

New Bank of India

Vs

N. P. Sehgal and Another

Civil Appeal No. 739 of 1991

(Kuldip Singh, M. H. Kania JJ)

15.02.1991

JUDGMENT

KANIA, J. –

1. Leave granted. Counsel heard.
2. This is an appeal by special leave against the decision of a learned Singh Judge of the Punjab and Haryana High Court, dismissing summarily Regular Second Appeal No. 405 of 1990 in that court.
3. The relevant facts can be stated very shortly.
4. At the relevant time respondent 1 was an officer being the Manager in the Hardwar Branch of the appellant Bank, a Government of India Undertaking. On April 2, 1982 a show cause notice was served on respondent 1 in respect of several irregularities, lapses, acts, omissions and so on. On May 4, 1982 respondent 1 submitted his reply to the said show cause notice denying the charges made against him and asking for the holding of an enquiry into the allegations. On July 17, 1984 respondent 1 was promoted from Scale II to Scale III by the appellant. It appears from the record that disciplinary action was contemplated against respondent 1 but in November 1984, the disciplinary proceedings contemplated against respondent 1 were kept in abeyance as some of the allegations against him were under investigation by the Central Bureau of Investigation (CBI). On March 11, 1988 interviews for promotion from Scale III to Scale IV were conducted and respondent 1 was one of the officers interviewed for promotion. On April 27, 1988 a charge sheet was served on respondent 1. On May 27, 1988 an enquiry was ordered against him and the Commissioner of Departmental Enquiries, Government of India, was appointed as the Enquiry Officer. On June 30, 1988, respondent 1 filed a suit in the Court of Sub-Judge, Second Class, Jalandhar for a declaration that the order dated April 27, 1988 by which respondent 1 was served with charge sheet was illegal and in violation of the Service Regulations and unsustainable in law and prayed for a permanent injunction restraining the appellant and others from proceeding with the enquiry on the basis of the said charge sheet. One of the main contentions urged on behalf of the respondent 1 in the said suit was that by reason of the promotion granted to him from Scale II to Scale III on July 17, 1984 as aforesaid, which was after the irregularities and misconduct alleged against him had been committed and in view of the said promotion the appellant must be deemed to have condoned the earlier misconduct, if any, of respondent 1; and thereafter it was not open to the appellant to take any action against respondent 1 in respect of the said misconduct. This contention found favour with learned trial Judge who gave a declaration that the order serving the charge sheet on respondent 1 was illegal and restrained the appellant and others from proceedings with the enquiry on the basis of the said charge sheet. An appeal was preferred by the appellant against the said order in the Court of

learned Additional District Judge, Jalandhar but it was dismissed as learned Additional District Judge accepted the reasoning and conclusions of the learned trial Judge. The second appeal against the decision of learned Additional District Judge was dismissed by the High Court and this is an appeal directed against the judgment of the High Court.

5. It was submitted before us by Mr. Pai, learned counsel for the appellant that the promotion granted to respondent 1 from Scale II to Scale III of July 17, 1984, could not be regarded in law as condonation of the earlier acts of misconduct committed by respondent 1. It was urged by him that at that time no disciplinary proceedings had been initiated against respondent 1 and in view of this, the appellant had no option but to consider respondent 1 for promotion for which he was entitled to be considered and to promote him if he was found fit for promotion. It was, on the other hand, contended by Mr. Rao, learned counsel for the respondent that the earlier acts of respondent 1, even if they constituted misconduct, could not be relied upon to take any disciplinary action against respondent 1 because they were condoned by reason of the aforesaid promotion.

6. In considering the submissions of the respective parties, we have to bear in mind that it is accepted before us that in law the mere fact that disciplinary proceedings are contemplated or under consideration against an employee does not constitute a good ground for not considering the employee concerned for promotion if he is in the zone of consideration nor would it constitute a good ground for denying the promotion if the employee is considered otherwise fit for promotion. In the present case, we find that this legal position is reinforced by clause (9) of the Promotion Policy of the appellant Bank. Clause (9) reads as follows :

"(9) Officers in respect of whom disciplinary action is in process will be permitted to take part in the promotion process, subject to the condition that the promotions (if they are selected) will be with-held until the officer is exonerated from the charges. In such an event the promotion will be given effect to from the date on which it would have been otherwise effective but for the disciplinary action. The officer will not be eligible for promotion if punishment, except censure, was awarded as a result of the disciplinary action."

