

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 2497-99/2004

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Date of decision: 1st July, 2010

RAKESH MEHTA &ORS.

..... Petitioners

Through: Mr. G.S. Chaturvedi, Advocate.

Versus

PUNJAB & SIND BANK & ORS.

.... Respondents

Through: Mr. Jagat Arora, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

RAJIV SAHAI ENDLAW, J.

1. The three petitioners, by this writ petition seek quashing of the seniority list circulated vide letter dated 28th February, 2003 and restoration of the seniority list circulated vide letter dated 22nd December, 2001, for Electronic Data Processing (EDP) officer cadre of the respondent no.1 Bank. The petitioners further claim a mandamus directing the respondent no.1 Bank to declare the result of the promotion process held in the year 2002 for promotion from MMGS-II to MMGS-III in the EDP cadre and to complete the promotion process; consequently the relief of consideration of the petitioners for promotion to MMGS-III in the EDP cadre of the respondent no.1 Bank w.e.f. the year 2002 is also claimed.

2. As far as the relief qua seniority list is concerned, the officers of the respondent no.1 Bank are classified in, Top Executive Grade consisting of Scale VII & VI, Senior Management Grade consisting of Scale V & IV, Middle Management Grade consisting of Scale III & II and lastly Junior Management Grade Scale-I.

3. The respondent no.1 Bank vide its Staff Circulatory letter dated 10th March, 1997 informed all concerned of the decision of the Bank to create Specialist Cadre *inter-alia* in the field of Electronic Data Processing (EDP), of officers of JMGS-I and MMGS-II “by way of induction and thereafter by way of promotion”. The officers already working in the general cadre i.e. JMGS-I and MMGS-II desirous of induction in the EDP Cadre in the same scale as well as employees in the Clerical Cadre and officers working in JMGS-I desirous of entering into the EDP cadre through promotion in the next scale i.e. clerical to the officers cadre in JMGS-I and officers in JMGS-I to MMGS-II were directed to apply in the prescribed manner.

4. The three petitioners namely Rakesh Mehta, Jatinder Singh Bawa and Harbhajan Singh Tuteja were at the time of the aforesaid Staff Circulatory letter working in the General Cadre in Grade MMGS-II w.e.f. 26th April, 1996; they opted for induction in the EDP Cadre and were vide letters dated 16th September, 1997, 16th September, 1997 and 19th September, 1997 respectively of the respondent no.1 Bank inducted into the EDP Cadre. Several other officers working in the General Cadre in Grade JMGS-I also responded to the aforesaid Staff

Circulatory letter and applied for promotion to MMGS-II Grade in the EDP Cadre. They also, after clearing the requisite process were cleared and the letters issued to them of induction in the EDP Cadre are of a date about a month earlier to the letters aforesaid issued to the petitioners. They have been impleaded as respondents 2 to 7.

5. That upon creation of the EDP Cadre, in accordance with the Punjab & Sind Bank (Officers) Service Regulations, 1982, seniority list of the EDP Officers as on 31st March, 2001 was circulated under cover of a letter dated 22nd December, 2001. The petitioners aforementioned were respectively shown at serial nos.4, 3 & 5 in the said list. The names of respondents 2 to 7 were placed below those of the petitioners in the said list.

6. However, the aforesaid list was superseded vide list circulated under cover of a letter dated 28th February, 2003. The seniority of the three petitioners in the new list was at serial nos.13, 12 & 14 respectively. The respondents 2 to 7 were shown as senior to the petitioners. When the representations of the petitioners in this regard did not meet with any success, the present writ petition was filed.

7. The controversy as to the two seniority lists is limited. The relevant Regulation, being Regulation 18 of the Punjab & Sind Bank (Officers) Service Regulations, 1982 is as under:-

“18 (1) Each year the Bank shall prepare a list of officers 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.

(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."

8. The Regulation aforesaid is to determine the seniority w.e.f. the date of the appointment in that grade or scale. The question is, whether the date of appointment in the MMGS-II in the EDP Cadre is to be counted from the date of the letters aforesaid issued to the petitioners and respondent nos.2 to 7 or from the date of induction in the MMGS-II Grade. If the date is to be reckoned from the appointment in the MMGS-II Grade, the petitioners undoubtedly are senior.

