

United Bank of India

Vs

Meenakshi Sundaram

(Sujata V. Manohar, D. P. Wadhwa JJ)

21.01.1998

JUDGMENT

D.P.WADHWA J

1.The appellant bank is aggrieved by the judgment dated May 24, 1991 of the Division Bench of the Guwahati High Court allowing the writ petition of the respondents and holding that the benefits which are being enjoyed by the transferred officers of the bank to North-Eastern region could also be available to respondents who are direct recruits and posted to the North-Eastern region for the first time either on probation or otherwise.

2.The appellant is a Public Sector Bank.A communication dated September 1, 1983 was addressed by the Central Government in the Ministry of Finance Department of Economic Affairs (Banking Division) to all the Chief Executives of Public Sector Banks on the subject of ad hoc and temporary incentives to the employees of the Banks posed in North-Eastern region. The reasons which led the Central Government to issue such a communication are stated in the first para of the letter which we reproduce as under:

"Sir,

I am directed to say that the question of providing special ad hoc, temporary incentives to officers of Public Sector Banks, with a view to facilitate their movement to branches/offices located in States and Union Territories in North-Eastern region, has been under consideration of the Government for some time. In view of the very special circumstances prevailing in the area, it is felt that some special, temporary incentives need to be given to such of the officers as are posted from other parts of the country to BRANCHES/offices located in States/Union Territories in the North-Eastern Region. The Bank could even ask for volunteers to be posted in the North Eastern Area for a period of two years."

3.Thereafter, incentives were listed which were to be made available to the transferred officers from other parts of the country. These are (i) transferred officer on completion of his tenure, be posted for a period of three years to a place of his choice out of three places to be indicated by him; (ii) the transferred officer may retain his furnished or non-furnished accommodation, as the case may be, at the last place of his posting or alternatively may be allotted accommodation at a place of his choice on payment of usual 10% or 12% of his pay, as the case may be. Where the transferred officer has

not been provided with accommodation by the Bank at his last place of posting, the Bank should, on request, provide him, on the basis of recovery of usual rent, accommodation to his family preferably at a place indicated by the officer; (iii) the transferred officer who retains the accommodation at the last place of posting or on a place of his choice may be given free furnished single accommodation appropriate to his status at the new place of posting in North-Eastern region; (iv) the transferred officer may be paid as per the entitlement mid-academic transfer allowance for the entire period of his posting in the North-Eastern region irrespective of the date of transfer provided the children of such officer did not join the officer on the new place of posting; (5) such transferred officer would be entitled to Leave Travel Concession once in a year to the place where his family is residing; and (vi) the transferred officer would also be entitled to ad hoc, out of turn increase in salary specifically for the duration of his active duty only in a post in the North-Eastern region. The out of turn, ad hoc increase salary will be regulated in the manner as the salary is fixed when an officer is placed in the immediately next higher scale. Such shall not confer any other benefit than the temporary monetary gain in basic pay and D.A. for the specific duration of active duty in any post in the North-Eastern region.

4. Some additional incentives were also mentioned to be provided to all officers of the Bank posted in the North-Eastern region.

5. On the advice of the Central Government as communicated by letter dated September 1, 1983, the appellant Bank issued guidelines on January 11, 1984 adopting the same very basis for grant of incentives. These incentives exclusively payable to transferred officers were not to the liking of the directly recruited officers which led them to file the writ petition in the High Court and was allowed by the impugned judgment. Their contention was that the incentives granted to the transferred officers of the Bank from other parts of the country as per communication of the Bank would also be applicable to directly recruited officers of the Bank posted in the North-Eastern region though hailing from different parts of the country as otherwise it would be violative of Article 14 of the Constitution of India. The High Court relied on its earlier decision in Reserve Bank of India Staff Officers Association & Ors. Vs. Reserve Bank of India decided on August 14, 1990 which the High Court said was on the same issue of discrimination. This decision in the Reserve Bank of India's case was reversed by this Court by judgment dated August 9, 1991 on an appeal filed by the Reserve Bank of India Reserve Bank of India Vs. Reserve Bank of India Staff Officers Association & Ors. [(1991) 4 SCC 132]. In the case of Reserve Bank of India certain incentives and allowances were provided by the Reserve Bank to its officers posted at Guwahati who were not from the North-Eastern region. Those allowances were generally known as special duty allowances. It included an ad hoc increase in salary for non-local officers and a option was given to them either to choose the ad hoc increase or the special duty allowance for the period during which they were posted at Guwahati. The Reserve Bank declined to allow the same allowances to local officers posted at Guwahati as were given to the officers from other regions transferred to Guwahati. This denial of allowances to the officers belonging to North-Eastern region was challenged by them in the Guwahati High Court which upheld their stand. This Court noticed from the stand of the Reserve Bank that there was difficulty in persuading officers of the Bank posted outside the North-Eastern region to accept transfers to the unit of the Bank in the North-Eastern part of the country which unit was located at Guwahati in Assam. From the record of the Reserve Bank, it appeared that Guwahati station was regarded as hardship station. In the High Court the Reserve Bank averred that the hardships faced by the non-local officers were greater than those faced by the local officers and the scheme of ad hoc incentives was introduced to tide over the problem of adequately staffing the Guwahati office. It were the non-local officers who experienced difficulty in getting accommodation, getting familiar with the language and so on and that some incentives had to be

given to them to mitigate the hardships experienced by them on transfer to Guwahati. The High Court, however, took the view that all officers at Guwahati local or non-local suffered from substantially the same hardship and that the action of the Reserve Bank discriminated the local officers and it, therefore, directed that they must be given the same benefits as were given to non-local officers transferred to Guwahati. Correctness of this decision was challenged in this Court. This Court was of the opinion that the High Court was in error in taking the view that the officers from the North-Eastern region who were posted at Guwahati suffered the same hardships as officers from other regions transferred to Guwahati. This Court observed as under:

