

(1992) 09 AP CK 0002

Andhra Pradesh High Court

Case No: Writ Appeal No. 1054 of 1991

Balbir Singh Nayyar

APPELLANT

Vs

Canara Bank and
Another

RESPONDENT

Date of Decision: Sept. 15, 1992

Acts Referred:

- Canara Bank (Officers) Service Regulations, 1979 - Regulation 17
- Constitution of India, 1950 - Article 14, 226

Citation: (1992) 3 ALT 501 : (1992) 2 APLJ 351

Hon'ble Judges: A. Lakshmana Rao, Acting C.J.; P.L.N. Sarma, J

Bench: Division Bench

Advocate: Y. Suryanarayana, for the Appellant; E. Manohar, for the Respondent

Final Decision: Allowed

Judgement

P.L.N. Sarma, J.

Writ Petitioner is the appellant in this appeal. This writ appeal was preferred against the Judgment of the learned single Judge dismissing Writ Petition No. 4529 of 1990.

2. Writ Petition itself was filed for a writ of Mandamus directing the respondents to act according to law and promote the petitioner to the rank and status of Senior Manager in the Middle Management Grade Scale III of the Bank with effect from 12-6-1989 along with other promotees.

3. In the affidavit filed in support of the writ petition, it was stated that the petitioner joined Lakshmi Commercial Bank Ltd., in the year 1970 as a Clerk and later he was promoted as an Accountant in the year 1976 and got further promotion as Manager in the year 1977. Thereafter, the petitioner was promoted as Area Manager by an order dated 26-4-1985 and assumed duties on the very same date. However, the said promotion was later withdrawn on the ground that the then Directors of the Bank have not approved the same. While so, Lakshmi Commercial Bank Ltd., was

amalgamated with the first respondent Bank with effect from 24-8-1985 by virtue of a notification of Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi, dated 23-8-1985. As per the terms of the scheme of amalgamation, all the employees of the Lakshmi Commercial Bank Limited, other than those specified in the schedule annexed to the scheme, were continued in service and were deemed to have been appointed as employees of the first respondent-bank with the benefit of continuity of service with effect from 24-8-1985. The petitioner-appellant herein was one of the persons included in the schedule annexed to the scheme. The employees of the Lakshmi Commercial Bank Limited who were included in the schedule annexed to the scheme including the appellant herein moved the Supreme Court of India in Writ Petition No. 719 of 1986 and the said writ petition was ultimately allowed and the first respondent bank was directed to take over the excluded employees whose names were included in the schedule annexed to the scheme. Thereafter, the appellant herein joined first respondent bank on 29-4-1987 and that he rendered unblemished and meritorious service in Lakshmi Commercial Bank Limited. While so, first respondent bank by Memo No. 65 of 1989 dated 9-3-1989 published notice calling for applications in the prescribed format from the Managers, Middle Management Grade Scale - II to Senior Manager Middle Management Scale - III by promotion by way of selection and the selection process was laid down in the Memo No. 65/89 dated 9-3-1989 issued by first respondent bank. The petitioner - appellant submitted his application and he was called and interviewed on 21-4-1989. First respondent bank released the list of promotees by a Memo No. 138/89 dated 10-6-1989. The appellant found that his name was not in the list and therefore, he requested the bank by his letter dated 16-8-1989 to inform him regarding the marks awarded to him. According to the appellant, he secured more marks than one of the last promotees, viz., Mr. Haribilas Biswas. Aggrieved at the denial of promotion, which according to the appellant is without any reason and arbitrary, writ petition was filed. It was further stated in the affidavit that neither any charge-sheet nor memo was served upon the appellant till the date of filing of the writ petition and therefore, the denial of promotion to him is wholly bad. He made an allegation that since he was holding the post of Organising Secretary of Canara Bank Officers Union (Registered), he was victimised. According to the appellant, entire procedure adopted by the respondent bank in withholding his promotion is wholly unsustainable and unconstitutional.

