

Kartick Das Bandopadhyay Vs Chairman / Managing Director Dena Bank and Others

Court: Calcutta High Court

Date of Decision: April 19, 2000

Acts Referred: Industrial Disputes Act, 1947 – Section 2(p), 36A

Citation: 104 CWN 1067

Hon'ble Judges: Barin Ghosh, J

Bench: Single Bench

Advocate: Gopal Chandra Mukherjee, for the Appellant; R.N. Majumdar and S. Roy, for the Respondent

Final Decision: Allowed

Judgement

...

Barin Ghosh, J.

The petitioner, originally a clerk, joined the services of the respondent bank on 2nd February 1969 and since 1984 is",,,
working as Special Assistant. It is the case of the petitioner that there is a settlement dated 12th June, 1990 which provides the eligibility of the",,,

candidates seeking promotion from clerical cadre to officer cadre of the respondent bank as well as selection modalities. The selection modalities,,,

contained in the said settlement specifies that there shall be two channels of promotion, namely, seniority-cum-merit channel and merit channel, It is",,,

the case of the petitioner that in July, 1998 it was decided that 60 per cent of such promotions would be accorded from the seniority-cum-merit",,,

channel and 40 per cent through merit channel. The petitioner contended that he fared well in the written examination but not been selected for promotion.,,,

He stated that he is one of the senior most clerks working in the respondent bank and despite he having fared well in the written examination he has,,,

not been found fit to be promoted. He stated that on previous occasions too, proper selection had not been made and accordingly the Union was",,,

constrained to raise objections. He stated that on previous occasions the Union raised objection in relation to one Mr. V. Ramaswami. It was,,,

pointed out that on the marks given to Mr. V. Ramaswami it appeared that he obtained 25.5. marks in the written examination for which only 25,,,

marks was allotted. He stated that on previous occasions he had occasion to complain about awarding of marks in his favour. He then stated,,,

despite correcting 80 questions out of 100 questions he was not selected in the seniority-cum-merit channel and despite he being the senior most,,,

Special Assistant he was not found fit for selection but his juniors have been found fit for such promotion. He stated that the marks he ought to,,,

have had. Have been manipulated and reduced to deny his promotion. With this case he filed the writ petition seeking a direction for production of,,,

answer scripts and question papers in connection with the written test and to consider his promotion on the basis of seniority-cum-merit after,,,

looking into the answer scripts. The writ petition was moved on 15th September, 1998 upon notice when no one appeared on behalf of the",,,

respondents to contest the application. A direction was given to keep one post vacant in the promotional post. Directions were also given for filing,,,

of the affidavits. Instead of filing affidavit-in-opposition the respondent bank filed an application for vacating the interim order. In that application it,,,

was stated that the selection was made in accordance with law and in accordance with the procedure. The petitioner was found to have not,,,

succeeded and the contention of the petitioner that he has been given lower marks than what he is entitled to, is incorrect as the examination was",,,

conducted in the most impartial manner by the Institute of Banking Personnel Selection. In addition to that it was stated that the written test was,,,

common for all participants and the same was conducted on 15th March, 1998 by the Institute of Banking Personnel Selection, an organization",,,

established by the Government of India for conducting competitive test for recruitment and promotion of bank employees. It was then stated that,,,

upon receiving the list of marks obtained by various candidates who participated in the written test conducted by the Institute of Banking Personnel,,,

Selection, the respondent bank prepared separate merit list for the general category. Scheduled Caste category and Scheduled Tribe Category",,,

under each of the channels. It was then stated that under seniority-cum-merit channel 314 clerks belonging to the general category were promoted.,,,

It was then added that 61 clerks belonging to the Scheduled Caste Category and 30 clerks belonging to Scheduled Tribe category were promoted,,,

from the said channel to the posts reserved for Scheduled Caste category and Scheduled Tribe category respectively. It was stated that 207 clerks,,,

belonging to the general category, 41 clerks belonging to Scheduled Caste Category and 22 clerks belonging to Scheduled Tribe category were",,,

promoted from the merit channel in the general category. Scheduled Caste category and Scheduled Tribe Category respectively. But subsequently,,,

it appeared that the last selected Scheduled Caste candidate secured higher marks than the last selected general category candidate both in the,,,

seniority-cum-merit channel and the merit channel. In consequence thereof, it was stated that a few Scheduled Caste candidates though having",,,

scored more than some of the selected general candidates, did not get the job and accordingly 24 and 19 Scheduled Caste candidates were given",,,

