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K.M. MISHRA

v.

CENTRAL BANK OF INDIA & ORS.

(Civil Appeal No. 5683 of 2008)

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SEPTEMBER 16, 2008

[TARUN CHATTERJEE AND AFTAB ALAM, JJ.]

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Service Law – Promotion – To Senior Management Grade Scale IV – Of Bank officer in preference to the other, on the basis of better Performance Rating for two out of three years – Promotion challenged on the ground that the promoted officer did not fulfil education qualification and that performance appraisal of the officer challenging the promotion, was in breach of the guidelines – Held: the promotion was given rightly – Challenge to educational qualification is a non-issue as the same was relevant at the stage of entry level and not for promotion in question – In the facts of the case, challenge regarding performance appraisal is not sustainable.

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Appellant as well as respondent No.5 were considered for promotion from Middle Management Grade Scale III to Senior Management Grade Scale IV. Respondent No. 5 was promoted in preference to the appellant as Performance Appraisal Ratings of the appellant for two years (years 1995-96 and 1996-97) out of the three relevant years were lower than respondent No. 5.

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Appellant challenged the order on the grounds inter alia that respondent No. 5 did not fulfill the requirement of educational qualifications; and that performance appraisal of the appellant for the two years i.e. 1995-96 and 1996-97, was in breach of the guidelines provided under the Performance Appraisal System of Officers. High Court dismissed the writ petition. Hence the present appeal.

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Dismissing the appeal, the Court

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HELD: 1. The matter of educational qualification of respondent No.5 is a non-issue insofar as his promotion to Senior Management Grade (SMG) Scale IV is concerned. The educational qualifications referred to by the appellant pertain to the entry level post of Hindi Officer Scale I. The appellant and the respondent were promoted as Hindi Officer Class I. Later on both of them were promoted to scales II and III and it was after about 20 years of entry into service that both of them came up for consideration for promotion to SMG Scale IV. Even while the selection process was going on, the appellant did not raise this objection before the Bank management. The objection was taken for the first time before the High Court and at that stage too it was not made clear that the educational qualifications were not relevant for the promotion in question but that pertained only to the entry level post. At this stage, therefore, the Court will not go into the question of the educational qualification of respondent No.5, more so since it is not at all conclusive or clear that respondent No.5 did not have English as one of the elective subjects at the Graduation level. [Para 7] [539-D-G]

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2. There is no substance or merit in the appellant's objections regarding his Performance Appraisal Ratings for the three years in question. It is true that in the year 1996 the appellant's Reporting Officer was for less than six months but the appellant himself was responsible for the same to a great extent as he did not submit his self appraisal in time. Though in the year 1996 the appellant's Reporting Officer was for less than six months, by the time the appraisal rating for the year 1997 was written the appellant had already worked under him for more than six months. The Performance Appraisal Rating of the appellant given for the year 1996-97 was thus beyond any objection. Even if the Performance Appraisal Rating for the year 1995-96 is excluded for both the candidates, the

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A position would still remain the same as the appellant would have only a 'Good' remark as against the 'Very Good' remark for respondent No.5 for the year 1996-97. [Paras 11, 12 and 13] [542-A-F]

B 3. It is not correct to contend that the rating of 'Very Good' in the year 1995 and of 'Good' for the year 1996-97 being a climb down, (as in the preceding years he had 'Excellent' ratings) it was incumbent upon the authorities to intimate the appellant about his ratings for the two years in question; and that in absence of such intimation, the ratings for those two years should not have been taken into account and instead the ratings for the earlier years should have been considered for the purpose of promotion. [Para 14] [542-G]

D *Satya Narain Shukla vs. Union of India and Ors.* 2006 (9) SCC 69 – relied on

Case Law Reference

2006 (9) SCC 69 Relied on Para 15

E CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5683 of 2008

From the final Judgment and Order dated 24.11.2006 of the High Court of Judicature at Bombay in Writ Petition 1412 of 1997

F A.K. Srivastava, Satish Jagalan and Kishan Datta for the Appellant.

