

A RAKESH MEHTA AND OTHERS
v.
PUNJAB AND SIND BANK
(Civil Appeal No. 10908 of 2014)

B DECEMBER 09, 2014

[JAGDISH SINGH KHEHAR AND ARUN MISHRA, JJ.]

Service Law:

C *Punjab & Sind Bank (Officers) Regulations, 1982 – Reg 18 – Seniority – Claim of, by the appellants – Appellants promoted from Junior Management Grade Scale-I (JMGS-I) to Middle Management Grade Scale-II (MMGS-II) and thereafter, horizontally transferred to the Specialist Electronic*
D *Data Processors Cadre within the MMGS-II in the year 1997 – Some officers belonging to the JMGS-I cadre promoted vertically as Electronic Data Processors, later in the year 1997 – Seniority between the promotees from the JMGS-I and those appointees as Electronic Data Processor, by horizontal*
E *movement, including the appellants from the MMGS-II – Held: Seniority between employees is a vested right – Adjudication of the inter-se seniority between the appellants, and other promotees from the JMGS-I, is to be determined, on the basis of the prevailing Rule which was Reg 18 – Under Reg 18, the*
F *date of appointment to a grade or scale would determine the superiority on the subject of seniority – Appellants came to the higher scale, on an earlier date vis-a-vis those who came to be promoted to the Specialist Cadre, from the JMGS-I – Thus, the appellants are superior, on the subject of seniority, with reference to promotees from the JMGS-I – Government*
G *Circular dated 26.9.2002, cannot be taken into consideration to determine the seniority of the appellants since it was issued well after the inter-se seniority between the appellants and the promotees, was determined under Reg 18 – A*

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*communication issued subsequently, would not alter the inter-
se seniority position, which had crystallized earlier under the
existing 1982 Regulations – Government Circular cannot
have an overriding effect, over the prevailing 1982
Regulations – As regards, appellants claim to consider them
for promotion to MMGS-III, respondent-Bank directed to carry
out the said promotion exercise.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
10908 of 2014.

From the Judgment & Order dated 12.07.2011 of the High
Court of Delhi at New Delhi in LPA No. 575 of 2010.

WITH

C.A. No. 10909 of 2014.

G.S. Chaturvedi (for Surya Kant), Jagat Arora (for Rajiv
Nanda) for the appearing parties.

The Judgment of the Court was delivered by

J.S. KHEHAR, J.

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1. The appellants were promoted from the Junior
Management Grade Scale-I (hereinafter referred to as the
'JMGS-I') to the Middle Management Grade Scale-II
(hereinafter referred to as the 'MMGS-II') on 26.4.1996. On
10.3.1997, the Punjab and Sind Bank created a Specialist
Cadre of officers designated as Electronic Data Processors.
Since the appellants were eligible for appointment as Electronic
Data Processors, under the terms and conditions laid down by
the respondent-bank, they opted for appointment to the said
Specialist Cadre. It is necessary to mention, that the Electronic
Data Processors cadre, was admittedly created in the MMGS-
II. Pursuant to the exercise of their option, all the appellants were

A inducted into the said Specialist Cadre on 16.09.1997. Since
 the appellants were members of the MMGS-II even prior to their
 induction into the Specialist Cadre, it is apparent that their
 appointment as Electronic Data Processors was a horizontal
 movement within the MMGS-II.

B 2. Appointment to the cadre of Electronic Data
 Processors, was also possible by promotion, subject to
 fulfillment of the conditions of eligibility, from the feeder cadre
 of JMGS-I. Some officers belonging to the JMGS-I cadre, were
 C considered and promoted as Electronic Data Processors, at
 or around the same time, as the appellants. Promotion to the
 Specialist Electronic Data Processors Cadre, envisaged a
 vertical movement from a lower cadre (JMGS-I), to a superior
 cadre (MMGS-II). In other words, those who were promoted to
 D the Specialist Cadre, entered the MMGS-II, for the first time. A
 seniority dispute arose between the promotees from the JMGS-
 I, and those appointees as Electronic Data Processor, by
 horizontal movement (including the appellants) from the MMGS-
 II. The promotees to the Specialist Cadre claimed superiority
 E in seniority, because their date of appointment to the Specialist
 Cadre, preceded the date of appointment of the appellants, to
 the same.

