

State Bank of India & Ors. Vs. C.K. Karunakaran

Civil Appeal No. 6821/2009
2021-09-30 |
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Full judgment text

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The respondent was employed with the appellant-bank in the Middle Management Grade Scale-II and his promotion to Middle Management Grade Scale-III came up for consideration in November, 1984 when he was interviewed by the Interview Committee which made its recommendation to the promoting authority.

In the meantime, apparently the disciplinary authority took a decision to initiate departmental action against the respondent on 28.1.1985. His explanation was called for on 18.2.1985 and the charge-sheet was issued on 04.11.1985. In view of the pendency of these disciplinary proceedings, the promoting authority after considering the recommendations of the Interview Committee issued a select list on 23.8.1985 but the result of the respondent was kept in a sealed cover.

The charge-sheet resulted in a punishment of censure to the respondent on 28.7.1987 and thus the promotion was not given effect to. The order of the disciplinary authority was assailed by the respondent in departmental appeal and the same was dismissed on 13.12.1988 which attained finality. The grievance of the respondent was that despite the censure, the sealed cover procedure having been adopted, the same shall have been given effect to after the period of censure was over.

In this behalf the respondent filed an appeal before the Appellate Authority on 26.11.1990 but the same was rejected and thus Writ Petition being O.P. No.8947/1992 was filed before the High Court of Kerala at Ernakulam directing the bank to consider the case of the respondent ignoring the sealed cover procedure.

The Writ Petition was allowed by the learned Single Judge in terms of order dated 30.5.2003 opining that the ex-post facto decision of imposing censure could not be relied upon for denying the benefit of promotion and since the decision dated 28.1.1985 to take disciplinary action against the respondent was the only impediment standing in the way of the respondent, he is entitled to the benefit of promotion.

The appeal was dismissed by a brief order dated 30.5.2003 by the Division Bench which has been assailed in the present appeal. Interim stay of the operation of the order was granted on 29.9.2009 while granting leave. Respondent from the inception has not entered appearance in the present proceedings. We may note at the inception that of the impugned order itself records that the respondent was subsequently granted promotion.

Thus the issue is only as to whether the respondent could be entitled to promotion from an earlier date. The other factor which has been pointed out to us is that the respondent retired in the year 2003 and is stated to have received all retiral and pensionary benefits. Learned counsel for the appellant sought to canvas before us that the appellant bank acted in accordance with its norms of sealed cover procedure as per staff Circular No.118 (Exhibit P-2). The relevant part of the Circular is as under:-

"3. Keeping in view the principles of natural justice and with a view to maintaining uniformity in this regard. It has been decided to introduce the 'Sealed Cover Procedure' in respect of officers in the Bank with effect from the 1st March 1983 on the lines followed by the Government and the following guidelines are laid down for the purpose:

i) The 'Sealed Cover Procedure' would be applicable in respect of promotion/confirmation of the following categories of officers:-

(a) Officers against whom disciplinary proceedings have been contemplated provided there is a prima facie case against the officer

(b) Officers against whom disciplinary proceedings are in progress and

(c) Officer who have been placed under suspension."

It is the submission of the learned counsel for the appellant that the case of the respondent would be covered by sub-clause (a) of Clause (i) of para 3 as stated aforesaid. As to what would be the consequence of the same is set out in sub clause (iv) thereafter which is reproduced hereinunder:-

"iv) Where the department proceedings have ended with the imposition of a minor penalty, viz. censure, recoveries of pecuniary loss to the Bank withholding of increments of pay and withholding of promotion the accommodation of the Selection Committee in favour of the employees, kept in the sealed cover, will not be given effect to.

But the case of the employees concerned may be considered at the time of next promotions immediately after the conclusion of the departmental proceedings, if the employee is selected for promotion, he may be promoted in the usual manner alongwith others if the penalty, is that of 'ensure' or 'recovery of pecuniary loss'. But in the case of employees, who have been awarded the minor penalty of 'withholding of increments' or 'withholding of promotion', promotion of the officers concerned can be made only after the expiry of the period of his penalty."

Learned counsel for the appellant thus contends that the respondent was imposed with a minor penalty of censure, the sealed cover is not to be given effect to but his case may be considered at the time of next promotion immediately after the conclusion of the departmental proceedings and he may be promoted if otherwise eligible. This is what appears to have been done since the respondent earned his promotion subsequently.

Learned counsel for the appellant seeks to refer on two judicial pronouncements of this Court for the proposition that even if there is a minor penalty of the nature of censure, the recommendation of the DPC cannot be given effect to. In *State of M.P. & Anr. Vs. I.A. Qureshi*¹ it has been opined that once a minor penalty has been imposed on the employee in departmental proceedings, the directions given in respect of the relevant circular would be applicable and the sealed cover recommendation of DPC cannot be opened and the recommendation of the DPC cannot be given effect to because the employee has not been fully exonerated when a minor penalty has been imposed.

The employee can only be considered for promotion on prospective basis from the date after the conclusion of the departmental proceeding. Similarly, in *Union of India & Ors. Vs. A.N. Mohanan*² it has been opined that awarding of censure is a blame worthy factor and where even such a penalty has been imposed the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course.

We have examined the aforesaid judicial pronouncements which do give rise to a conclusion that the censure having been imposed albeit the least of the minor penalty, a recommendation of the sealed cover procedure cannot be given effect to for promotion. This is also in conformity with what the relevant rule provide as under the State Bank of India (Supervising Staff) Service Rules 'censure' is mentioned as the first 'minor penalties' in Section 2 dealing with 'disciplinary and appeal' in paragraph 49.

The staff Circular No.118, quoted aforesaid, provides that once a disciplinary proceeding has been contemplated provided that the prima facie case against the officer (which is apparent from the ultimate penalty imposed) the sealed cover procedure should be adopted. However, where the said departmental proceedings end with the imposition of a minor penalty even like a censure, the recommendations of the selection committee in favour of an employee, kept in a sealed cover, will not be given effect to and his case may be considered only in the next promotion immediately thereafter.

On the aforesaid principles applying to the facts of the present case, a recommendation was made to the promoting authority in November, 1984 but soon thereafter the disciplinary authority took a decision to initiate departmental action against the respondent on 28.1.1985, before the promoting authority could take a view on the recommendation of the interview committee, a notice was issued calling upon the response of the respondent.

Before issuance of a charge-sheet, in contemplation of the aforesaid disciplinary proceedings, the promoting authority issued a select list on 23.8.1985 keeping the result of the respondent in a sealed cover. If the punishment would not have been ultimately imposed, the question of giving effect to the result of the sealed cover procedure would have arisen.

However, the charge-sheet issued on 04.11.1985 resulted in a punishment of censure on 28.7.1987 and the departmental appeal against the same was dismissed making that aspect final. The consequence was that

the sealed cover was not given effect in terms of the aforesaid rules.

In view of the aforesaid position, we are of the view, that the impugned orders of learned Single Judge dated 30.5.2003 and the Division Bench dated 17.10.2008 cannot be sustained and are set aside and the appeal is allowed leaving parties to bear their own costs.

We may only add in the end that the respondent having earned his promotion albeit belatedly as stated aforesaid, is a possible reason why he may not have joined the present proceedings.

1 1998 (9) SCC 261

2 2007 (5) SCC 425

Item No. 105

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This appeal was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s)

Mr. Sanjay Kapur, AOR Ms. Megha Karnwal, Adv. Mr. V. M. Kannan, Adv. Mrs. Shubhra Kapur, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

Civil appeal is allowed in terms of the signed reportable order.

Pending application(s), if any, shall stand disposed of.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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