4. Writ petition was resisted by the respondent bank by filing a counter. It was stated in the counter that the Board of Directors of the Bank, in consultation with the Reserve Bank of India and the previous approval and sanction of the Central Government, formulated certain regulations in the year 1979 which are known as "Canara Bank (Officers") Service Regulations, 1979". The said regulations laid down the terms and conditions of service applicable to all the employees of the Bank and inter alia, they provide for matters relating to the determination of grades of officers, categorization of posts, scales of pay, allowances, perquisites, appointment,

probation, confirmation, seniority etc. Promotion is regulated by Regulation 17 of the Service Regulations referred to above. It says that promotion to all grades of officers in the Bank shall be made in accordance with the policy laid down by the Board of Directors from time to time having regard to the guidelines of the Government, if any. In accordance with the above Service Regulation 17, the Board of Directors of the respondent Bank, approved the promotion policy for the year 1989 and, the same was circulated, vide Banks Memo No. 65/89 dated 9-3-1989. The said promotion policy binds all including the appellant herein. The said promotion policy contains a disability clause, which is to the effect that such of those Officers against whom charge-sheets are pending or are contemplated or under suspension or against whom criminal proceedings are pending will be assessed but results will be with-held till the final out-come. The appellant, having applied for promotion under the very same policy, cannot question the said policy and it is binding on the appellant. In fact the policy is not challenged in the writ petition and therefore, he cannot question the disability clause in these proceedings. It was further stated in the counter- that while the petitioner -appellant was in the employment of erstwhile Lakshmi Commercial Bank Limited, it was alleged that he committed certain acts of misconduct and they were scrutinized and investigated into by the respondent-Bank and it revealed a prima facie case for issuing charge-sheet to the petitioner and by 11-5-1989 when the Departmental Promotion Committee considered the case of the petitioner for promotion, issuance of charge-sheet to the appellant was contemplated and therefore, the result of the Departmental Promotion Committee was with-held as per the promotion policy for the year 1989. The policy was finalised only after consulting the recognised Officers" Association of the respondent Bank and therefore, it is binding on the appellant. Having regard to the disability clause in the promotion policy for the year 1989, recommendations of the Departmental Promotion Committee were kept in a sealed cover and with-holding of the promotion is in order.

5. On a consideration of the rival contentions and the material placed before the learned single Judge, the writ petition was dismissed. The learned single Judge came to the conclusion that the respondent bank completed the preliminary enquiry into the alleged misconduct of the appellant and the charge-sheet against the appellant was in contemplation and therefore, with-holding the promotion is in order and it is in accordance with the promotion policy and that the promotion policy for the year 1989 issued by the Bank is of statutory nature and binding on the appellant.

6. In this appeal, Sri Y. Suryanarayana, learned Senior counsel appearing for the appellant raised the following three contentions:

(1) Sealed covet procedure adopted by the respondent bank is not permissible inasmuch as, neither a charge memo was issued to the appellant nor any charge-sheet in criminal prosecution was filed by the date the appellant's case was considered for promotion by the Departmental Promotion Committee.

(2) Pendency or "contemplated" initiation of the disciplinary proceedings against the appellant cannot be a ground to deny the appellant the right to be considered and if found to be fit to be promoted. Therefore, the result of the Departmental Promotion Committee ought to have been made known and according to the finding of the said Committee, the appellant should have been promoted.

(3) The disability clause contained in the promotion policy of the year 1989, and formulated by the Bank, even if it is done so with the approval of the Employees' Association, is arbitrary and therefore, violative of Article 14 of the Constitution of India.

7. Sri E. Manbhar, learned Senior Counsel appearing for the respondent Bank contended that the promotion policy was formulated by the respondent bank in consultation with the Officers' Association and, therefore, it is binding on the appellant which includes the disability clause and it is not open to him to question the same. It is also contended by the counsel that the appellant, having applied under the very same promotion policy, is estopped from questioning the disability clause and in any event, there being no challenge to the promotion policy in the writ petition, it is not necessary for this Court to go into the same. On facts, the learned counsel contended, that by 11-5-1989 the preliminary investigation into the alleged misconduct committed by the appellant while he was in the employment of erstwhile Lakshmi Commercial Bank Limited was completed and the issuance of charge-sheet was in contemplation and therefore, the "sealed cover" procedure was adopted.

