

(1987) 06 CAL CK 0002

Calcutta High Court

Case No: None

Anugrah Narayan Sinha

APPELLANT

Vs

United Commercial Bank and
Others

RESPONDENT

Date of Decision: June 29, 1987

Acts Referred:

- Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 - Section 19
- Constitution of India, 1950 - Article 16, 226

Citation: (1988) 2 LLJ 295

Hon'ble Judges: Sudhir Ranjan Roy, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Sudhir Ranjan Roy, J.

Whether a suspended employee, who is not considered for promotion solely on the ground that a disciplinary proceeding is pending against him, is entitled to be considered for such promotion retrospectively after the said proceeding is dropped following his exoneration of the charges, is the short but interesting question which arises for consideration in the instant writ petition.

2. The petitioner, a grade "D" Officer in the United Commercial Bank, while working in the Division Office at Patna, was charge-sheeted and put under suspension with effect from 10th February 1976.

3. In the disciplinary enquiry that followed, the petitioner was exonerated of all the charges and was reinstated with effect from 27th October 1977. He was, however, suspended once again from 1st December 1977 and a fresh enquiry was directed against him.

4. The petitioner having challenged this order in the Patna High Court, the said High Court by its order dated 24th January 1979 made the Rule absolute in his favour and restored the order dated 27th October 1977 by setting aside the order of fresh enquiry.

5. Following this, the petitioner resumed his duty on 27th January 1979 and was paid his emoluments for the entire period after deduction of the subsistence allowance already drawn by him.

6. However, the petitioner's claim for promotion with retrospective effect from 10th February 1976 was disallowed though in the meantime promotions were given twice from grade "D" to grade "C" posts on 1st April 1976 and 1st September 1978.

7. Being aggrieved the petitioner has come up for redress before this Court under Article 226 of the Constitution.

8. The case, made out by the respondents in their affidavit-in-opposition is that according to the guidelines for determining the seniority of Officers of various grades and in effecting promotions of Officers from a lower grade to a higher grade as adopted by the Board of Directors and communicated to the staff by Circular letter No. 52/75 dated 23rd June, 1975, an Officer against whom departmental or any other enquiry is pending, would not be considered for promotion until the enquiry is completed and if he is exonerated, his case for promotion to the next higher grade would be considered in the light of the findings of the enquiry, and that petitioner's case for promotion can only be considered in accordance with the existing guidelines and not otherwise.

9. It was contended by Mr. Mukherjee, the learned Advocate representing the petitioner, that the petitioner's case would be governed by Regulation 15(1) read with Regulation 15(3)(a) of the United Commercial Bank Officer Employees (Conduct) Regulations, 1976 which provide that when an officer is exonerated of the charges levelled against him and is reinstated on the suspension order being withdrawn, the period of absence from duty on account of suspension shall be treated as a period spent on duty.

10. On the other hand, it was contended by Mr. Roy, the learned Advocate appearing on behalf of the respondents that since the petitioner's case is not governed by Regulation 15(3), the guidelines laid down by the Board of Directors dated 23rd June, 1975 will continue to have effect. The petitioner being under suspension from 10th February 1976 to 26th October 1977 and then again from 1st December 1977 to 26th January 1979, his case for promotion could not be considered during that period in view of the guidelines and as such, on his being exonerated of the charges, his case for promotion will now be considered. Under no circumstances the petitioner can claim promotion retrospectively with effect from 10th February 1976.

11. Now, since Mr. Mukherjee representing the petitioner has strongly relied upon Regulation 15(1) read with Regulation 15(3) of the 1976 Regulations duly framed u/s 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, it may be useful to refer to the said Regulations which are as hereunder:

15. Pay, allowances and treatment of service on termination of suspension:

(1) Where the competent authority holds that the officer employee has been fully exonerated or that suspension was unjustifiable, the officer employee concerned shall be granted the full pay to which he would have been entitled, had he not been suspended, together with any allowance of which he was in receipt immediately prior to his suspension, or may have been sanctioned subsequently and made applicable to all officer employees.

(2) In all cases other than those referred to in Sub-regulation (1), the officer employee shall be granted such proportion of pay and allowances as the Competent Authority may direct:

Provided that the payment of allowances under this sub-regulation shall be subject to all other conditions to which such allowances are admissible.

Provided further that the pay and allowances granted under this sub-regulation shall not be less than admissible under Regulation 14.

(3)(a) In a case falling under sub-regulation (1), the period of absence from duty shall, for all purposes, be treated as a period spent on duty;

(b) In a case falling under sub-regulation (2) the period of absence from duty shall not be treated as a period spent on duty unless the Competent Authority specifically directs, for reasons to be recorded in writing, that it shall be so treated for any specific purpose.