3. On the issue of seniority, at the relevant juncture i.e., in
 1997, the prevalent provision was Regulation 18 of the Punjab
 F & Sind Bank (Officers) Regulations, 1982 (hereinafter referred
 to as the '1982 Regulations'). Regulation 18 aforementioned
 is being reproduced hereunder:

G **"18(1) Each year the Bank shall prepare a list of
 officer in its service showing their names in the order
 of their seniority on an all India basis and containing
 such other particulars as the Bank may determine.
 A copy of such list shall be kept at every branch or
 office of the Bank.**

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(2) Seniority of an officer in a grade or scale shall be reckoned with reference to the date of his appointment in that grade or scale. Where there are two or more officers of the same length of service in that grade or scale, their inter-se seniority shall be reckoned with reference to their seniority in the immediately preceding grade or scale or the previous cadre to which they belonged to in the Bank's service. Where two or more officers have the same length of service in such preceding grade or scale or such previous cadre their seniority shall be determined with reference to their seniority in the immediately preceding grade or scale or cadre, as the case may be."

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(emphasis is ours)

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4. It is apparent from the aforesaid regulation, applicable to officer employees of the respondent-bank, that the date of appointment in a particular grade or scale, is the determining factor, for seniority. Accordingly, an individual who is placed in a higher scale first, is liable to be treated as senior, to an individual placed in the same scale later. It is not a matter of dispute, that the appellants came to be appointed to the MMGS-II on 26.4.1996, and were horizontally transferred to the Specialist Electronic Data Processors Cadre on 16.9.1997 within the MMGS-II. It is also not in dispute, that those promoted vertically from the JMGS-I, to the Specialist Electronic Data Processors Cadre, were appointed later in the year 1997. Indisputably, all the appellants entered the MMGS-II cadre, before the promotees. Based on their earlier appointment to the MMGS-II in 1996, the appellants were entitled to claim a higher position in the seniority list viz. those promoted to the Specialist Electronic Data Processors Cadre in 1997, under Regulation 18 of the 1982 Regulations. As a matter of fact, the aforesaid conclusion, has also drawn by the High Court, but on a different consideration. We are satisfied, that the aforesaid

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A determination was fully justified, and therefore endorse the same, for the reasons recorded above.

B 5. The dispute raised by the Bank with reference to the determination of seniority of the appellants, is based on a Government Circular dated 26.09.2002 issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). The contents of the aforesaid Government Circular are being reproduced hereunder:

C “Sub: Seniority list of officers in Specialist Cadre.

Sir,

D I am directed to refer to your letter No.203 dated 26.08.2002 on the subject cited above and to draw your attention to this Division’s letter of even number dated 26.05.1995, which stipulates that on conversion to specialist cadre, such officers will be placed at the bottom of the seniority list of their respective grade/scale in the respective categories in specialist/generalist officers. It is clarified that the seniority in the specialist cadre is to be reckoned with reference to the date of entry into Specialist cadre and an officer with more length of service in general cadre, on conversion to specialist cannot be treated senior to the existing Specialist Officer on that date on the basis of his length of service in general cadre.”

