A SH. K.B. SHARMA AND ANR.

v.

UNION OF INDIA AND ANR.

JANUARY 28, 1998

B [S. SAGHIR AHMAD AND G.B. PATTANAIK, JJ.]

Service Law :

New Bank of India (Officer's Service) Regulations, 1982—Regulation
C *7—Promotion—Appellants joined as clerks in Bank, later promoted as Accountants and again promoted as Assistant Managers—Bank taken over by Union of India—New Regulations and Promotion Policy framed—Appellants placed in Junior Management cadre, scale-I along with Accountants—New Regulations and Promotion Policy challenged in writ*
D *petition before High Court—Single Judge upheld the challenged Regulation but struck down Promotion Policy—Division Bench in LPA upheld Promotion Policy as there was no arbitrariness or inequality—On appeal Held, Promotion Policy not discriminatory and no interference called for.*

Promotion Policy—Clauses 5.1, 5.5, 6.2 and 7.1—Determination of
E *inter-se seniority—Held, Seniority before take over or tenure of service as Assistant Manager not wiped off—Due weightage given to services rendered.*

The appellants had joined the New Bank of India as clerks and were promoted as Accountants and further promoted and confirmed as Assistant Managers in the same pay scale, with the special allowance. While they were
F **working as such, the Bank was taken over by the Union of India under Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 and later on the New Bank of India (Officers Service) Regulation 1982 was framed along with a Promotion Policy.**

As per clause 5.1 of the Promotion Policy the appellants were placed
G **in the Junior Management Grade Scale I along with Accountants and their seniority was determined. They filed a writ petition challenging the validity of Regulation 7 and Clauses 5.1, 5.5, 6.2 and 7.1 of the Promotion Policy as being violative of Art, 14 and 16 of the Constitution. Single Judge upheld Regulation 7 which provided for categorisation and fitment of existing officers,**
H **but struck down the impugned clauses of the Promotion Policy holding them**

to be ultravires of Regulation 18(5) and also violative of Articles 14 and 16 of the Constitution. A

The Division Bench in L.P.A. held that the Single Judge committed an error by holding that unequals had not been treated equally. It also held that there was no arbitrariness or inequality in the Promotion Policy. Hence, this appeal. B

The appellants contended that the very categorisation as per Regulation 7 is invalid as it puts Accountants and Assistant Managers in one grade; the High Court was in error when it upheld the clauses of the Promotion Policy as prior to the take over, the appellants had been promoted and in any event they cannot be held to be junior to Accountants and be placed in the same grade; and that the seniority of the employees is being determined on continuous length of service; therefore unequals like Accountants and Assistant Managers are being treated equals which *per se* is hostile discrimination. C

D

The respondents contended that the expression "promotion", used in the orders, was not in fact a promotion from one cadre to the other; Accountants and Assistant Managers were in one grade scale, and as such unequals were not being treated equally; and that the Promotion Policy for determination of inter-se-seniority gave appropriate weightage for the services rendered as Assistant Manager/Manager and seniority is not determined on length of service. E

Dismissing the appeal, this Court

HELD : 1. Validity of Regulation 7 of New Bank of India (Officer's Service) Regulations, 1982 was upheld by Single Judge and appellants did not challenge the same by filing any appeal and as such the decision in that respect has reached finality and cannot be re-opened in an appeal against judgment of the Division Bench where the only question was the validity of different clauses of the Promotion Policy. [393-D-E] F

2.1. A plain reading of the provisions of the Promotion Policy clearly demonstrates that neither the seniority of the appellants in the erstwhile Bank before the take over of the same nor their services as Assistant Manager assuming the same to be a promotion are being wiped off in any manner so as to hold the provisions of the Promotion Policy discriminatory. On the other hand the provisions for determination of inter-se seniority G H

A under the Promotion Policy provide for additional weightage for the service rendered by an employee as Assistant Manager in the erstwhile Bank. [396-D-E]

2.2. Prior to taking over of the Bank the Accountants and Assistant Managers were in the same grade scale and the Assistant Managers were B getting an additional allowance of Rs. 75 p.m. for the onerous nature of duty they were performing and, therefore, the same is not a promotion *Stricto Sensu.* [396-E-F]

2.3. The Promotion Policy has taken care of giving additional weightage for the services rendered as Assistant Manager in addition to the length of C service for determination of seniority in the cadre of Junior Management Grade Scale-I; neither any part of the service thus rendered by an employee has been ignored nor the Policy can be attacked as discriminatory. [396-F]

2.4. In the matter of laying down the Policy and criteria for promotion, the very Promotion Policy, more particularly Clause 11 thereof, provides for D different weightage for various factors and as such in laying down the Policy all relevant factors have been taken into consideration. [396-G-H]

3. There is no invalidity in the impugned judgment of the Division Bench requiring interference. The appellants who are stated to have been E promoted to higher grades on the basis of the judgment of the single judge may not be reverted from the promotional posts they are occupying notwithstanding their seniority in the cadre of Junior Management Grade Scale-I being lowered down in implementation of the provisions of the Promotion Policy. [397-A-C]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4223 of 1994.