G L.N. Rao Jayshree Wad, Ashish Wad, Neeraj Kumar, Chirag Kumar (for M/s. J.S. Wad & Co.) Dhruv Mehta, Harshvaradhan Jha, Yashraj Singh Deora and T.S. Sabarish (for M/s. K.L. Mehta & Co.) for the Respondents.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. Leave granted.

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2. A dispute over promotion to the post of Chief Manager, Rajbhasha in Senior Manager Grade, Scale IV in the Central Bank of India has brought this matter to this Court. Respondent No.5 was granted promotion to the post on 19 May 1997 in preference to the Appellant. He challenged the promotion given to the respondent before the Bombay High Court in Writ Petition No. 1412 of 1997. The High Court dismissed the writ petition by judgment and order dated 24 November 2006. This appeal is filed against the judgment of the High Court.

3. It would be useful to state at the beginning certain basic facts that are admitted or are, at any rate, undeniable as that would keep us from straying into issues that have no relevance to the dispute giving rise to this appeal. The promotion from Middle Management Grade (Scale III) to Senior Management Grade (Scale IV) is made on the principle of merit-cum-seniority from among officers who have completed five years' satisfactory service in MMG scale III. The Bank's Promotion Policy for Officers in clause 3.3 provides as follows.

"3.3. Promotion from Middle Management Grade Scale III to Senior Management Grade Scale IV — For promotion from Middle Management Grade Scale III to Senior Management Grade Scale IV, an officer should have completed a minimum of 5 years of satisfactory service in Middle Management Grade Scale III."

The selection from among the eligible candidates, i.e., officers who have completed the qualifying service of five years in MMG Scale III is made on the basis of an interview and annual Performance Appraisal Ratings for three preceding years. For the promotion in question, the appellant and respondent no. 5, both of whom had completed five years' qualifying service in MMG Scale III were assessed in the same way. In the interview both the appellant and respondent No.5 were awarded 30 marks. In the annual PARs, however, though the appellant had 'Very Good', same as respondent no.5 for the year 1994-95, for the other two years 1995-96 and 1996-97 he had only

A 'Good' against 'Very Good' obtained by respondent no.5. The remark 'Very Good' carried 32 marks and 'Good' 24 marks. Thus the Performance Appraisal Ratings of the appellant averaged out to 26.6 and that of respondent No.5 to 32. In this way, out of 100 the appellant had 56.6 marks as against 62.0 secured by respondent No.5. Respondent No.5 was accordingly selected and promoted to the post.

4. The appellant after unsuccessfully challenging the promotion granted to respondent no.5 before the Bombay High Court has brought the matter to this Court.

5. From the judgment coming under appeal, it appears that before the High Court the promotion granted to respondent No.5 was assailed on one of the grounds that respondent No.5 did not possess the requisite educational qualifications. It was stated before the High Court that there were three options in regard to educational qualifications and respondent No.5 came in the third option that required a second class Master's degree in Economics/Commerce in Hindi medium *with English as an elective subject at Bachelor's degree level*. It was submitted before the High Court that respondent No.5 did not fulfil the requirement of educational qualifications and he was wrongly given the promotion. The High Court considered the submission and rejected it holding that respondent No.5 duly fulfilled the academic qualifications as well. Apparently, however, the High Court was not informed and it was completely overlooked that the educational qualifications referred to by the appellant pertained to the entry level post of Hindi Officer in Scale I.

6. Since the issue of the educational qualifications came under discussion in the High Court judgment, before this Court it has been vastly expanded and turned into practically the main plank of attack to the promotion given to respondent no.5. A number of affidavits have been filed both by the appellant and respondent No.5 bringing on record his Master's degree, the Bachelor level marks-sheets and courses of studies etc. of Agra University (from where respondent No.5 took his Graduation

and Master's degrees). On the basis of the affidavits and the enclosed documents, the appellant seeks to contend before the Court that though satisfying the first part of the educational criteria of having a Master's degree in Commerce in Hindi medium, respondent no.5 did not have English as an elective subject at the Bachelor degree level. Mr. A. K. Srivastava, learned senior advocate, appearing for the appellant set forth before the Court in great detail the various documents obtained from the Agra University contending that the claim of respondent no. 5 that he had elective English at the Bachelor's level was not borne out from the University documents. Needless to say that on behalf of respondent No.5 it is equally strenuously argued that he fully satisfied the educational criteria and he had English as one of the subjects at the Graduate level.

