

Before : J. L. Gupta, J.

O. P. LATKA,—Petitioner.

versus

THE STATE BANK OF PATIALA THROUGH MANAGING
DIRECTOR AND OTHERS,—Respondents.

Civil Writ Petition No. 10971 of 1988

May 2, 1991.

State Bank of Patiala (Officer's) Service Regulation, 1979—Reg. 67—Petitioner found suitable for promotion—Result kept under sealed cover pending determination of issuance of charge sheet against him—Policy decision specifying not to resort to 'Sealed Cover Procedure' unless there is prima-facie case established for proceedings against him in a departmental proceeding—Or otherwise has formed the opinion that a charge sheet may be issued to the officer concerned on specific imputations—Promotion withheld are unjust and unfair.

(Para 9)

Held, that the petitioner had been found suitable for promotion on the basis of his performance in the written test and interview, etc. According to the prescribed procedure, even the record of service is also examined and taken into consideration. If the petitioner was suitable for promotion on the basis of his record of service and his performance in the competitive selection, the bank could not withhold his promotion except after following the procedure prescribed in Section 2 of the Staff Regulations. If the contention raised, on behalf of the Bank is accepted, the result would be that the promotion of an employee shall be withheld even before the proceedings have been actually initiated against him. The punishment would precede even the levelling of a charge. Such a cause of action would in my opinion be wholly unfair and inequitable. On the contrary, if the officer is allowed promotion and ultimately found faulty, the authority would be entitled to impose any punishment including reduction in rank. There is no gainsaying the fact that even if the promotion is temporarily withheld, the officer suffers tremendously in terms of reputation and is bound to feel demoralised. However, if the promotion is granted but ultimately, if he is found guilty of the charges levelled against him, nothing stops the competent authority from imposing any penalty that may actually be found to be appropriate in the circumstances of the case.

Petition under Articles 226/227 of the Constitution of India praying that the record of the case be called for and after perusal of the same :

(i) *issue a writ in the nature of certiorary quashing the order*

dated 22nd October, 1988 (Annexure P/6) passed by the respondents;

- (ii) issue a writ in the nature of MANDAMUS directing the respondents to give effect to the result of the interview Committee and consequently the petitioner be promoted on the post of MMGS-II, with retrospective effect with all consequential benefits;
- (iii) issue any other appropriate writ, order, direction which this Hon'ble High Court may deem fit in the facts and circumstances of the case;
- (iv) dispense with the requirement of filing the certified copies of the annexures and serving of the advance notices to the respondents;
- (v) award the costs of this petition to the petitioner.

S. S. Nijjar, Sr. Advocate with S. K. Mittal and Mandeep Singh, Advocates and Mr. Sajal Ahluwalia, Advocate, for the petitioner.

J. S. Narang, Sr. Advocate, for State Bank of Patiala. for the Respondents.

JUDGMENT

Jawahar Lal Gupta, J.

"I was declared suitable for promotion on April 26, 1986 and yet I have not been promoted presumably because the department had served a charge-sheet on me on July 22, 1987" is the sum and substance of the petitioner's grievance in this petition.

(2) The petitioner was appointed as a Branch Manager in the respondent-Bank and was promoted as Officer Junior Management Grade-Scale-I with effect from October 1, 1977.

(3) Officers working in Scale-I are eligible for promotion to middle Management Grade-Scale-II on completion of six years of service. This promotion is made as a result of a written test and an interview. Certain posts in Scale-II were available in the year 1984. Promotion to these posts had to be made with effect from August 1, 1984. The conditions of eligibility had to be fulfilled as on January 1, 1984. The petitioner appeared in the written test held on August 18, 1985 and was interviewed on December 21, 1985. The petitioner avers that he was selected on merit (P3) but his result was

kept in a 'sealed cover'. Finally, the petitioner was served with a charge-sheet on July 22, 1987. The petitioner submitted his reply to the charge-sheet on August 31, 1987. Thereafter, an Enquiry Officer was appointed,—*vide* order dated January 12, 1988. These proceedings culminated in an order of August 31, 1988 by which a penalty of reduction of the basic pay by two stages was passed.

(4) The petitioner further avers that in the year 1985-86 there was nothing against him which could empower the department to withhold his promotion and that the "Sealed Cover Procedure" was wrongly invoked by the respondents. He claims to have submitted a representation and finally after the rejection of the representation on 22nd October, 1988, the petitioner has approached this Court through the present petition.

(5) A written statement has been filed on behalf of the respondents. It has been, *inter-alia*, averred that the conditions of service of the employees are governed by the State Bank of Patiala (Officers') Service Regulations, 1979 (for short 'the Regulations'). It has been further averred that the Executive Committee of the Board of Directors of the respondent-Bank in their meeting held on June 26, 1982 had adopted the guidelines issued by the Government of India in the matter of promotions etc. The guidelines were circulated on July 6, 1982 according to which the "Sealed Cover Procedure" could be invoked in the case of the petitioner. It has been further averred that the petitioner was eligible for promotion to Scale-II for the vacancies of the year 1984 under "Merit Channel". Petitioner was, however, not found suitable by the Interview Committee and he had in fact submitted an application to the Executive Committee on January 18, 1986. Petitioner's appeal was accepted by the Committee on April 26, 1986 and it was ordered that the petitioner be promoted to Scale-II with effect from August 1, 1984. The appellate Authority had further ordered that the petitioner's result be kept in 'sealed cover' since disciplinary action was contemplated against him. The petitioner having been found guilty ultimately, the selection stood annulled.