From the Judgment and Order dated 23.3.90 of the Punjab and Haryana High Court in L.P.A. No. 310 of 1988.

G S.S. Javelli, Dr. Meera Agarwal and Ramesh Chandra Mishra for the Appellants.

V.R. Reddy, Additional Solicitor General, A.K. Sikri, N.N. Goswami, V. K. Rao, Ms. Madhu Sikri, C.B. Babu and V. K. Verma for the Respondents.

H The Judgment of the Court was delivered by

G. B. PATTANAIK, J. This appeal is directed against the judgment of the Division Bench of the Punjab & Haryana High Court dated March 23, 1990, in Letters Patent Appeal No. 310 of 1988. By the impugned judgment the Division Bench has reversed the judgment of the learned Single Judge and allowed the LPA. The appellants are the employees of the New Bank of India who joined the Bank as clerk in the year 1972. They were promoted as Accountants in the year 1977. In the year 1980 they were further promoted as Assistant Manager in the same scale of pay as that of Accountant but special allowance of Rs. 75 p.m. had been granted. These appellants had undergone some Probationary period and were confirmed as Assistant Manager of the Bank. While they were so continuing the Bank was itself taken over by the Union of India under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. After the taking over of the Bank a set of Regulations were framed, called, The New Bank of India (Officers Service Regulation) 1982, providing for service conditions of the employees including the categorisation of the officers and their fitment in the new grades. The Bank also formulated a set of policy for promotion, called the "Promotion Policy' which provided for the *inter se* seniority of these employees in different grades after their fitment and the mode and criteria for promotion. The appellants who were working as Assistant Manager before taking over of the Bank in the pay scale of Rs. 400-1110, which was also the scale of pay meant for Accountants were placed in the Junior Management Grade Scale I alongwith the Accountants. Their seniority in the Junior Management Grade Scale I was determined under Clause 5.1 of the Promotion Policy. Being aggrieved by their fitment into the Junior Management Grade Scale I as well as determination of their seniority in the said grade in accordance with the Promotion Policy they filed a Writ Petition challenging the validity of Regulation 7 as well as Clauses 5.1, 5.5, 6.2 and 7.1 of the Promotion Policy *inter alia* on the ground that the Regulation in question has undone the promotion of the appellants already achieved and as such is violative of Articles 14 and 16 of the Constitution. It was also contended that different clauses of the Promotion Policy indicating the mode for determination of *inter se* seniority in the new cadre where the appellants have been filled in are also violative of Articles 14 and 16 inasmuch as their promotion from the post of Accountants to the post of Assistant Manager has not been given any weightage and such Promotion Policy, more particularly Clause 5.1 thereof contravenes Sub-Regulation 5 of Regulation 18.

The respondents on the other hand took the stand that prior to taking over of the Bank the Accountants and Assistant Managers were drawing the

same scale of pay, but those who were being posted as Assistant Manager were merely getting an allowance of Rs. 75 per month. The word 'promotion' is a misnomer and, therefore, the appellants cannot claim any right on that score. Further stand of the respondents was that once the bank was taken over, the employer had ample powers to determine the service conditions by framing Rules and Regulations and in exercise of such power Regulations having been framed and the post having been categorized to different grades and their fitment having been indicated there is no justification on the stand of the appellants that they could not have been fitted in Junior Management Grade Scale I alongwith the Accountants. So far as the Promotional Policy is concerned, it was the stand of the respondents that there has been no discrimination and due weightage has been given for the period an employee has served as an Assistant Manager even for determination of their seniority in the cadre of Junior Management Grade Scale I and as such there has been no discrimination nor violation of Articles 14 and 16 of the Constitution. The learned Single Judge, however, on consideration of the different provisions of the Regulation as well as the Clauses of Promotion Policy came to hold that Regulation 7 providing for categorisation and fitment of the existing officers of the Bank on being taken over its legally valid and there is no constitutional infirmity and as such the appellants were rightly put in the Junior Management Grade Scale I. But so far as the Clauses of Promotion Policy is concerned, the learned Single Judge came to hold that Clauses 5.1, 5.5, 6.2 and 7.1 are *ultra* vires of Regulation 18(5) and are otherwise discriminatory and violative of Articles 14 and 16 of the Constitution and accordingly those Clauses of Promotion Policy were struck down. The appellants did not challenge the judgment of the learned Single Judge and, therefore, the finding of the learned Single judge that their fitment into Junior Management Grade Scale I and that Regulation 7 is constitutionally valid has become final. The Bank, however, assailed the judgment of the learned Single Judge striking down the different Clauses of Promotion Policy, as stated earlier, by filing a LPA. The Division Bench considered the different provisions of the Promotion Policy and came to hold that the Single Judge committed an error by holding that unequals have been treated as equals and the said conclusion cannot be sustained. The Division Bench further came to hold that no unreasonableness or arbitrariness or inequality can be found in the Promotional Policy providing the mode for determination of *inter se* seniority of the officers in any particular grade. It also took note of the fact that even while fixing the seniority under the Promotion Policy, additional weightage has been provided for discharging the functions of the Manager/Assistant Manager managing one man Bank. Further weightage has also been provided