7. In our considered view the matter of educational qualification of respondent No.5 is a non-issue insofar as his promotion to SMG Scale IV is concerned. As noted above, the educational qualifications referred to by the appellant pertain to the entry level post of Hindi Officer Scale I. The appellant was promoted as Hindi Officer Class I in 1976 and respondent No.5 came to join that post in 1978. Later on both of them were promoted to scales II and III and it was after about 20 years of entry into service that both of them came up for consideration for promotion to SMG Scale IV. Even while the selection process was going on the appellant did not raise this objection before the Bank management. The objection was taken for the first time before the High Court and at that stage too it was not made clear that the educational qualifications were not relevant for the promotion in question but that pertained only to the entry level post. At this stage, therefore, we are completely disinclined to go into the question of the educational qualification of respondent No.5, more so since it is not at all conclusive or clear that respondent No.5 did not have English as one of the elective subjects at the Graduation level.

8. This takes us to consider the second objection raised on behalf of the appellant with regard to being given 'Good' as

A his Performance Appraisal Ratings for the years 1995-96 and
1996-97. It is stated by the appellant that on the retirement of
Mr. R. V. Tiwari, Assistant General Manager (Hindi Department)
on 1 February 1993, he was asked to take over as Head of the
B Hindi Department on officiating basis; at that time he was in
MMG Scale III. In that position, from 1 June 1993 he was asked
to report directly to the General Manager. On the retirement of
Mr. Arjun Bhaya, General Manager, Hindi Cell, one Mr. S.C.
C Unhelkar, Chief Manager (System and Procedure) from the main
stream of the Bank was posted as Chief Manager, Rajbhasha
on 1 April, 1996. The appellant objected to the posting of Mr.
Unhelkar as he was from the main stream and his posting in
Rajbhasha was in violation of the Government guidelines. Similar
objections were also raised by the Central Bank Officers' As-
D sociation. It is further stated on behalf of the appellant that for
the years 1995-96 and 1996-97 his Performance Appraisal
Ratings were given by Mr. Unhelkar and he gave him the rating
'Good' for those two years. In fairness to the appellant it must
E be noted that he does not allege any mala fide on the part of Mr.
Unhelkar but Mr. Srivastava argued that the appellant's perfor-
mance appraisal for the two years in question by Mr. Unhelkar
was in breach of the guidelines provided under the Performance
Appraisal System of Officers of the Central Bank of India.

9. From the guidelines it appears that appraisals are to
be made annually on calendar year basis, i.e., for the period
F from January to December. It is a two tier process in which the
officer concerned makes his own appraisal and submits it to
his Reporting Officer. The remarks given by the Reporting Of-
ficer are finally reviewed by the Reviewing Officer. Clause 3 of
the Guidelines provides that in case the concerned officer does
G not submit his self-appraisal within one month of receiving the
format, the Reporting Authority would have the right to submit
his report concerning the officer to the Reviewing Authority.
Clause 6 of the Guidelines provides that if a Reporting/Review-
ing Authority is to retire on a specified date, care should be
H taken to ensure, as far as practicable, that appraisals of the

officers working under him are taken before his retirement. Much reliance was placed on behalf of the appellant on Clause 4 of the Guidelines that provides as follows:

"It should be ensured that the Appraisee has worked under both Reporting and Reviewing Authority for a *minimum period of six months* before he is appraised by them. If it is not so, the appraisal form of the officer concerned should be sent to the previous Reporting/Reviewing Authority under whom he has worked for six months or more."