"A person transferred from outside the North-Eastern region to Guwahati would normally have to face more severe difficulties than an officer from the North-Eastern region posted in Gauhati or, at the least, the appellant bank could reasonably take that view. Moreover, as pointed out by the appellant bank in the counter that they were finding it difficult to persuade their officers from outside to accept transfers to Gauhati and it is common knowledge that an office of a large bank cannot be run efficiently by officers a large number of whom have been posted there by transfers against their will and under the threat of disciplinary action. The work done by them could hardly be expected to be satisfactory. After all, the appellant, the Reserve Bank of India, is a banking institution and if in the interest of efficiency and proper working it bona fide took the decision, in the circumstances set out earlier, to grant some extra benefits to the non-local officers transferred to Gauhati with a view to maintain efficient working of its unit at Gauhati, in our opinion, they cannot be treated as being guilty of any unlawful discrimination.

6. The High Court in the impugned judgment completely relied on its decision in the Reserve Bank of India case which decision did not find favor with this Court. The facts in the present case and that in the Reserve Bank of India case though were somewhat different but the principles as initiated by this Court would be applicable in the present case as well. While the dispute in Reserve Bank of India case was between local officers belonging the North-Eastern region and those transferred from other parts of the country, in the present case before us it is between the officers of the Bank transferred to North-Eastern region and those who were directly recruited and posted to North-Eastern on their first posting.

7. In our opinion, direct recruits cannot be placed on the same pedestal as the officers already working in the Bank and being transferred to the North-Eastern region. The incentives which have been given to transferred officers are not such as can be granted to the direct recruits posted for the first time in the service of the Bank except one of the incentives being ad hoc, out of turn increase in salary during the duration of the posting in the North-Eastern region. The direct recruited officers, as far as their first posting is concerned, are a class with themselves. For proper functioning of its branch, the Bank also needs experienced hands. However, good a direct recruit may be, he certainly has no previous experience in the working of the appellant Bank. A direct recruit has a choice whether to join the service of the Bank or not. If he does, he runs on the risk, if it is risk, of being posted in the North-Eastern region on his first posting. In this context, it was submitted by the respondents that the promote officer cannot refuse posting in the North-Eastern region on his getting promotion and that when such a promote officer is entitled to incentives those incentives should also be granted to direct recruit on the same principle. But then a promote officer in an experienced hand unlike a direct recruit. An employee in the clerical cadre in the Bank can make to an officer in

Junior Management Grade Scale-I only after five years of service and after passing written test-cum-interview. He has undoubtedly experience of working in the Bank. On promotion, he gets salary as a Junior Management Grade Scale-I Officer. This he gets from the date of publication of the promotion test results in his original place of posting, i.e., where he was posted as a Clerk at the time of his promotion. The appellant bank has contended that such an officer in Junior Management Grade Scale-I gets remunerated at his existing place of posting and sending him to North-Eastern region as a promote officer would be on transfer and since he was already getting SPF (Special Pay Fixation?) and all other facilities as a Clerk which were continued to him as a promote officer he would thus be also entitled to the incentives. It was also submitted that a directly recruited probationer or a promote officer are unequal and could not be treated alike. As a matter of fact, the plea of discrimination between a direct recruit probationer and a promote officer on probation was not advanced before the High Court. We are of the view that the Bank is right in its submission. A distinction was also sought to be drawn between transfer and posting. Assuming there is such a distinction as contemplated by the communication dated September 1, 1983 and the circular issued by the appellant Bank dated January 11, 1984, it is clear that the incentives (mentioned in the earlier part of the judgment) are applicable only to the transferred officers and certain additional incentives would be applicable to all the officers posted in the North-Eastern region. Certain incentives are necessarily required to be given to the officers of the Bank so that they accept their transfer to hardship stations in North-Eastern region for the proper functioning of the Branches of the Bank. That would certainly be within the policy of the Bank. It cannot be said that in not granting those incentives to the directly recruited officers posted for the first time in the Branches in the North-Eastern region in any way is discriminatory and violative of Article 14 of the Constitution of India. This Court will not interfere with the policy devised by the Bank for introduction of incentives to its transferred employees when it has taken into consideration the prevalent circumstances in the North-Eastern region and the reluctance of its experienced officers to be transferred to that region. This Court in the Reserve Bank of India case has already upheld the distinction between local and non-local officers working in Reserve Bank unit in the North-Eastern region on similar consideration.

8. Accordingly, the appeal is allowed. The judgment dated May 24, 1991 of the High Court of Guwahati is set aside and the writ petition filed by the respondents dismissed.