at the time of consideration for promotion and therefore, the Clauses of the Promotional Policy cannot be held to be violative of Articles 14 and 16 of the Constitution. With these conclusions the judgment of the learned Single Judge having been set aside and the Clauses of Promotional Policy having been held to be valid the appellants have preferred this appeal.

Mr. Javeli, learned senior counsel appearing for the appellants strenuously urged that the very categorisation of the officers in the terms of Regulation 7 by putting the Assistant Managers and the Accountants in one grade is invalid and has been so held by the Andhra Pradesh High Court in *Sainathan's* case and the Special Leave Petition against the said judgment has not been entertained by this Court and as such Regulation 7 must be held to be invalid. We are unable to accept this contention of Mr. Javeli, learned senior counsel, inasmuch as in *Sainathan's* case only the *inter se* seniority of the officers was under challenge and the determination made thereunder by the High Court was not interfered with by this Court inasmuch as the Special Leave Petition was dismissed *in limini*. Neither the High Court has struck down Regulation 7 nor this Court had the occasion to go into that question while dismissing the Special Leave Petition in limini. That apart, as has been stated earlier, in the case in hand the learned Single Judge upheld the validity of Regulation 7 and the appellants did not challenge the same by filing any appeal and as such the decision of the learned Single Judge in that respect has reached finality and cannot be re-opened in an appeal against the judgment of the Division Bench where the only question was the validity of different Clauses of the Promotional Policy. We have, therefore, no hesitation in rejecting the submission of Mr. Javeli on this score.

Mr. Javeli, learned senior counsel further contended that the Division Bench of the High Court was in error in holding that the Clauses of the Promotion Policy are not discriminatory and does not violate the provisions of Regulation 18(5). According to the learned counsel the employees of the erstwhile Bank prior to its taking over who had been promoted from the post of Accountant to that of Assistant Manager/Manager in any event cannot be held junior to the Accountants who after taking over have been placed in one grade, namely, Junior Management Grade Scale I. The past services of the appellants as Assistant Manager which is the promotional post are being completely wiped off by the Promotion Policy and, therefore, the Policy must be held to be grossly discriminatory. According to Mr. Javeli, learned senior counsel under the Policy in question, the seniority of the employees in Junior Management Grade Scale I is being determined on the continuous length of

A service thereby unequals like Accountants and Assistant Managers are being treated as equals which *per se* is a hostile discrimination and as such the said Clauses of the Promotion Policy must be struck down.

Mr. Reddy, learned Additional Solicitor General appearing for the respondents, on the other hand contended that the expression 'promotion' B though had been used in the orders while posting the appellants as Assistant Manager but infact it was not a promotion from one cadre to the other, on the other hand the Accountants and the Assistant Managers were in one grade scale and, therefore, the argument that unequals have been treated as equals is of no substance. Mr. Reddy, learned Additional Solicitor General C further contended that in the Promotional Policy even for determination of *inter se* seniority in the Junior Management Grade Scale I appropriate weightage for services as Manager/Assistant Manager has been given, as is apparent from Clause 5.5 of the Policy and the seniority is not being determined solely on the length of service in the grade. Mr. Reddy, learned Additional Solicitor General also further pointed out that even for promotion from Junior D Management Grade Scale I to Middle Management Grade II weightage for various factors, like, seniority, educational/professional qualification, Banking knowledge, performance review and potential are given, as is apparent from Clause II of the Promotion Policy and as such the apprehension of the appellants that their services as an Assistant Manager prior to the taking over of the Bank is being totally ignored is wholly unfounded and is devoid of any E substance. As such the Division Bench of the High Court rightly held the Clauses of the Promotion Policy to be *intra vires.*

Having heard the learned counsel for the parties and having examined the provisions of the Regulation as well as the Clauses of the Promotional F Policy we do not find any infirmity with the conclusions arrived at by the Division Bench of the High Court so as to be interfered with by this Court. But since Mr. Javeli learned senior counsel appearing for the appellants has vehemently urged that the provisions of the Promotional Policy are constitutionally infirm and violate sub-regulation 5 of Regulation 18 we are examining the same in a greater detail. To appreciate the contentions raised G it would be appropriate to extract Regulation 18(2) and 18(5) and Clauses 5.1, 5.5, 6.2 and 7.1 of the Promotion Policy.

