal to this Court, it was contended on behalf of the appellant that the constitution of the Review Committee was not proper inasmuch as the persons constituting the committee were not entitled to consider the issue regarding extension of service of the officers of the category to which

the appellant belonged and; that the appellant authority had based its findings on assumptions and not on appraisal of record. It was stated that the extension in the Bank services was granted at the age of 50, 55 and 68 years and the appellant having been granted extension after the age of 55 years in 1993 only should not have been refused extension when there was no material to show that he had deteriorated in his functioning.

Allowing the appeal, this Court

HELD 1.1. The decision taken by the respondents was vitiated by violating the rules and the guidelines provided for extension of service.

[643 A]

1.2. The matter of extension had to be considered by a committee consisting of Managing Director and certain Duputy Managing Directors who are mentioned by designation. Admittedly, none of them were members of the Review Committee. [642 E]

1.3. The Review Committee is a recommending body only. The final order had to be passed by the competent authority on recommendation of the committee. Such officer is always higher in rank than the Deputy Managing Director. The final order was not passed by the competent authority. It having been passed by a person who was a member of the Review Committee, was in gross violation of the procedure and the guide lines provided. It is also violative of fair play. Though the appellate authority had examined the record, but it did not apply its mind to this aspect which was basis and fundamental. [642 H; 643 A]

1.4. Besides, the extension of service of the appellant had to be decided objectively on material on record to find out if he was entitled to extension. [642 D]

2. The respondents are directed to constitute a fresh Committee of the personnel, mentioned in the rules itself, other than the members of the earlier Committee. In case the appellant had made any allegation against any of those Deputy Directors, then the Committee shall comprise of Deputy Directors other than those mentioned in the rules. The recommendation of the Committee shall be placed before the competent authority who shall be different and higher in rank than the members constituting the Committee. [643 B, C]

3. Though the appellant was posted to work at a place where his

A juniors were working at higher post, he was bound to follow the orders and obey them. Nor was there justification on his part to proceed on leave without obtain permission. His conduct in attempting to seek interview with the Governor by declaring that he was Chief General Manager of the Bank was unbecoming of a senior officer. [642 C]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1609 of 1994.

From the Judgment and Order dated 5.10.93 of the Punjab & Haryana High Court in C.W.P. No. 12062 of 1993.

C F.S. Nariman, Naresh Kaushik, Smt. Lalitha Kaushik and S. Divate for the Appellant.

Gururaja Rao, A.V. Rangam and A. Ranganathan for the Respondents.

D The Judgment of the Court was delivered by

R.M. SAHAI, J. This appeal is directed against the order passed by the High Court of Punjab and Haryana dismissing the Writ Petition filed by the appellant against refusal to grant him extension in service as it would not be in the interest of the Bank. The appellant who joined the service of the Bank as a Probationary Officer in the year 1961 rose to the level of top executive grade VI. On 27th August 1980 he was given charge as Deputy General manager of the zone comprising of the bank branches of Haryana State and Union Territory of Chandigarh. In 1981 an inquiry was ordered against him by the Bank's Vigilance Department, Central Office, Bombay, which ultimately resulted in imposing the punishment of reduction by three grades. This order was set aside by the High Court and the order was maintained by this Court. The appellant got relief as the Disciplinary Authority while disagreeing with the report of the Inquiry Officer committed certain procedural irregularities. Since the order was not complied with, the appellant approached the High Court by way of contempt proceedings and the respondents moved this Court for review of its order. Against issuance of notice in contempt by the High Court, the respondents approachd this Court. We disposed of both the review application and the S.L.P. directed against issuance of contempt notice by the High Court by accepting the statement of the learned Additional Solicitor General that

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no fresh proceedings shall be taken against the appellant. And the contempt application filed by the appellant shall stand withdrawn. Further the respondents shall consider the appellant for promotion in accordance with rules by a properly constituted committee. This order was passed in August 1993 whereas the appellant was reaching the age of superannuation at 58 in September 1993. He could be considered for promotion only if he was in service. Therefore, the Review Committee considered the case of appellant for extension of his service up to the age of 60. It did not find him suitable. The recommendation was accepted by the appropriate authority. The order was maintained in the departmental appeal filed by the appellant. The appellate authority passed a detailed order dismissing the appeal as the appellant's case for extension was considered by the committee in conformity with the procedure. The appellate authority further found that the competent authority did not decide the appellant's claim for extension only on 'average' or 'above-average' ratings earned by the appellant but it had also considered the guidelines issued by the Bank.