(emphasis added)

10. Mr. Srivastava submitted that in both the calendar years 1995-96 and 1996-97 the appellant had worked under Mr. Unhelkar for less than six months and hence, he was not competent or authorised to give any appraisal ratings to the appellant. The appellant had worked under Mr. Unhelkar from 9 September, 1996 to 9 March, 1997; in other words in the year 1996 he worked under Mr. Unhelkar for about four months and in 1997 for only three months. Mr. Srivastava also placed before us the appellant's performance appraisals during his service tenure. It appears that right from 1984 to 1994 his ratings were 'Excellent'. In 1995 he was given 'Very Good'. In 1996 the Reporting Authority gave him 'Good' and the Reviewing Authority 'Very Good' but the overall rating came down to 'Good'. In 1997 both the Reporting and Reviewing Authorities gave him 'Good'. In 1998 the rating once again picked up to 'Very Good'.

11. The position in this regard is clarified in the counter affidavit filed by the Bank. In the Bank's counter affidavit it is stated that in the year 1994-95, the appellant duly submitted his self-appraisal before Mr. Bhaya who was the General Manager at that time. But in 1995-96, the appellant did not submit his self-appraisal in time and though in terms of Clause 3 of the Guidelines Mr. Bhaya could give his appraisal rating concerning the appellant he did not do so till his retirement. The appellant submitted his self-appraisal for two years 1995-96 and 1996-97 after Mr. Bhaya had already retired from service and

A thus it fell upon Mr. Unhelkar to write the appellant's Performance
Appraisal Ratings for the two years. It is true that in the year
1996 Mr. Unhelkar was the appellant's Reporting Officer for less
than six months but in the circumstances, for which the appel-
lant himself was responsible to a great extent, his work appraisal
B could only be made by Mr. Unhelkar. It is further pointed out that
in both years 1995-96 and 1996-97 Mr. Tiwary was the Reviewing
Authority under whom the appellant had worked for a very
long period and against whom he did not have any objection.

C 12. Mr. L.N. Rao, senior counsel appearing for the Bank,
submitted that though in the year 1996 Mr. Unhelkar was the
appellant's Reporting Officer for less than six months, by the
time the appraisal rating for the year 1997 was written the ap-
pellant had already worked under him for more than six months.
The Performance Appraisal Rating of the appellant given for
D the year 1996-97 was thus beyond any objection. He further
submitted that even if the Performance Appraisal Rating for the
year 1995-96 is excluded for both the candidates the position
would still remain the same as the appellant would have only a
'Good' remark as against the 'Very Good' remark for respon-
E dent No.5 for the year 1996-97.

F 13. On a careful consideration of the rival contentions we
find no substance or merit in the appellant's objections regard-
ing his Performance Appraisal Ratings for the three years in
question.

G 14. Mr. Srivastava then submitted that in the preceding
years the appellant had 'Excellent' ratings and in the year 1995
he had 'Very Good'. The rating 'Good' for the year 1996-97
was thus a climb down and it was incumbent upon the authori-
ties to intimate the appellant about his ratings for the two years
in question. Since no intimation was given to the appellant the
ratings for those two years should not have been taken into ac-
count and instead the ratings for the earlier years should have
been considered for the purpose of promotion.

H 15. We are unable to accept the submission. In *Satya*

Narain Shukla vs. Union of India & Ors., 2006 (9) SCC 69 (81) A
it was held and observed as follows :

"The appellant also argued that the remarks made in the ACR were not communicated to him. It was also urged by the appellant that this Court should direct the authorities to streamline the whole procedure so that even remarks like "good" or "very good" made in ACRs should be made compulsorily communicable to the officers concerned so that an officer may not lose his chance of empanelment at a subsequent point of his service. In our view, it is not our function to issue such directions. It is for the Government to consider how to streamline the procedure for selection. We can only examine if the procedure for selection as adopted by the Government is unconstitutional or otherwise illegal or vitiated by arbitrariness and mala fides." B C

16. On hearing counsel for the parties and on a careful consideration of the materials placed on record we find no merit in the appeal and it is accordingly dismissed. In the facts and circumstances of the case there shall be no order as to costs. D

K.K.T.

Appeal dismissed. E