promotion under the seniority-cum-merit channel and merit channel respectively. Thereafter the result was declared. Despite that a writ petition",,,

was filed in the Bombay High Court wherein an interim order was passed on 31st July, 1998. This order, however, has not been produced before",,,

me. It is suggested in the said application that by that interim order a direction was given to prepare an over all merit list of seniority-cum-merit",,,

channel and to promote the first 314 persons and thereafter to promote the 85 Scheduled Caste and 32 Scheduled Tribe persons on the basis of",,,

their standing in the said merit list and also to prepare an over all merit list of person- in-merit channel and to promote first 207 persons from the",,,

general category and thereafter to promote 60 Scheduled Caste and 23 Scheduled Tribe persons on the basis of the standing in the respective",,,

merit lists. It was however, not stated as to whether the respondent bank has complied with the said direction." ,,,

2. A serious allegation was made in the said application to the effect that the writ petition was appearing in the combined list of the Hon"ble Justice",,,

Altamas Kabir as Listed Motion for a number of days in the bottom of the list. On 7th September, 1998 the Advocate-on-Record for the writ",,,

petitioner by a letter dated 7th September, 1998 addressed to the respondent bank informed that the writ petition would appear before the" ,,,

Hon"ble Mr. Justice Altamas Kabir on 16th September, 1998 but on 15th September, 1998 it was represented to His Lordship the Hon"ble Mr." ,,,

Justice Altamas Kabir that despite service none is appearing to contest the application and accordingly the interim order was obtained.,,,

3. This application was moved before His Lordship the Hon"ble Mr. Justice Altamas Kabir, when His Lordship observing that His Lordship has",,,

no determination at present to take up the matter, released the same." ,,,

4. Subsequent thereto the matter appeared before me.,,,

5. In the meantime, however, the writ petitioner filed an affidavit- in-opposition to the said application. In that it was stated that the Institute of",,,

Banking Personnel Selection adopted illegal and motivated procedure to give promotion to those persons who belong to Union, namely. All India",,,

Dena Bank Employees Co-ordination Committee. It was also stated that despite there being an accepted promotional channel of seniority-cum-,,,

merit, the said union by force compelled adoption of a procedure which is not permissible, for opening the gate of promotion of juniors ignoring the" ,,,

seniors. He clarified that in the letter written by his advocate dated 7th September, 1998 it was mentioned that the matter would be taken up on",,,

Tuesday and the Tuesday was 15th September, 1998 and the date 15th September, 1998 was an obvious mistake. He reiterated that his answer",,,

scripts be produced. The respondent bank then filed an affidavit--in-reply and subsequently they also filed a supplementary affidavit to which a,,,

reply was given.,,,

6. The supplementary affidavit and the reply thereto were filed inasmuch as on the basis of the allegation made in the affidavit-in- opposition to the,,,

application, it was contended that the entire modality of selection through the seniority-cum-merit channel was illegal.",,,

a),"Clerical staff with the following qualifications and length of

service will be eligible to appear for the written test.

the written test." ,,

,,,

,,, "No. of years of service in

Clerical Cadre

in Clerical Cadre

,,,

i), Graduates with both parts of CAIIB,,3 years

ii), Graduates with Part-I of CAIIB,,4 years

,, "No. of years of service in

Clerical Cadre",

iii) A Graduate in any discipline,,5 years,

iv) A matriculate with both parts of CAIIB,,4 years,

v) A matriculate with Part I of CAIIB,,5 years,

vi) Matriculate or equivalent,,6 years,

vii) Non-matric (matric appeared but failed),,8 years,

Graduate (for B.Sc. Agriculture: 5 marks),,3 marks,

Post Graduate/Double Graduate,,2 marks,

CAIIB Part-I,,2 marks,

CAIIB Part-II,,3 marks,

Technical qualification (minimum 2 years degree or diploma from recognized

University/Institute)",,2 marks,

Special qualifications Like C.A.. I.C.W.A.I., M.B.A. of recognised University/Institute",,5 marks,

However, the total marks for educational qualification shall not exceed 15 marks.

Written Test",,,25 marks,

Distribution of marks for seniority cum-merit Challan.,,,

1.,Seniority,25 marks,

2.,Educational Qualification,15 marks,

,Written test,"25 marks

65 marks",

Distribution of marks for merit channel:,,,

1.,Educational Qualification,15 marks,

2.,Written Test,"25 marks

40 marks",

1 a) Graduate (other than B.Sc. Agriculture) : 3 marks,,,

b),"Graduate in B.Sc. Agriculture or Graduate (other than B.Sc.

