

(2000) 01 CAL CK 0037

Calcutta High Court

Case No: F.M.A. No. 936 of 1990

Biswa Ranjan Banerjee

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Jan. 20, 2000

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- Reserve Bank of India (Staff) Regulations, 1948 - Regulation 28, 4, 28

Citation: (2000) 1 ILR (Cal) 160

Hon'ble Judges: Ashok Kumar Mathur, C.J; Satyabrata Sinha, J

Bench: Division Bench

Advocate: L.K. Gupta, Sefali Sarcar and Sumit Ghosh, for the Appellant; Subrata Roy, Amalendu Mitra and S. Ghose, for the Respondent

Final Decision: Dismissed

Judgement

Satyabrata Sinha, J.

This appeal is directed against a judgment and order dated October 12, 1982 passed by a learned single Judge of this Court whereby and whereunder the writ petition filed by the Appellant herein claiming for the following reliefs:

A) A declaration that

- Regulation 28 of the Reserve Bank of India (Staff) Regulations, 1948 is ultra vires the provisions of Articles 14 and 16 of the Constitution of India;
- The "un-notified practice" referred to in Annexure "M" is ultra vires Regulation 4 of the Reserve Bank of India (Staff) Regulations, 1948;

B) A writ in the nature of Mandamus Commanding the Respondents to confirm the Petitioners in the post of Staff Officer, Grade B with effect from 1st April, 1977 and to count the Petitioner's seniority in the Grade "B" post on the basis of length of

service and/or to maintain and pretest the original seniority of the Petitioner viz. Serial No. 773 in the Combined Seniority List in Grade "B" for the purpose of promotion to the higher post in Grade "C" and to consider the case of the Petitioner for promotion to Grade "C" post on the basis of such seniority;

C) A writ in the nature of Mandamus Commanding the Respondents to grant promotion to your Petitioner to Grade "C" post on the basis of his seniority counted on the basis of length of service and/or original seniority viz. Serial No. 773 in the Combined Seniority List in Grade "B" and also to fix up the proper seniority of your Petitioner in Grade "C" post and to give to your Petitioner all consequential benefits on the basis of such fixation of proper seniority and promotion to Grade "C".

was dismissed.

2. Shortly stated the fact of the matter is as follows:

The Appellant herein was appointed as a Junior Officer Grade-II on probation which was later on termed as Grade "A" by the First Respondent herein in terms of an offer of appointment dated December 31, 1968, inter alia, on the following condition:

You will not be eligible for confirmation as Junior Officer Grade II unless you have passed at least part I of the Associate Examination of the Indian or English institute of Bankers. In the event of your failure to complete Part I of the aforesaid Associate examination within the probationary period of three years or the extended period of probation (total probationary period not exceeding four years) your services are liable to be terminated. You are also required to pass both the parts of the aforesaid examination within a period of five years from the date of your appointment. In the event of your failure successfully complete part II of the aforesaid examination within the said period of five years, will not be allowed to draw any further increments in the scale of pay applicable to you until such time you have successfully completed the examination.

3. Admittedly within a period of 3 years he passed Part I of the Associate Examination of the Indian/English institute of Bankers as a result whereof he was confirmed in his service. However, he failed to pass the part-II Examination. On or about August 29 (Annexure "E") to the Petitioner was informed that as he had not passed the part I Examination and the five years period as stipulated therefor, in the offer of appointment was to expire, he was advised to take steps to complete the said examination as early as possible failing which his promotion shall be held over. He, however, did not pass part II Examination within the aforementioned period of five years. Despite the same, he was given an officiating promotion on a long term basis in Grade "B" on or about February 5, 1974.

4. On July 26, 1978 a new policy was laid down as regards the conditions of service which is in the following terms:

At present, Officers in Grades "A" and "B"(Direct Recruits) were required to complete both parts of the Associate Examination of the Indian/English Institute of Bankers within a period of Five years from the date of appointment on probation as Staff Officer Grade "A"/"B". In the event of their failure to successfully complete both parts of the said examination, within the said period of five years, they are neither allowed to draw any further increments in the scale of pay admissible to them nor are they considered for promotion to the higher grade until such time as they have successfully completed the examination. The condition of passing Part II of the said examination is waived on their attaining the age of 40 years.