8. Point No.I: The relevant facts, for the purpose of appreciating the contention raised by the appellant, are as follows:

The appellant submitted an application for promotion pursuant to a notice issued by the respondent bank calling for applications in the prescribed format. The Departmental Promotion Committee met on 11-5-1989 for considering the case of the appellant for promotion. The recommendation of the Departmental Promotion Committee was kept in a "sealed cover" while publishing the list of other candidates who were selected. Actually, the charge-sheet was issued to the appellant on 23-7-1990. Now the question is whether keeping the recommendation of the Departmental Promotion Committee in a "sealed cover" on 11-5-1989 when the said Committee met for considering the case of the appellant for promotion, is valid or not? Resort to sealed cover procedure was considered by the Surpeme Court in [Union of India Vs. K.V. Jankiraman, etc. etc.,](#) . A batch of cases was disposed of by the learned Judges of the Supreme Court in the above cases arising out of the decision of a Full Bench of the Central Administrative Tribunal as well as other decisions by the Central Administrative Tribunal following the judgment of the Full Bench. The learned Judges held, on a consideration of the relevant cases as follows in para 6 of their Judgment at page 2015:

"On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo /charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement With the Tribunal on this point."

From the above, it is clear that the sealed cover procedure can be resorted to only after the charge-memo was issued in a departmental proceeding or a charge- sheet was issued in criminal prosecution. The above decision of the Supreme Court was considering the judgment of the Full Bench of the Central Administrative Tribunal in K.Ch. Venkata Reddy v. Union of India 1987 (4) S.L.R. 70. The Full Bench of the Central Administrative Tribunal, having considered exhaustively regarding sealed cover procedure, stated in its conclusion as follows at page 70: "the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal Court and not before."

Having regard to the above, it is clear that in the instant case by 11-5-1989, when the Departmental Promotion Committee met and considered the case of the appellant for promotion, neither a charge memo was served on the appellant in a disciplinary proceeding nor charge-sheet was filed against the appellant in a Criminal Court. Therefore, we are of the opinion that the "sealed cover" procedure adopted by the respondent bank in the instant case is not sustainable and it is bad.

9. Point No. 2: In support of the contention on this point, Sri Y.Suryanarayana, learned senior counsel appearing on behalf of the appellant, relied upon a judgment of the Supreme Court in [The State of Madhya Pradesh Vs. Bani Singh and another](#), . In this case, the learned Judges while considering the very same point concluded thus:

"Normally, pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon, to his right to be considered. If the departmental enquiry had reached the stage of framing of charges after a prima facie case has been made out, the normal procedure followed as mentioned by the Tribunal was "sealed cover" procedure but if the disciplinary proceedings had not reached that stage of framing of the charge after prima facie case is established the consideration for the promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings."

This decision of the Supreme Court, in our view, completely supports the contention of the learned counsel appearing for the appellant. Pendency or even contemplated initiation of the disciplinary proceedings will have no impact upon the right of the candidate to be considered for promotion. Only if the departmental enquiry had reached the stage of framing of charges then only "sealed cover" procedure can be resorted to. The promotion cannot be with-held merely on the ground of pendency of such disciplinary proceedings. By 11-5-1989, the date on which the departmental promotion committee met for considering the case of the appellant for promotion to Senior Manager Middle Management Scale - III, no disciplinary proceeding was pending against the appellant. In fact, charge memo was issued on 23-7-1990 to the appellant. Therefore, withholding of promotion to the appellant on the ground that departmental proceedings are contemplated is not sustainable and it is illegal. The point is held in favour of the appellant.