Agri.) with Post Graduate Diploma in Computer with

duration of one year or more from University/Govt. Institute

or Graduate in B.Sc. Agri. With Post Graduate Diploma in

computer of one year or more" ,,

,,,marks

2.,,marks,

3.,,marks,

4.,,marks,

Special Qualification like C.A. I.C.W.A.

A.C.S. M.B.A. of recognised University/Institute": 5,marks,

18. After arriving at the said conclusion the Supreme Court noted the selection modalities of various banks on the criterion of seniority-cum-merit.,,,

From those it appears that separate marks were given for seniority, qualification, interview, performance etc. Noting the same the Supreme Court" ,,,

observed that it was not the case where minimum qualifying marks had been prescribed for assessment of performance and merit and those who,,,

secured the prescribed minimum qualifying marks were selected for promotion on the basis of seniority and in the circumstances it must be held,,,

that the High Court had rightly come to the conclusion that the mode of selection that was infact employed was contrary to the principle of,,,

seniority-cum-merit. In regard to another selection modality, where 55 per cent of the marks was allotted to seniority and the balance for" ,,,

qualification, performance and interview, on facts the Supreme Court found that the selection was made of only those officers who secured the",,,

highest number of marks amongst the eligible officers and accordingly held that in the circumstance the High Court has rightly held that the method,,,

of selection was contrary to the principle of seniority-cum-merit. The third selection modality as was considered by the Supreme Court provided,,,

15 per cent for seniority and the balance for job responsibility, placement/posting mobility, performance and interview. The Supreme Court held",,,

that the criterion of the said promotion policy cannot be regarded as being in consonance with the principle of seniority-cum-merit. While,,,

considering the fourth and the last selection modality, on facts, the Supreme Court found that 50 marks out of total of 100 marks were prescribed",,,

as the minimum qualifying marks for interview and only those who had obtained the qualifying marks in interview were selected for promotion on,,,

the basis of seniority. The Supreme Court in those circumstance observed,,,

It was, therefore, a case where a minimum standard was prescribed for assessing the merit of the candidates and those who fulfilled the said",,,

minimum standard were selected for promotion on the basis of seniority." In the circumstances, the Supreme Court observed that it cannot be said",,,

that the selection has not been made in accordance with the principle of seniority-cum-merit.,,,

19. In view of the said judgments of the Supreme Court, therefore, if the channel of promotion is seniority-cum-merit then the promotion must be",,,

given on the basis of seniority amongst those persons who have been adjudged to have the basic required merit. In the instant case that was not,,,

done. The way the selection modalities have been prescribed in the instant case, a person young but meritorious can always outsmart a very senior",,,

but moderately meritorious person. In the instant case even if a meritorious person applies through merit channel, he does not cease to lose the",,,

scope of getting promotion through seniority-cum-merit channel. The written examination is same for both channels and it is an admitted position,,,

that two lists are prepared one for the seniority-cum-merit channel and in other for the merit channel on the basis of the aggregate marks a person,,,

is entitled to, having regard to. his seniority, qualification and outcome of the written test. Thus, if there are only 100 promotional posts, 40 of them",,,

are sure to be obtained by meritorious young persons and there is every chance that the remaining 60 would also go in their favour unless, of",,,

course, the senior man is also equally meritorious.",,,

20. It was submitted that the said judgment of the Supreme Court is not applicable in the instant case as in that case the Supreme Court was,,,

considering promotion from officer cadre to senior officer cadre and therefore, it has observed that assessment can be made by assigning marks on",,,

the basis of appraisal of performance on the basis of service record and interview and prescribing minimum marks which would entitle a person to,,,

be promoted on the basis of seniority-cum-merit, but in so far as the present case is concerned it is a promotion from clerical cadre to officer cadre",,,

and in the clerical cadre there is no scope of recording appraisal of performance in the service record.,,,

21. In *Sher Singh vs. Surinder Kumar*, reported in (1998)9 SCC 652 the Supreme Court was considering promotion to the post of Field",,,