(6) Mr. Nijjar appearing for the petitioner has contended that the petitioner having been found suitable for promotion in the year 1986 and no charge-sheet having been issued to him till July, 1987, had a right to be granted the promotion and the action of the respondents in denying the promotion to him was totally arbitrary and unfair. As against this, Mr. Narang, appearing for

the respondents has vehemently contented that the action of the Bank was in strict conformity with the policy decision circulated,—vide letter of July 6, 1982. He has further pointed out that a decision to initiate disciplinary proceedings had been taken against the petitioner as far back as September 24, 1985 when the proposal of the Zonal Manager had been approved by the General Manager. Copy of the proposal and the approval thereof are at Annexure R-3 with written statement of the respondents.

(7) In order to appreciate the respective contentions, a reference to the proposal contained in Annexure R-3 and the policy decision at Annexure R-1 is necessary. A perusal of the proposal submitted by the Zonal Manager on September 14, 1985 which was approved by the General Manager on September 24, 1985 shows that the only decision taken was that "the erring officer should be proceeded against and the case should be given to Disciplinary Action Cell for further action". Did the approval of this proposal mean that a positive decision to charge-sheet the petitioner had been taken? The sequence of events shows that the charge-sheet was actually given on July 22, 1987 viz. almost one year and ten months later. It is in the background of this factual position that the case has to be considered in the light of the policy decision arrived at in the letter of July 6, 1982. The relevant portion of the policy decision reads as under :—

“ ‘Sealed Cover Vacancies Procedure’ (i) The interviewing Committee/Staff Committee should also consider for promotion the cases of all officers under suspension or against whom disciplinary proceedings are in progress or are contemplated. Whereas in so far as an officer whose conduct is under an inquiry is concerned, the fact that inquiries are under way or there is a secret note or report about/against him, should not affect his chance of promotion unless there is a *prima facie* case established for proceeding against him in a departmental proceeding or launching criminal prosecution against him. In other words, only after the conclusion of an investigation and when the Competent Authority on consideration of the results of the Investigation either by Bank or Central Bureau of Investigation or otherwise has formed the opinion that a charge-sheet may be issued to the officer concerned on specific imputations or that sanction for prosecution is proposed;

the "Sealed Cover Vacancies Procedure", should be resorted to deeming such an officer as the one against whom disciplinary proceedings are contemplated."

A perusal of the above shows that the officer had not to be denied his promotion unless "there is a *prima facie* case established for proceeding against him in a departmental proceeding—or otherwise has formed the opinion that a charge-sheet may be issued to the officer concerned on specific imputations.....". It is only in such a situation that the 'Sealed Cover Procedure' can be resorted to. In September, 1985, in my opinion, the ultimate decision which was taken by the General Manager was P1 that the case be given to the Disciplinary Action Cell of the Bank for further action. There is nothing on record to show that the decision to charge-sheet the petitioner for specific imputations had been taken. It is no doubt correct that the ultimate charges levelled against the petitioner on July 22, 1987 (Annexure P-1) were substantially the same as those contained in the proposal at Annexure R-3, the fact remains that an opinion to issue a charge-sheet had not been formed in September, 1985. At best, there was a proposal to proceed further and a decision to forward the papers to the 'Disciplinary Action Cell' had been taken.

(8) My attention has also been drawn to a recent pronouncement by their Lordships of the Supreme Court in the case of *New Bank of India v. N. P. Sehgal and another JT* (1). In this case, their Lordships were considering a similar provision embodied in clause 9 of the Promotion Policy of the Bank. It read as under :—

"Clause 9—Officers in respect of whom disciplinary action is in process will be permitted to take part in the promotion process, subject to the condition that the promotions (if they are selected) will be withheld until the officer is exonerated from the charges. In such an event the promotion will be given effect to from the date on which it would have been otherwise effective but for the disciplinary (P8) action. The officer will not be eligible for promotion if punishment, except censure, was awarded as a result of the disciplinary action."