2. This requirement as to completing the Institute of Bankers' Examination for continued drawal of increments as also for being considered for promotion to the next higher grade of officers in Grade "A" and "B" (Direct Recruits), as the case may be, has since been reviewed by Central Office. It has been decided that in modification of the earlier condition, officers in Grade "A" and "B" (Direct Recruits) may subject to their being otherwise suitable, be considered for promotion to higher grades and also allowed to draw the usual increments. However, they will not be eligible for being confirmed in the next higher grade (i.e. Grade "B" or grade "C" as the case may be) unless they pass both parts of the Institute of Bankers' Examination. The condition of passing the said examination would, however, be waived on their attaining the age of 40 years.

3. The above decision would take effect as from the July 1, 1978.

4. You may draw the attention of the Officers in Grade "A" and "B" (Direct Recruits) attached to your office/department to this circular and obtain their concurrence to the revised condition as in the Annexure. Those Direct Recruit Officers who do not give their concurrence to the revised condition by a date to be stipulated by you, which may be about a fortnight from the date of receipt of this circular, would continue to be governed by the old condition. Where any such Direct Recruit Officers have already been held up for drawal of increments and if they now give their concurrence to the revised condition their pay may be refixed as on 1st July, 1978 so as to give them the benefit of the withheld increments from the aforesaid date. However, no arrears will be paid.

5. The Petitioner entered into various correspondences about his claim and although initially he did not submit his option, he did so in terms of his letter dated July 2, 1980 on reconsideration of the entire matter which is to the following effect:

With reference to your letter No. MGR. St.4195/C134 79/80 dated the 19th April 1980 and further to my letter dated the 10th May 1980 enclosing my representation to the Governor on the captioned subject. I hereby exercise option in regard to the revised service condition as contained in your letter No. MGR. St.902/PF-78/79 dated the 4th August 1978 and shall be glad if my withheld increments are released and the arrears of salaries and allowances are paid to me at an early date the duplicate

copy of your letter No. MGR. St. 902/PF-78/79 dated the 4th August, 1978 duly signed is enclosed herewith as required.

6. The Petitioner, pursuant to the aforementioned option, was thereafter given increments as also promotion on regular basis. The Petitioner passes his part-II Examination in the year 1981, whereafter he was confirmed. This writ application was filed by the Petitioner in the month of May, 1982.

7. Before us as also before the teamed trial Judge the contention of the Appellant was that as in terms of the offer of appointment vis-a-vis the changed rules of service which came into force with effect from July 1, 1978 he was to be confirmed but only his increments were to be withheld, the same principle ought to have been applied in his promotional post while he was promoted in Grade "B" and in that view of the matter as a regular vacancy in Grade-"B" fell in the year 1975 he ought to have been confirmed in the year 1977,

8. Mr. Gupta, the Learned Counsel appearing on behalf of the Appellant would contend that keeping in view the fact that the new policy had come into effect on July 1, 1978 and as the Appellant was entitled to be confirmed in Grade "A" post in the year 1977, the impugned orders are bad in law.

9. Mr. Sub rata Roy, the Learned Counsel appearing on behalf of the Respondents, on the other hand, submitted that the Appellant in fact had been promoted in Group "B" to "C" in the year 1985 and he had accepted the said promotion without any demur whatsoever. It was further stated that the Appellant had also been confirmed in the year 1987, According to the Learned Counsel, the Appellant had sought to approbated and reprobated at the same time as has rightly been found by the learned trial Judge and was, thus, not entitled to any relief.

10. Admittedly, there does not exist any staff regulations or rules framed under the provisions of the Reserve Bank of India Act governing the terms and conditions of service of the employees working in the Reserve Bank. The R.B.I. Staff Regulations, 1948 are merely compilation of certain circular letters and it does not have any statutory force.

11. Rule 28 of the said Regulations, thus, has no statutory force as has been held by the Apex Court In [V.T. Khanzode and Others Vs. Reserve Bank of India and Another](#), Be that as it may Rule 28 of the said Regulation which occurs in Chapter-III thereof under the head "Record of Service; (Seniority, Promotion and Reversion", reads thus:

Rule 28. An employee confirmed in the Bank's service shall ordinarily rank for seniority in his grade according to his date of confirmation in the grade and an employee on probation shall ordinarily rank for seniority among the employees selected along with him in the same batch according to the ranking assigned to him at the time of selection.