9. The respondent nos.2 to 7 have not filed any separate counter affidavit, though are represented by the counsel for the respondent no.1 Bank only. The stand of the respondent no. 1 Bank is that the relevant date has to be of induction in the concerned cadre i.e. EDP Cadre and the earlier induction of the petitioners in MMGS-II Grade in the general cadre is of no avail. Reliance in this regard is placed on the clarification issued by the Government of India in its letter dated 26th September, 2002 to the effect that on conversion to a specialist cadre, officers will be placed at the bottom of the seniority list of their respective grade/scale in the

respective categories of specialist officers and that seniority in the specialist cadre is to be reckoned with reference to the date of entry into the specialist cadre and an officer with more length of service in general cadre, on conversion to specialist cadre cannot be treated senior to those existing in the specialist cadre. Clarification to the same effect has also been given by the Indian Banks' Association vide its letter dated 9th September, 2002. The respondent no. 1 Bank, therefore contends that the induction of the respondents 2 to 7 in the EDP Cadre being prior to that of the petitioners, no error can be found in the seniority list circulated under cover of letter dated 28th February, 2003, impugned in the present writ petition.

10. This Court vide order dated 25th February, 2004, on the application of the petitioners for interim relief ordered that selection, if any, effected from MMGS-II to MMGS-III would be subject to further orders in this writ petition. The respondent no. 1 Bank was also directed to intimate the order to all concerned. The said interim order has continued. Rule was issued in the writ petition on 20th October, 2005.

11. The counsel for the petitioners in rejoinder has stated that the clarifications aforesaid even though not binding, in any case do not apply to the facts of the present case. It is stated that there was no existing Specialist EDP Cadre in which the petitioners and the respondents 2 to 7 were inducted; it was created for the first time in 1997 and applications for horizontal transfer from MMGS-II in General category to MMGS-II in the Specialist EDP Cadre and also for vertical induction by way of promotion from JMGS-I in the General category to MMGS-II in the

Specialist EDP Cadre were invited at the same time. It is further contended that the difference in the dates of the letters of induction issued to the petitioners and the respondents 2 to 7 are of no avail inasmuch as both, were released from their previous postings, for joining the Specialist EDP Cadre at the same time. It is urged that the petitioners, who were working in MMGS-II Grade in the General Cadre were senior to respondents 2 to 7 working in JMGS-I Grade, also in the General Cadre in the manner aforesaid have been made juniors to the respondents 2 to 7.

12. No case law in the aforesaid context has been cited by either counsel. However, merit is found in the contention of the counsel for the petitioners. When a new cadre is created as in the present case, the seniority cannot be left at the *ipse dixit* of the official issuing the letters of induction in the cadre to all those joining at the same time. Regulation 18 (supra) providing for seniority to be reckoned from the date of appointment in that grade cannot be interpreted in such whimsical fashion when several people have applied at the same time when the specialist post/cadre comes into existence, their *inter-se* seniority cannot be dependent on the date of issuance of the letters of their induction. They are all deemed to have been appointed at the same time. It is not the case of the respondent no. 1 Bank that the respondents 2 to 7 were appointed or that they joined before the petitioners. They had all applied on being notified about the creation of the Specialist Cadre; the petitioners by moving from MMGS-II in the General category to MMGS-II in the Specialist EDP Cadre and respondents 2 to 7 by promotion from JMGS-I in General category to MMGS-II in the Specialist EDP

Cadre. Thus, their dates of appointment in the Specialist EDP Cadre have to be treated as the same. The Regulation 18 in such eventuality provides for the seniority to be reckoned by reference to their seniority in the immediately preceding grade or scale and the petitioners are definitely senior to the respondents 2 to 7 in accordance with the said Regulation. The seniority list impugned in the writ petition thus cannot be sustained and is liable to be struck down/quashed and the seniority list circulated under cover of the letter dated 22nd December, 2001 entitled to be restored. I may however record that the Supreme Court in ***Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab*** AIR 1975 SC 984 held that where “appointment was with immediate effect”, the length of service will be from date of appointment, even if charge was taken subsequently. However, neither was the appointment “with immediate effect” nor was the Supreme Court in the case aforesaid concerned with creation of new cadre, as in the present case.