12. It was strongly contended by Mr. Mukherjee that since Regulation 15(3) provides that the period of absence from duty shall "for all purposes" be treated as a period spent on duty, the period of absence of the petitioner from duty on account of suspension from 10th February 1976 to 26th October 1977 and then again from 1st December 1977 to 26th January 1979 shall be treated as spent on duty. This, according to Mr. Mukherjee, will entitle the petitioner not only to arrear emoluments, allowances etc. but the period will be taken into consideration for promotion as well.

13. It is undoubtedly true that Regulation 15(3) does not specifically speak about promotion, but it clearly provides that on reinstatement on being exonerated of the charges, the period of absence will for "all purposes" be treated as a period spent on duty. In other words, the concerned employee should be deemed to have continued in service for all practical purposes in spite of his being absent for a certain period on account of suspension.

14. It is not disputed that the petitioner was fully exonerated of the charges by the departmental authority and was reinstated with immediate effect by order dated 27th October 1977 (Annexure "A") and this order was restored by the Patna High Court when he was suspended once again by order dated 1st December 1977 (Annexure "B"). Following this, the petitioner was allowed to resume his duties with effect from 27th January 1979 (Annexure "E").

15. It is also not disputed that the petitioner has since been paid all his dues treating the period of suspension as spent on duty.

16. Thus, the petitioner having continued to be in service under the statutory provisions for "all purposes" having been exonerated of the charges there can absolutely be no reason for not considering him for promotion with retrospective effect when it actually became due to him. To deny such promotion to the petitioner would obviously amount to penalising him unnecessarily in spite of his being fully exonerated of the charges.

17. In my judgment, the operation of Regulation 15(3) which regularises the service of the concerned employee by treating the period of absence as spent on duty, cannot be restricted only to payment of his emoluments etc. as under Regulation 15(1), it should be allowed to be carried to its logical conclusion. And that is to give him all benefits of the service including promotion in case he became eligible for such promotion during the period of his suspension.

18. Obviously, he would not have been suspended had there not been any disciplinary enquiry on the basis of the charges levelled against him. And the fact of his being exonerated of the said charges proves that the charges were baseless. In other words, he had to face the suspension for no fault of his. And that being so, he did not deserve the denial of promotion which might have become due to him during the said period of suspension. Thus, on the suspension order being withdrawn on his exoneration of the charges, he becomes entitled to all the benefits with retrospective effect which were denied to him during the period of his suspension, since Regulation 15(3) retrospectively regularises the period of such absence. This, in my view, is the net effect of the said Regulation.

19. Practically under similar circumstances the Madras High Court in [K.S. Venkataraman Vs. State of Tamil Nadu and Another](#), held that when an employee is under suspension, his case for promotion is not considered for the sole reason that departmental proceedings are pending against him. After those proceedings are dropped the right revives and would enure to his benefit as from the date when he was due for consideration for promotion. Refusal of this right, according to the said High Court, is a denial of equality of opportunity in the matter of employment and is hit by Article 16 of the Constitution.

20. It is no doubt true that such a situation is very likely to create problems for the Administration since it may very often be difficult to find a vacancy for the employee

retrospectively. But such problems have to be sorted out to avoid denial of justice to the concerned employee. More often than not the object is achieved by creating a vacancy notionally outside the normal cadre. But that undoubtedly, is for the Administration to decide.

21. Now, since Regulation 15(3) of the Regulations of 1976 which were framed in exercise of powers conferred by Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 entitled the petitioner to be considered for promotion retrospectively, the guidelines framed by the Board of Directors on April 25, 1975 (Annexure "A" to the affidavit-in-opposition) can have no overriding effect on such Regulations which have a statutory force.

22. Incidentally, the guidelines provide that pending an enquiry, the delinquent officer shall not be considered for promotion and in case he is exonerated, his case for promotion to the next higher grade shall be considered in the light of the findings of the enquiry.

23. Significantly, the relevant guideline while providing that the delinquent officer shall not be considered for promotion until the enquiry is concluded, does not categorically rule out promotion with retrospective effect after he is exonerated of the charges.

24. The relevant guideline is, therefore, not also directly in conflict with Regulation 15(3) as interpreted earlier and as such, it is quite open to the respondents to consider the petitioner's case for promotion with retrospective effect.

25. In the above view of the matter, the reply (Annexure T) given to the petitioner to the effect that his case will be considered when new promotions take place from lower to the higher grade, apart from its being against the spirit of Regulation 15(3) is also not quite in consonance with the relevant guidelines.

26. The Rule issued in the circumstances is made absolute and the respondents are directed by the issuance of a writ the nature of Mandamus to consider the case of promotion of the petitioner to grade "D" from grade "C with effect from 1st April 1976, when some other Officers were promoted, having regard to his efficiency, competency etc.

The respondents are further directed to release to the petitioner all his financial benefits, if not already released.

The implementation of this order shall take effect within a period of sixty days from this date.

26. No order is made for costs.