12. Mr. Gupta would urge that having regard to the fact that the Respondents had proceeded on a wrong premises on the basis of certain unnotified circulars, the impugned order is bad in law. According to the Learned Counsel, even if those persons who had also been promoted having passed both parts of the Examination within the stipulated period had been granted promotion earlier. If Regulation 28 is to be followed, the Appellant having become entitled to confirmation of his promotion in the year 1977 he would have become senior to others and for that purpose the court could direct creation of a supernumerary post. Reliance in this connection has been placed on [Narender Chadha and Others Vs. Union of India and Others](#), In that decision it has been held:

We are aware that the view we are taking may upset the inter seniority between those promotees who were included in the Select Lists of 1970, 1982 and 1984 and those who were included later on or who have not been included at all till now. The existence of this possibility should not deter us from adopting a uniform rule in the case of all promotees and direct recruits to adjust the equities amongst them as regards their relative seniority in the light of the violent departure made by the Government both as regards direct recruitments and promotions which it had to make every year under the Rules. The prejudice which the promotees included in the Select Lists might suffer is marginal and has to be ignored.

13. In the alternative it has been submitted that as the Appellant had in the writ application questioned a policy decision, non-impleading other persons who would be affected by the decision would not entail dismissal of the writ application. We do not agree.

14. The underlying principle governing the requirement of passing of both parts of Examination cannot be undermined. The very fact that a person appointed on probation was required to pass both parts of the Examination within a stipulated period failing which some civil consequences were to ensue clearly goes to show that the said provision is a mandatory one. Passing of the said examination, therefore, was a sine qua non for the Appellant for his entitlement of getting increments. Non-passing of the said Examination would, therefore, constitute a sort of efficiency bar. In the service jurisprudence, therefore, a person who had failed to cross efficiency bar would not be entitled to be promoted to a higher post. The Appellant, therefore, although was promoted on an efficiating basis, he could not have claimed as the same a matter of right. In view of the aforementioned situation, he could not have been confirmed in Grade "B" post in the year 1977.

15. Furthermore, these who had passed the examination prior to the Appellant being more meritorious were entitled to be considered for promotion and such persons had rightly been promoted before the Appellant. In the aforementioned premise, whence the new conditions of service were laid down in the year 1978 although the same had a prospective operation, the Appellant having not passed part-II Examination was not entitled to be promoted or confirmed in the said post, it

is not and could not be the case of the Appellant that he had already been promoted and confirmed in the said post. It is not and could not be the case of the Appellant that he had already been promoted and confirmed in the year 1977. He, as noticed hereinbefore, considered his legal rights very carefully and filed representations therefor and after having obtained the clarification, exercised option on reconsideration of the whole matter as would appear from AnnEx. "O" to the writ application.

16. By reason of the said letter the Appellant prayed for release of his withheld increments and the arrears of his salaries and allowances pursuant whereunto, he had been granted the said benefits. The Appellant, therefore, on his own showing exercised the option and accepted the increments which were withheld both while he was in Category "A" & "B" post is, thus, estopped and precluded from contending otherwise.

17. Even assuming that he had any right in terms of his offer of appointment by way of special conditions of service which, according to Mr. Gupta, would prevail over the condition laid down in the regulations, he must be deemed to have been waived the same.

18. In [Graphite India Ltd. and Another Vs. Durgapur Projects Ltd. and Others](#), the Apex Court has held that even a mandatory provision which is in the interest of the party can be waived by the party itself but if it is in public interest it cannot be waived. There is no element of public interest involved in this case.

19. Furthermore, the conduct of the Appellant has a bearing in granting him a relief. He filed the writ application only after passing the examination and after obtaining the order of increments prior thereto. As noticed here before he was promoted on regular basis, confirmed and all withheld increments had been released in his favour. He passed the examination on January 21, 1981 and immediately the after was confirmed. He thereafter filed the writ application as noticed hereinbefore, only in May, 1982. The question to whether a writ petition should not be entertained on the ground of delay and acquiescence depend upon the fact situation of each case.

20. In view of our findings aforementioned, we are of the opinion that the learned trial Judge has rightly refused to exercise discretion in favour of the Appellant. We see no reason to differ with the said opinion, in the result there is no merit in this appeal which is dismissed accordingly. However, in the facts and circumstances of this case there will be no order as to costs.

Ashok Kumar Mathur, C.J.

21. I agree.