

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30/11/2004

Coram

The Honourable Mr. Justice A.K. RAJAN

W.P.No.11542 of 1999

N.Suramanian ...Petitioner

-Vs-

1. Indian Bank
rep. by its Chairman and
Managing Director
No.31, Rajaji Salai,
Chennai 600 001

2. Indian Bank
rep. by its General Manager (I & V)
No.31, Rajaji Salai
Chennai 600 001

3. Indian Bank
rep. by its Chief Manager (Personnel)
No.10, Kamaraj Salai
Pondicherry - 605 011 ...Respondents

Petition under Article 226 of the Constitution of India praying to
issue a writ of certiorarified mandamus as stated therein.

For Petitioner : Mr.NGR.Prasad, Senior Counsel for
M/s.Row & Reddy

For Respondents: Mr.Venkatraman

:ORDER

The petitioner has filed the above writ petition praying to
issue a writ of certiorarified mandamus to call for the concerned records from
the third respondent and quash the order No.PZO:PRNL:162:99 dated 12.2.1999
issued by the third respondent and consequently direct the respondents to
consider and promote the petitioner from JMG-I to MMG Scale-II with effect
from 27.10.92, when he became eligible and on par with his immediate junior
Mr.S.Ganesan SR 14126 and grant all consequential benefits thereon, interest
on backwages due at the rate of 12% per annum.

2. The petitioner was employed in the Indian Bank. He was

holding the post of Scale 1 Officer. There is a selection post from Scale 1 Officer to Scale 2 Officer. He was promoted to Scale 1 Officer on 22.10.1982. He was eligible to be considered for promotion under Scale 2 Officer in the year 1989. While so, on 25.10.1988 he was suspended on the ground that his wife filed a police complaint against him under the Dowry Prohibition Act. Therefore, he was under suspension for more than six and half years. On 13.1.1995 the suspension was revoked, that is, even before the disposal of the criminal case. By order dated 4.7.1998, the period of suspension was treated as duty. On 2.11.1989, the Bank paid entire salary due to him. In the meanwhile, in 1992 to 1995, there was promotions from Scale 1 to Scale 2 grade. Since this petitioner was also eligible for promotion, he was permitted to write written examination. But thereafter, he was not selected. Challenging the same, the petitioner has come forward with the above said writ petition.

3. According to the promotional policy out of 125 marks, 25 marks were allotted to written examination, 10 marks for professional qualification, 40 marks for performance and 50 marks for role functioning and exposure. This performance was to be considered on the basis of the three years service. The case of the petitioner is that no marks were awarded for performance and also for role functioning and exposure. The petitioner has served for two years in Rural Branches and he was also transferred to northern zone. He served in New Delhi in the foreign exchange department for four and half years. Therefore, this should have been taken into account in giving marks for role functioning and exposure. Since he was kept under suspension for six and half years, he could not serve in the bank for immediate preceding three years. Therefore, his performance for the last three years, while he was in service, should have been considered. But that was not considered and he was denied promotion. In the meanwhile, in the year 2001 the petitioner has voluntarily retired from service without prejudice to the pendency of the writ petition. As the petitioner has already been voluntarily retired from service, he is not claiming any backwages and only deemed promotion for grant of pension. The learned counsel for the petitioner has submitted that the criminal case which was pending against him has ended in acquittal as the case was "not proved" against him. In that case, the petitioner was honourably acquitted on the ground of benefit of doubt; that is he did not commit any criminal offence. He was kept under suspension only due to false complaint preferred against him by his wife. Moreover, the Appellate Court acquitted him, though the trial court convicted him. As such, it is clear that he was not suspended for any other criminal offence. Further no departmental enquiry was initiated against him. Under the above circumstances, his promotion for the period of 1992 and 1995 should have been considered.

4. The learned counsel for the respondents submitted that the petitioner was arrested on 4.9.98 and was detained for more than 48 hours. As per the Rules, he deemed to have been suspended since he was arrested for the offence under sections 498A and 406 IPC readwith provisions of Dowry Prohibition Act. According to para 12(2)a of IBOE (D & A) Regulations 1985, when any person is kept under custody, detained for more than 48 hours, he shall be deemed to have been suspended. Therefore, his suspension was in