Supervisors to be filled up by promotion from amongst the clerks and also by direct recruitment. The criterion, for promotion from the post of",,,

clerk to that of Field Officer was seniority-cum-merit. The employer bank had adopted the criteria of merit-cum-seniority and not seniority-cum-,,,

merit. The Supreme Court held that such a selection was bad.,,,

22. It is, therefore, clear that the assessment of merit is not necessarily to be made by assigning marks on the basis of appraisal of performance on",,,

the basis of service record. The Supreme Court did not observe that to assess the merit of a person to make him eligible, his performance on the",,,

basis of his service record is a must. Having regard to the facts of that case the Supreme Court made the said observation. Even without appraisal,,,

of performance on the basis of service record, one's merit may be judged The same may be on the basis of qualification alone. The same may be",,,

on the basis of written examination alone. The same may be on the basis of combination of his performance in the written examination and,,,

interview. That may be a combination of his qualification and performance at written test and interview also. But what is significant is that there shall,,,

be a minimum eligibility criteria to assess the merit of a person to make him eligible. Once a person is so eligible then in the matter of promotion his,,,

seniority comes first In other words if the criteria for assessing merit is a combination of qualification and written test and if a minimum marks, say",,,

40, is prescribed to make a person eligible and if the seniormost person barely gets 40 but a person not so senior gets 70, even then the senior",,,

person getting 40 would be higher up in the list or panel to be prepared for promotion on the basis of his seniority than the person more meritorious,,,

to him but junior in service. If that is what is not done then the promotion would be tantamount to depend upon merit-cum-seniority and not,,,

seniority-cum-merit.,,,

23. In the instant case despite the criterion being seniority-cum-merit but on facts it is not disputed that the selection was made on the basis of,,,

merit-cum-seniority.,,,

24. It is true that the Supreme Court does not enact but then the law declared by the Supreme Court binds all Courts in India. The law is made by,,,

legislature. The Supreme Court interprets the same. Once the Supreme Court by interpreting the law made by the legislature states what the law is, "",,,

until and unless the legislature intervenes in the meantime, the law so pronounced to be. is the law enforceable at any Court in India. That exactly",,,

what has been sought by the petitioner in the instant case.,,,

25. There cannot be any dispute that the Industrial Disputes Act, 1947 is a Special Act. There is also no dispute that the settlement in question is a",,,

settlement within the meaning of the said Act. There is also no dispute that the said settlement is enforceable in terms of the said "Act. By reason of,,,

the aforementioned judgments of the Supreme Court no portion of the Industrial Disputes Act, 1947 has been touched. There is, therefore, no",,,

question of applying the principle of *genrealia specialibus non derogant*" as the interpretation of law made by the Supreme Court in the said",,,

judgments is not, nor can be said legislation. Therefore, reliance upon the judgment of the Supreme Court in *L.I.C. vs. D. J. Bahadur*. reported in",,,

AIR 1980 SC 2181 is totally misplaced.,,,

26. Contention, however, is that the Industrial Tribunal and not this court is competent to decide whether or not the parties have really intended in",,,

the settlement to the effect that the predominant feature of seniority-cum-merit promotion is promotion on merit. As aforesaid selection modality as,,,

provided for in the subject settlement had been changed by the bank itself while making the selection modality for the current selection. The bank,,,

having done so should not be permitted to say that the subject selection modalities can only be questioned before the Industrial Tribunal.,,,

27. In any event settlement within the meaning of the Industrial Disputes Act, 1947 is nothing but an enforceable agreement. While purporting to",,,

enforce such an agreement if a legal right of a citizen established on the basis of the law interpreted by the Supreme Court is denied. Writ Court,,,

can always redress the same. Interpretation of a document is a question of law, predominant intent must be gathered from the document alone and",,,

from nowhere else. It cannot be said that in the matter of such interpretation industrial Tribunal would be more convenient.,,,

28. In the result I hold in favour of the petitioner but then having regard to the involvement of large number of persons. I do not direct setting aside,,,

of the entire selection but direct the bank to give promotion to the petitioner as the petitioner is a Graduate and therefore has the basic qualification,,,

and he having scored 12.40 marks out of 40 marks in the written examination and there being no minimum marks fixed for assessing the merit in,,,

such examination. In the matter of giving such promotion to the petitioner, the bank shall have no difficulty as it has already created extra posts for" ,,,

giving some promotions and by virtue of an interim order of this court has kept one promotional post vacant, but has not stated in any of the" ,,,

pleadings referred to above, that it has not so kept the said vacant post." ,,,

29. The writ petition is allowed to the extent as above. There shall be no order as to costs. Let urgent xerox certified copies of this judgment, if" ,,,

applied for, be delivered to the learned Advocates for the parties." ,,,

Stay prayed for is refused.,,,