7. On a plain reading of this clause it is clear that even if disciplinary action is in process against an officer of the appellant Bank, that would not entitle the appellant Bank to exclude from consideration for promotion the officer concerned if he is otherwise entitled to be so considered. The only right given to the appellant in such cases is that, in case such an officer is otherwise found fit for promotion and selected for promotion, that promotion can be withheld until the officer is exonerated from the charges. It is significant that the said clause goes to state that in case such an officer is exonerated from the charges, promotion will have to be given effect to from the date on which it would have been otherwise effective but for the disciplinary action. This rule gives rise to the implication that till disciplinary action is in process or initiated, the officer concerned, against whom allegations of misconduct might be made, can neither be excluded from consideration for promotion if he is entitled to be considered otherwise nor can the promotion be denied to him. In these circumstances, when the promotion from Scale II to Scale III was granted to respondent 1 on July 17, 1984, there could be no question of condonation of the earlier acts of misconduct by reason of this promotion because in law and in view of the said clause (9) the appellant had no option but to consider respondent 1 for promotion and if he was otherwise found fit for promotion to promote him. In view of this conclusion, it must follow that the charge sheet submitted against respondent 1 and the disciplinary proceedings pursuant to the said charge sheet cannot be said to be bad in law and cannot be interfered with on the ground of condonation. In our view, the courts below were in

error in holding that the earlier alleged acts of misconduct of respondent 1 had been condoned by the appellant and basing their conclusions thereon.

8. In support of his submissions relating to the question of condonation, Mr. Rao relied upon the decision of a Division Bench of the Calcutta High Court in *L.W. Middleton v. Horry Playfair* (AIR 1925 Cal 87 : 86 IC 310) and the decision of a learned Single Judge of the Nagpur High Court in *District Council, Amraoti through Secretary v. Vithal Vinayak Bapat* (AIR 1941 Nag 125 : 1941 NLJ 98 : 193 IC 658). Both these cases lay down that once a master has condoned any misconduct on the part of servant which would have justified dismissal or a fine, he cannot, after such condonation, go back upon his election to condone an claim a right to dismiss him or impose a fine or any other punishment in respect of the offence which has been condoned. In our view, these decisions are of no relevance in the present case. At the time these decisions were rendered under the general law of master and servant it was open to the master to dismiss his servant or fine him on the ground of misconduct. On the facts of both these cases the master has the option of dismissing the servant or fining him on the ground of misconduct but voluntarily did not take the action of dismissing or fining him on the ground of misconduct and it was held that thereby the master had condoned the earlier misconduct and could not thereafter rely on the said misconduct for punishing the servant. In the case before us, however, at the time when the promotion was granted to respondent 1 on July 17, 1984, the appellant had no option but to consider respondent 1 for promotion and to promote him if he was found fit as no disciplinary proceedings had been initiated against him or could be said to be in process against him, as we have set out earlier. In such a case, no question of condonation could arise. The ratio of decision in *Lal Audhraj Singh v. State of M.P.* (AIR 1967 MP 284 : (1967) 2 LLJ 531 : 1967 Jab LJ 630) is also of no application to the case before us as that again was a case where the employer, namely, the State, had the option of punishing the employee and voluntarily refrained from doing so.

9. It was next contended by Mr. Rao that even if the disciplinary proceedings against respondent 1 were liable to be continued that constitutes no ground for holding up the promotion of respondent 1 from Scale III to Scale IV if he was otherwise found fit for promotion, as, on the date even the selections for that promotion were made, no charge sheet has been served on respondent 1 and it is the accepted position here that till the charge sheet was submitted it could not be said that disciplinary proceedings were in process or has been initiated. It was submitted by Mr. Rao that this contention was fortified by the provisions of clause (9) of the Promotional Policy of the appellant, which we have discussed earlier. It was urged by him that it was on this ground that the appellant had based its case regarding the validity of the disciplinary proceedings against respondent 1 and on the same basis respondent 1 was entitled to be promoted from Scale III to Scale IV as from March 1988 if he was found fit. It was submitted by him that since the charge sheet was served on respondent 1 over a month after he was considered for promotion from Scale III to Scale IV, it was not open to the appellant to hold back the consideration of the case of respondent 1 for promotion from Scale III to Scale IV or to deny him the promotion if he was found fit.

10. It appears to us prima facie that the submissions of Mr. Rao in connection with promotion of respondent 1 from Scale III to Scale IV are not without substance. However, it is unnecessary for us to decide this question because Mr. Pai, learned counsel for the appellant has agreed that without creating a precedent, the appellant will grant promotion to respondent 1 from Scale III to Scale IV if it is found that the Departmental Promotion Committee found him fit for promotion and that this promotion will be granted from the date on which he would have been promoted but for the departmental enquiry being contemplated against him.

11. In the result, the appeal is allowed to the extent aforesaid and the impugned order of the High Court quashing the departmental proceedings is set aside. The departmental enquiry shall be proceeded with and completed within a period of six months according to law. As far as question of promotion of respondent 1 from Scale III to Scale IV is concerned, that question will be considered in the light what has been agreed to by Mr. Pai, as set out earlier.

12. Parties shall bear and pay their own costs throughout.

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