accordance with Rules. Further the petitioner was convicted by judgment dated 16.5.1996 and by way of appeal only, the petitioner was acquitted by the Appellate Court by judgment dated 19.12.1996. During the period of 1992 and 1995, a criminal case was pending against him, as such, he was not considered for promotion. In other words, the petitioner cannot at all be considered for any promotion, in view of the pendency of the criminal case. The petitioner was charged for commission of offence involving morally turpitude. Therefore, as per the 17(2) of Indian Bank (Officers') Service Regulations, 1979, the promotion is only on the basis of merit with weightages and shall not provide any weightage for seniority. Therefore, on the date of consideration, viz., 1992 and 1995, the petitioner was charged for commission of offence involving morally turpitude. In terms of promotion policy under clause 4(d), the assessment under performance review shall be on the basis of performance appraisal reports for the past 3 years. As there were no marks have been awarded for the past performance, the petitioner was not considered for promotion. Further the learned counsel for the respondents relied on a judgment reported in R.VEERABHADRAM vs. GOVERNMENT OF ANDHRA PRADESH (AIR 2000 SUPREME COURT 1918), wherein in paragraph 10 of the judgment reads as follows:-

" It is next contended that the appellant should be granted a deemed promotion to the post of Joint Secretary prior to his retirement. The promotion to the post of Joint Secretary is a promotion by selection and not by seniority. The appellant, therefore, cannot claim any promotion from the date on which his junior was promoted, since the basis for promotion is selection and not seniority. The appellant, however, has relied upon a decision of this Court in Sulekh Chand & Salek Chand v. Commissioner of Police, reported in 1994 Supp (3) SCC 674. In that case also, the appellant had been charged with an offence under the Prevention of Corruption Act and he was kept under suspension. However, when his turn came for promotion, he was considered for promotion but he was promoted at a later date in view of the criminal proceedings which ultimately ended in his acquittal. The Court held that once there was an acquittal, he was entitled to reinstatement as if there were no blot on his service. The material on the basis of which his promotion was denied, did not now subsist and he should be promoted on the basis of the Departmental Promotion Committee's findings. In the present case the appellant was not considered for selection because of the pending criminal proceedings. Since the promotional post is a selection post, there is no basis on which he can now claim that he must be deemed to have been selected and hence he should be granted the promotion. There is no basis on which we can hold that he would have been selected when he was eligible for promotion. The decision, in the above case, has no application here. The only other judgment on which the appellant relied, in this connection is the judgment of the Rajasthan High Court in Mohan Singh Bhati vs. State of Rajasthan, reported in (1998) 1 Serv. LR 684, where the court said that after acquittal, the respondent was entitled to reinstatement and all consequential monetary benefits. We fail to see how this decision will help the appellant in the present case. On the contrary, in the State of Mysore v. C.R.Seshadri, reported in (1974) 4 SCC 308 : (AIR 1974 SC 460: 1974 Lab IC 362), this Court has held that if the Rule of promotion is one of sheer seniority, it may well be that promotion is a matter of course. On the other hand, if merit is the rule, promotion is problematical and it would be hazardous to assume that by efflux of time, the petitioner would have got the promotion. The Court

cannot speculate in retrospect whether the petitioner would have been selected on merit and on the strength of such "dubious hypothesis" direct retro-active promotion and back pay".

5. Referring to the above judgment, the learned counsel for the respondents submitted that since the promotion post is a selection post, there is no basis on which he can claim that he must deemed to have been selected when he was not eligible for promotion. The learned counsel further submitted that in view of the pendency of the criminal case during the year 1992 and 1995, the petitioner is not entitled for deemed promotion for any reason whatsoever.

6. The petitioner joined as Award Staff in the Bank during the year 1977 and later he was promoted. There was no departmental enquiry or other proceedings initiated against him except a criminal case in view of the police complaint preferred by his wife. While the Appellate Court has acquitted the petitioner, in its judgment, it is stated that the petitioner was a good natured and was having humanitarian approach. As such, it cannot be said that he would have asked for dowry and caused cruelty to his wife. Further it has stated that this complaint appears to have been filed deliberately against the petitioner. From it is clear that the complaint which was given against him was not true. Therefore, this petitioner was suspended on the complaint given by his wife and not due to malpractice done in the course of his functioning as an Officer in the bank. If any person who is otherwise not involved in any other malpractice or not committed any misdeeds in his official duty, but has been suspended in view of the false complaint given by his wife, and if due to that he lose his entire benefits of service, that would not be in the interest of justice. Further the Supreme Court in the case of SULEKH CHAND AND SALEK CHAND vs. COMMISSIONER OF POLICE AND OTHERS reported in 1994 Supp (3) SCC 674 has held as follows:-
"..... The judgment acquitting the appellant of the charge under Section 5(2) became final and it clearly indicates that it was on merits. Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the selfsame allegations and take appropriate disciplinary action....."