"Regulation 18(2):-

"Seniority of an officer in a grade or scale shall be reckoned with H 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 proceeding grade of scale or the previous cadre to which they belonged 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.

Regulation 18(5):-

Nothing in this Regulation shall affect the seniority among themselves of the officers as existing immediately prior to the appointed date."

"*Promotion Policy*:-Clause 5.1 - Seniority of an officer in a Grade or Scale shall be reckoned with reference to the date of his appointment in that Grade/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 belong in the Bank's services. Where two more officers have the same length of service in such preceding Grade or Scale or such previous cadre their seniority will be determined with reference to their seniority in the immediate preceding grade or cadre, as the case may be,"

"Clause 5.5 :- In order to remove doubts, it is clarified that seniority in Junior Management Grade Scale I of different categories of officers i.e. Managers Asstt. Incharge Extn. Counters and Accountants shall be common, to be determined as per length of service in the Junior Management Grade/Scale I. However, extra weightage for performing higher responsibilities of Managers/Asstt. Managers/Incharge Extn. Counters shall be given as under:

(1) Assistant Managers/Incharge Extn. Counters = 1/2 additional mark for each completed year of service or part thereof which is not less than six months as Assistant Managers/Incharge Extn. Counters.

(2) Managers = 1 additional mark for each completed year of service or part thereof which is not less than six months as Manager."

"Clause 6.2 :- Promotion from Junior Management Grade/Scale I to Middle Management Grade/Scale II.

A For promotion from Scale I to Scale II an officer should have completed a minimum 7 years of service in the officers' cadre."

"*Clause 7.1* :- In respect of officers categorised into new scales of pay under New Bank of India (Officers) Service Regulations, 1982 as on the appointed date, their length of service in the new scales will B be reckoned as under for the purpose of eligibility for promotion from one grade to another :

(i) Officers who are categorised in Jr. Management Grade/Scale I as on the appointed date -Minimum 7 years of service required in C terms of para 6.2 above will be reckoned from the date of initial appointment (inclusive of probation period, if any) in the Officers' cadre."

A plain reading of the aforesaid provisions clearly demonstrates that neither the seniority of the appellants in the erstwhile Bank before the taking D over of the same nor their services as Assistant Manager, assuming the same to be a promotion are being wiped off in any manner so as to hold the provisions of the Promotion Policy to be discriminatory. On the other hand the provisions for a determination of *inter se* seniority under the Promotion Policy provide for additional weightage for the service rendered by an employee as Assistant Manager in the erstwhile Bank. We also find sufficient force in E the contention of Mr. Reddy, learned Additional Solicitor General that prior to taking over the bank the Accountants and Asstt. Manager were in the same grade scale and the Astt. Managers were getting an additional allowance of Rs. 75 p.m. for the onerous nature of duty they were performing and, therefore, the same is not a promotion stricto sensue. But even otherwise the F Promotional Policy having taken care of giving additional weightage for the services rendered by him as Assistant Manager in addition to the length of service for Determination of Seniority in the cadre of Junior Management Grade Scale I neither any part of the service thus rendered by an employee has been ignored nor the Policy can be attacked as discriminatory. We are therefore, in agreement with the Division Bench of the High Court, of the G considered opinion that the provisions of the Promotional Policy sought to be challenged in these proceedings are constitutionally valid and there is no legal infirmity in the same. Even in the matter of laying down the Policy and criteria for promotion the very Promotional Policy, more particularly Clause 11 thereof, provides for different weightage for various factors and as such in H laying down the Policy all relevant factors have been taken into consideration.

In the aforesaid premises, we see no invalidity in the impugned judgment of the Division Bench of Punjab & Haryana High Court requiring our interference. A

While we decline to interfere with the impugned judgment of the High Court we make it clear that the appellants who are stated to have been promoted to higher grades on the basis of the judgment of the learned single Judge may not be reverted from the promotional posts they are occupying notwithstanding their seniority in the cadre of Junior Management Grade Scale 1 may be lowered down in implementations of the Provisions of the Promotional Policy. The appeal is accordingly dismissed with the aforesaid observations. But in the circumstances, there will be no order as to costs. B C

A.Q. Appeal dismissed.