10. Point No. 3: Sri E. Manohar, learned senior counsel appearing for the respondents strongly relied upon the disability clause contained in the promotion policy formulated by the Bank in Memo No. 65/89 dated 9-3-1989, which is as follows:

"Disability clause on account of Suspension and Charge-sheet:

(a) Such of those officers against whom charge-sheets are pending or are contemplated or are under suspension or against whom criminal proceedings are pending will be assessed but results will be withheld till the final outcome."

According to the counsel, by 11-5-1989 when the Departmental Promotion Committee met and considered the case of the appellant, preliminary investigation into the alleged misconduct of the appellant was completed and the issuance of charge-sheet was contemplated and, therefore, as per the disability clause, the result of the appellant can be withheld till the final outcome of the departmental proceedings. Factually nowhere it is mentioned in the counter filed on behalf of the respondents as to when the preliminary investigation was completed into the alleged allegation of misconduct against the appellant and as to when actually the decision was taken to issue charge-sheet. The details are not forthcoming. It is easy for the respondent now to contend that the preliminary investigation was completed and the issuance of charge-sheet was under contemplation. It is not possible to accept the factual allegation made in the counter. Even otherwise, when the decision of the Supreme Court clearly laid down that pendency of disciplinary proceedings is not a ground for withholding promotion, it can never be contended that contemplated issuance of a charge-sheet can be a ground for withholding the consideration of a candidate for promotion, and if found fit to promote him to the next higher post. This disability clause to the extent it stated that such of those officers against whom charge-sheets are contemplated, the results can be withheld till the final outcome of the disciplinary proceedings, is absolutely unsustainable and it cannot stand as being contrary to the law of the land as laid down by the decisions

of the Supreme Court referred to supra. Further, contemplating issuance of a charge-sheet is vague and it is arbitrary. At any point of time, the authorities may come forward and say that the issuance of charge-sheet is contemplated. The word "contemplation" depends upon the mental condition of the, authority. The authority can always say, even though issuance of charge-sheet is not in contemplation, that the issuance of charge- sheet is in contemplation. No guidelines are incorporated in the disability clause with reference to the contemplated action. Un-guided and un-canalised power is given under the disability clause to the authorities. In the instant case, the Departmental Promotion Committee met for considering the case of the appellant for promotion on 11-5-1989, on which date, it is alleged, issuance of charge memo was under contemplation, while the charge memo was issued long thereafter viz., on 23-7-1990. If the contention is accepted, the authorities can issue charge memo at any time they like even though they have come to a conclusion on a particular day that the issuance of charge memo is under contemplation. Having regard to the above mentioned facts, we are of the view that the disability clause, insofar as contemplation of charge-sheet is concerned, is arbitrary and falls within the vice of Article 14 of the Constitution of India.

11. The other submission made by Sri E. Manohar, learned senior counsel appearing on behalf of the respondents, that the promotion policy including the disability clause is binding on the appellant in view of the fact that the same was issued by the bank in consultation with the Officers' Association is also not sustainable. When once it is held that it runs counter to the law of the land as laid down by the Supreme Court and is also arbitrary and violative of Article

14 of the Constitution of India, the question of disability clause being binding on the appellant does not arise. It is well settled that there can be no estoppel against Constitution. It is further contended by the counsel appearing for the respondents that in the writ petition the constitutional validity of the disability clause in the promotion policy was never questioned and therefore, this Court should not countenance the said point. However, in this writ appeal specific grounds have been raised by the appellant regarding invalidity of the disability clause and since it does not depend upon any question of fact and it is a pure question of law, we are of the opinion that it can be gone into.

12. Having regard to the above facts and in the circumstances, the writ appeal is allowed and the judgment of the learned single Judge under appeal is set aside and a Mandamus will issue to the respondents herein to open the sealed cover and if the appellant is found suitable for promotion as per the recommendations of the Departmental Promotion Committee, he shall be promoted to the post of Senior Manager, Middle Management Scale - III with effect from 12-6-1989, on which date the other promotions were made by the respondents, with all the attendant benefits. No order as to costs.