7. In this case, no departmental enquiry was initiated and the criminal case against the petitioner ended in acquittal. Therefore, he is deemed to have been restored to his original position as if there was no blot on his carrier. While so, he is entitled to reinstatement and also other benefits as per the Rules. The judgment referred to by the learned counsel for the respondents is not applicable to the facts of the present case. In that case, the person was suspended due to offence committed under the Prevention of Corruption Act and for that he was kept under suspension. He was permitted to retire while under suspension. He was never reinstated. Therefore, ultimately when he was acquitted by a criminal court, the court came to the conclusion that he was not entitled to be considered for promotion on the date when the promotion was to be considered. The Supreme Court

finally held in that case that "if merit is the rule, promotion is problematical and it would be hazardous to assume that by efflux of time, the petitioner would have got the promotion". That is the reason why the Supreme Court has dealt with the issue involved in that case. In the present case, it is not problematical and it would not be hazardous, to assume that by efflux of time, the petitioner would have got the promotion as he was not involved in misdeeds relating to his official function. Therefore, the judgment of the Supreme Court in Sulekh chand and Salek chand is applicable to the facts of the present case.

8. That apart, it is not as if the petitioner was not considered for promotion in 1992 and 1995 unlike in Veerabhadram case, where he was not considered for promotion during that period. In the present case, the petitioner was considered for promotion, but marks were not awarded under two heads viz., performance and role functioning and exposure. Admittedly, he had role functioning and exposure because he had served for two years in Rural Branches and four and half years in northern zone, that too, in foreign exchange department. So far as the role functioning and exposure is concerned, he has got necessary qualification.

9. So far as performance is concerned, the argument of the learned counsel for the respondents is that the performance should be considered for the immediate three years before the date of consideration for promotion. In this case, since he was under suspension, it was not possible for three years performance immediately preceding date under consideration. The learned counsel for the petitioner has submitted that under such circumstance, it should have been taken into account the past performance when he served before suspension. This was negated by the learned counsel for the respondents since as per the Rules, past service meant immediate preceding three years from the date of consideration for promotion. To a specific question put by the Court, if the person went on leave for a period of two years, how to decide the performance, the learned counsel respondents would submit that he will not be eligible for any marks for two years. This argument is not acceptable. If a person goes on leave after getting due permission from the authorities, he cannot be neglected for promotion if that is to fall within the period of consideration and he cannot lose his promotion on the ground that he went on leave. Therefore, under such circumstances, the past performance should be considered on the past performance when he was in service. That is, immediately preceding past service has to be evaluated on the performance when he was on duty the date on which the person was kept under suspension. That should have been considered in the case of the petitioner. In fact, the petitioner was permitted to write examination. It can be stated that he was not considered for promotion. When he had been considered for promotion, he should have been awarded the marks under the above heads. Since that was not done, the petitioner was not given promotion. Since no marks was awarded under the two heads, the rejection of promotion to the petitioner is not legally sustainable.

10. Under those circumstances, it was not correct on the part of the department to reject the promotion. Therefore, it is for the department to consider this aspect and grant promotion to him during the

period of 1992 and 1995.

11. The learned counsel for the respondents submitted that the present writ petition has been filed in the year 1999 challenging the promotion for the period of 1992 and 1995. As such, there was an enormous delay in approaching this Court by way of writ petition. The learned counsel for the petitioner replied that the petitioner filed review application and that was dismissed only on 12.2.1999. Immediately thereafter he filed the present writ petition. Considering the fact that immediately after the

rejection of review application, this writ petition has been filed, there appears to be no laches on the part of the petitioner in approaching this Court by way of writ petition.

12. It is to be noted that the petitioner claims only pension benefits after he had voluntarily retired from service; he is not claiming backwages on the deemed promotion from the year 1992 or 1995. As such, the respondents are directed to consider the case of the petitioner for promotion awarding marks on the two heads viz., performance and role functioning and exposure, and to give paper promotion, if he is found fit in the year 1992 and 1995, in the light of this judgment and pass appropriate orders and refix the pension payable, within a period of one month from the date of receipt of copy of this order.

13. The writ petition is allowed in the above terms. No costs.

Index:Yes

Internet: Yes

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1. Indian Bank rep. by its Chairman and
Managing Director, No.31, Rajaji Salai,
Chennai 600 001

2.Indian Bank rep. by its General Manager (I & V)
No.31, Rajaji Salai, Chennai 600 001

3. Indian Bank rep. by its Chief Manager (Personnel)
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