13. The counsel for the petitioners has also contended that it was represented to the petitioners in the Staff Circulatory letter dated 10th March, 1997 (supra) that the Specialist EDP Cadre was being created “by way of induction and thereafter by promotion”. I do not find any merit in the said contention. Both, the petitioners as well as respondents 2 to 7 were inducted in the Specialist EDP Cadre, whether horizontally or vertically. The language of the Staff Circulatory letter relied on by petitioners only provides that the Specialist EDP Cadre is to comprise of JMGS-I & MMGS-II Grades only with JMGS-I being entitled to promotion to MMGS-II Grade in the same cadre.

14. Yet, another argument raised by the counsel for the petitioners is that there was no ground for superseding the Seniority list circulated under cover of the letter dated 22nd December, 2001. In response thereto, though the respondent no. 1 Bank has pleaded that it was only a tentative list but a perusal of the letters dated 22nd December, 2001 and 28th February, 2003 does not show any difference therein. Both provide that discrepancy, if any therein, be submitted within 30 days. Though the respondent no. 1 Bank has in the counter affidavit stated that objections to the seniority list circulated under cover of the letter dated 22nd December, 2001 were received but neither any particulars have been given nor any such objections have been filed before this Court. Not only so, seniority list circulated under cover of the letter dated 22nd December, 2001 was also acted upon by holding an examination in terms thereof. The respondent no. 1 Bank was not entitled to change the seniority list for this reason also.

15. The second relief sought by the petitioners is of declaration of the result of the exam held in the year, 2002 for promotion from MMGS-II to MMGS-III. Only those who had completed five years in MMGS-II could appear in the said exam. The petitioners who, as in the year 2002 had completed five years in MMGS-II were found eligible and took the exam. In this regard, it may be stated that it is not disputed that for the purposes of eligibility for promotion on the basis of length of service, change of stream from General Cadre to Specialist Cadre is not relevant. The grievance of the petitioners is that the result of the said examination was not declared. The respondent no. 1 Bank in its counter affidavit has pleaded that the promotion process could not be completed because the seniority list was found to

have not been correctly drawn up. The said explanation of the respondent no. 1 Bank is not found satisfactory. The seniority list had nothing to do with the eligibility process for the exam. The respondent nos.2 to 7 having been promoted to MMGS-II only in 1997 had in any case not completed five years in MMGS-II Grade on the cut off date for the examination/promotion of 2002.

16. The counsel for the petitioners relied on *A. Satyanarayana Vs. S. Purushotham* (2008) 2 SCC (L&S) 279 to contend that the right to be considered for promotion is a fundamental right.

17. During the course of hearing, it was informed that two of the three petitioners namely Rakesh Mehta and Jatinder Singh Bawa were promoted to MMGS-III in the year 2007. However, if the result of the examination conducted in the year 2002 is to be declared and the petitioners are to be found successful therein, then the petitioners or such of them as are found to clear the exam would be in MMGS-III cadre w.e.f. 2002/2003 only and will also be entitled to all consequential benefits. The explanation furnished by the respondent no. 1 Bank for withholding the promotions for which vacancies admittedly existed in the year 2002 being not satisfactory, the petitioners are also entitled to the relief in that regard.

18. The writ petition, therefore, succeeds. The seniority list circulated under cover of the letter dated 28th February, 2003 is set aside/quashed. The seniority list circulated under cover of the letter dated 22nd December, 2001 is restored. In

the alternative, the seniority list as on 31st March, 2001 be drawn up in accordance with the principles laid down hereinabove.

19. The respondent no. 1 Bank is also directed to declare the result of the examination held in the year 2002 for promotion from MMGS-II to MMGS-III and if on the basis of the result of the said examination the petitioners or any of them is successful and found eligible to be promoted to MMGS-III, the respondent no. 1 Bank is directed to treat them as promoted to MMGS-III w.e.f. that date only and to give all consequential benefits thereof to the petitioners within six weeks of today. The petitioners are also awarded costs of this writ petition of Rs.35,000/- payable by the respondent no. 1 Bank within six weeks hereof.

**RAJIV SAHAI ENDLAW
(JUDGE)**

1st July, 2010
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