Two submissions were advanced by the learned senior counsel Shri Nariman to assail the orders passed by the respondents, one, that the constitution of the Committee was not proper inasmuch as the Committee was constituted of persons other than who were entitled to look into the matters of extension of service of officers of the category to which the appellant belonged. It was next urged that the appellate authority had based its finding more on assumptions than on correct appreciation and appraisal of the record. The learned counsel urged that the extension in the Bank services is granted at the age of 50, 55 and 58 years. He urged that even though the appellant was granted extension after the age of 55 years in 1993 only yet he was refused extension when there was no material available to show that the appellant had deteriorated in his functioning nor any entry or warning was given to him during this period. The learned counsel urged that the character roll entry, prior to 1981, being all excellent and good and the disciplinary proceedings having remained pending between 1981 to 1987 which ultimately resulted in their quashing and their being no entry available from 1987 to 1993 which could have resulted in concluding that the appellant could not function in the interest of the Bank the orders were liable to be quashed. On the other hand the learned counsel appearing for the Bank vehemently argued that the Bank took precaution in appointing a committee of those members against whom the appellant had not made any allegation in any court of law. The learned

A counsel further urged that in any case from the record it appeared that the appellant did not take leave at times nor did he abide by the instructions issued by the higher officers, therefore, the orders were well founded.

B That there appears to be no love lost between the department and the appellant. It further cannot be disputed that the appellant was posted to work at a place where his juniors were working at higher post. The reaction of the appellant, who by temperament appears to be excitable as he had appeared earlier in person, to orders passed by those who were once his junior can very well be visualised. The appellant who is a senior officer and has crossed the age of 58 must realise that this is contrary to service culture. He was duty bound to follow the orders and obey them. Nor there was any justification at his part to proceed on leave without obtaining permission. We may also observe that the conduct of the appellant in attempting to seek interview with the Governor by declaring that he was Chief General Manager of the Bank, was unbecoming of a senior officer.

C At the same time the extension of service of an employee had to be decided objectively on material on record to find out if the appellant was entitled to extension when it is not disputed that very few officers have been refused extension in the category of appellant from 58 to 60 years We may not be understood as expressing an opinion on the matter. But what has persuaded us to agree with the learned counsel for appellant is that the matter of extension had to be considered by a committee consisting of Managing Director and certain Deputy Managing Directors who are mentioned by designation. Admittedly none of them were members of the committee. The respondents, despite our instructions, could not place any material to satisfy that the appellant had made any allegation against them. Be it as it may, the final authority which had to pass the order under the rules was not the committee but a different person higher in rank than the members who constituted the committee. The Review Committee appears to be recommending body only. The final order had to be passed by the competent authority on recommendation of the committee. Such officer, it is stated, is always higher in rank than the Deputy Managing Director.

D Unfortunately in this case the final order has been passed by a person who was a member of the Review Committee. This, in our opinion, was in gross violation of the procedure and the guideline provided. It is also violative of fairplay. The Review Committee was only a recommendatory body. The final order was to be passed by the competent authority. And this does not appear to have been done. We are conscious that the appellate authority

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had examined the record. But the appellate authority did not apply its mind to this aspect which was basic and fundamental. We are, therefore, of the opinion that the decision taken by the respondents was vitiated by violating the rules and the guidelines provided for extension of service.

In the result, this appeal succeeds and is allowed. The orders passed by the High Court, the Appellate Authority and the Review Committee are quashed. The respondents are directed to constitute a fresh committee of the personnel mentioned in the rule itself. In case the appellant had made any allegation against any of those Deputy Directors then the committee shall comprise of Deputy Directors, other than those who are mentioned in the rules. The earlier Deputy Managing Directors who were the members of the committee shall not be members of the new committee. The recommendation of the committee shall be placed before the competent authority who shall be different and higher in rank than the members who shall constitute the committee. Such committee shall be constituted within two weeks from today and the decision by the competent authority shall be taken within two weeks thereafter.

There shall be no order as to costs.

R.P.

Appeal allowed.