While considering the above Rule, their Lordships held as under :—

"7. On a plain reading of this clause it is clear that even if disciplinary action is in process against an officer of the

appellant Bank, that would not entitle the appellant Bank to exclude from consideration for promotion the officer concerned if he is otherwise entitled to be so considered. The only right given to the appellant in such cases is that, in case such an officer is otherwise found fit for promotion and selected for promotion, that promotion can be withheld until the officer is exonerated from the charges. It is significant that the said clause goes to state that in case such an officer is exonerated from the charges, promotion will have to be given effect to from the date on which it would have been otherwise effective but for the disciplinary action. *This rule gives rise to the implication that till disciplinary action is in process or initiated, the officer concerned against whom allegations of misconduct might be made, can neither be excluded from consideration for promotion if he is entitled to be considered otherwise nor can the promotion be denied to him.* In these circumstances, when the promotion from Scale II to Scale III was granted to respondent No. 1 on July 17, 1984, there could be no question of condonation of the earlier acts of misconduct by reason of this promotion because in law and in view of the said Regulation (9) the appellant had no option but to consider respondent No. 1 for promotion and if he was otherwise found fit for promotion to promote him. In view of this conclusion, it must follow that the charge-sheet submitted against respondent No. 1 and the disciplinary proceedings pursuant to the said charge-sheet cannot be said to be bad in law and cannot be interfered with on the ground of condonation. In our view, the courts below were in error in holding that the earlier alleged acts of misconduct of respondent No. 1 had been condoned by the appellant and basing their conclusions thereon.”
(emphasis supplied).

In view of the above pronouncement of the law it appears that an officer against whom disciplinary action is in process, can neither be excluded from consideration nor can the promotion be denied to him. Their Lordships took this view in spite of the fact that the rule provided for the withholding of the promotion “until the officer is exonerated from the charges.” The language of the circular in the present case is almost in similar terms. In view of the law as laid down by their Lordships of the Supreme Court, there is no option but

to hold that the petitioner's promotion could not be withheld after his having been found suitable.

(9) There is another aspect of the matter. The conditions of service governing the petitioner are embodied in the Service Regulations. Section 2 embodies the provision regarding discipline and appeal. Regulation 67 enumerates the penalties. Withholding of promotion is one of the penalties prescribed under Regulation 67. The sequence of events in the present case shows that the petitioner had been found suitable for promotion on the basis of his performance in the written test and interview etc. According to the prescribed procedure, even the record of service is also examined and taken into consideration. If the petitioner was suitable for promotion on the basis of his record of service and his performance in the competitive selection, the Bank could not withhold his promotion except after following the procedure prescribed in Section 2 of the Staff Regulations. If the contention raised on behalf of the Bank is accepted, the result would be that the promotion of an employee shall be withheld even before the proceedings have been actually initiated against him. The punishment would precede even the levelling of a charge. Such a course of action would, in my opinion, be wholly unfair and inequitable. On the contrary, if the officer is allowed promotion and ultimately found guilty, the authority would be entitled to impose any punishment including reduction in rank. There is no gainsaying the fact that even if the promotion is temporarily withheld, the officer suffers tremendously in terms of reputation and is bound to feel demoralised. However, if the promotion is granted but ultimately he is found guilty of the charges levelled against him, nothing stops the competent authority from imposing any penalty that may actually be found to be appropriate in the circumstances of the case.

(10) I am, therefore, of the opinion that in the present case, the action of the respondents in withholding the petitioner's promotion was wholly unjust and unfair.

(11) There is yet another aspect of the matter. The promotion was to take effect on August 1, 1984. On that date, there was nothing against the petitioner. There was not even an allegation against him. Even if the contention of Mr. Narang to the effect that disciplinary proceedings were contemplated against the petitioner in September, 1985 is accepted, the consideration for promotion being from August 1, 1984, the contemplated proceedings were, in my opinion, wholly irrelevant. Further, the proceedings have culminated only in reduction of basic pay by two stages. If the action of the Bank is upheld,

the petitioner would suffer not only reduction of pay but also denial of promotion.

(12) In view of the foregoing position, I allow this petition, quash the impugned action including the order rejecting the petitioner's representation at Annexure P-6 and declare that the petitioner shall be deemed to have been promoted to Middle Management Grade Scale-II with effect from August 1, 1984. The petitioner shall be entitled to all consequential reliefs in the nature of arrears of salary. He will also be entitled to his costs which are assessed at Rs. 3,000.

J.S.T.

Before : M. S. Liberhan, J.

DR. N. K. SOOD,—Petitioner.

versus

SMT. TARA WATI AND ANOTHER,—Respondents.

Civil Revision No. 1237 of 1981.

September 6, 1991.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13 (2) (i)—Ejection sought for non payment of rent—Copy of plaint bearing date of drafting of petition i.e. 31st May, 1983—Petition filed much later i.e. 16th September, 1993—No notice to tenant regarding date of filing of petition—Tender of rent made till the date of drafting as given in plaint—Held that tender is valid—Reasonable to infer that landlord claimed ejection on the ground of non-payment from the date claimed till 31st May, 1983 and not for any unspecified date.

(Paras 24, 28 and 31)

Held, that it may be observed that facts in existence can only be verified and not the future happening which may happen or may not. The reading of the verification and the facts averred in the ejection petition and its bearing the date of drafting and non-intimation of the date of filing to the tenant, it would be reasonable to infer that the landlord claimed the ejection on the ground of non-payment of rent from 1st January, 1983 to 31st May, 1983 and not for upto some unspecified future date. I have not been able to persuade myself to accept the contention of the learned counsel for respondents that the landlord is not required to disclose the definite rent due and can take freak chances of ejection.