(emphasis is ours)

G 6. It is the vehement contention of the learned counsel representing the respondent-Bank, that the bank is bound by the above Government Circular dated 26.09.2002. It was therefore the submission of the learned counsel for the respondent-Bank, that in terms of the aforesaid Government

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Circular, the seniority of officers appointed to a Specialist Cadre, was liable to be determined with reference to the date of their appointment to the Specialist Cadre. It was also submitted, that Regulation 18 of the 1982 Regulations, would not be applicable to them. Keeping in view the fact, that promotions made from the JMGS-I to the Specialist Electronic Data Processors Cadre, in the year 1997, preceded the horizontal appointment of the appellants, to the Specialist Cadre on 16.9.1997, it was the vehement contention of the learned counsel representing the respondent-Bank, that the appellants could not have been assigned seniority, over and above the promotees, who came to be appointed to the Specialist Electronic Data Processors Cadre, prior to the appellants.

7. It is not possible for us to accept the solitary contention advanced at the hands of the learned counsel for the Bank. Seniority between employees, is a vested right. Its adjudication is determined on the basis of the prevalent rule, at the relevant juncture. When the appellants were inducted into MMGS-II on 26.4.1996, and also, when they were appointed to the Specialist cadre on 16.9.1997, Regulation 18 of the 1982 Regulations, was the prevalent provision, for the determination of inter-se seniority. The promotions in question, from the cadre of JMGS-I, to the Specialist Cadre, were also made, when the 1982 Regulations were applicable. It is therefore, that we hold, that inter-se seniority between the appellants, and other promotees from the JMGS-I, had necessarily to be determined, on the basis of Regulation 18 of the 1982 Regulations. Under the mandate of the aforesaid Regulation, the date of appointment to a grade or scale would determine the superiority on the subject of seniority. The appellants having been appointed to the superior MMGS-II on 26.4.1996 came to the higher scale, on an earlier date vis-a-vis those who came to be promoted to the Specialist Electronic Data Processors Cadre (from the JMGS-I). Thus, there can be no doubt about

A the superiority of the appellants, on the subject of seniority, with reference to the promotees from the JMGS-I.

B 8. Besides the conclusion drawn hereinabove, we are also satisfied to hold, that the Government Circular dated 26.9.2002, could not have been taken into consideration to determine the seniority of the appellants. The Government Circular in question, was issued well after the inter-se seniority between the appellants and the promotees; came to be determined under Regulation 18 of the 1982 Regulations. In our considered view, C a communication issued subsequently, would not alter the inter-se seniority position, which had crystallized earlier under the existing 1982 Regulations. Furthermore, in our considered view, D the Government Circular cannot have an overriding effect, over the prevailing 1982 Regulations. The method of determining seniority expressed in the 1982 Regulations, could not be altered through a Government Circular. Till the 1982 Regulations are not amended or repealed, Regulation 18 alone, would be the basis for determining seniority. For the reasons recorded hereinabove, we are satisfied, that the claim E raised by the appellants insofar as the issue of seniority is concerned, is wholly justified. We accordingly uphold the impugned order passed by the High Court, not for the reasons recorded by the High Court, but for the reasons narrated above.

F 9. Now that the position of seniority of the appellants has been settled, the appellants claim consideration for promotion to the Middle Management Grade Scale-III (hereinafter referred to as MMGS-III). For this reference has been made to the promotion exercise for the year 2002. The appellants had by then, acquired eligibility for consideration. We are informed, G that the promotion exercise carried out, with reference to the MMGS-III, for the year 2002, has not yet been completed. In view of the above, we hereby direct the respondent-Bank to carry out the aforesaid promotion exercise, without any further delay. Such of the appellants who are found suitable and eligible H for promotion to the MMGS-III shall be granted promotion

retrospectively. They shall also be entitled to wages against the promoted posts, with effect from the date of their promotion. A

10. The instant appeal is accordingly allowed, in the aforesaid terms.

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11. In view of our order passed today in Civil Appeal No. 10908 of 2014, accepting the claim of the appellants therein, the claim raised by the Punjab and Sind Bank, to the effect that the inter-se seniority for those appointed to the Specialist Electronic Data Processors Cadre, is to be determined on the basis of the Government Circular dated 26.9.2002, is hereby rejected. C

12. The instant appeal is accordingly dismissed. D

Nidhi Jain

Appeals disposed of.