

CASE NO.:
Appeal (civil) 7803 of 2002

PETITIONER:
Reserve Bank of India & Another

RESPONDENT:
C. L. Toora & Others

DATE OF JUDGMENT: 05/04/2004

BENCH:
CJI, S.B. SINHA & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

KAPADIA, J.

This appeal by special leave is filed by the Reserve Bank of India against the judgment and order of the High Court of Rajasthan, Bench at Jaipur dated 12.12.2001 directing the appellant to consider respondent no.1 for promotion to grade-D ignoring the fact that a high power Selection Board presided by a retired Judge of the Bombay High Court had found the respondent unsuitable for selection to the said grade.

The facts giving rise to this appeal are as follows.

On 1.10.1988, the Currency Officer of the appellant asked respondent no.1 who was Assistant Currency Officer in Grade-C to look after, on 3.10.1988, the duties of M.S. Janagal, Assistant Currency Officer (Grade-B), who had proceeded suddenly on casual leave. It is the case of the appellant that respondent no.1 herein refused to comply with the orders of the currency officer stating that he cannot be asked to discharge the functions of Grade-B officer. Accordingly, the said respondent was charge-sheeted on 1.12.1989 for insubordination under regulation 32 of the Reserve Bank of India (Staff) Regulations, 1948 (hereinafter referred to as "the said regulations"). In the preliminary enquiry preceding the charge-sheet, the said respondent in reply to show-cause notice stated that on 1.10.1988, seven Grade-B officers were present on duty and only one of them Mr. M.S. Janagal had applied for casual leave; that he had never operated the vault in the past; that vault duties were entrusted to Grade-B officers and as such, except in emergency, a Grade-C officer was entrusted with such duties and, therefore, he did not intend insubordination. In fact, he pointed out that on 3.10.1988, he did all the work of Claims Department except opening and closing of vault. By his reply to show-cause notice, he further pointed out that he was under mental agony on that day in the background enumerated in para 2 of his reply to the show-cause notice. The appellant however did not accept the explanation of the respondent. In the meantime, the appellant undertook selection process in the matter of promotions of officers from Grade-C to Grade-D. Respondent no.1 herein was one of the candidates. The appellant constituted a high power Selection Board presided by Mr. Justice A.S. Ginwala, a retired judge of Bombay High Court. The Selection Board held several meetings at Calcutta, New Delhi, Bombay and Bangalore, as promotions were to be made at all India level. The Selection Board recommended candidates for promotion in terms of the executive policy

formulated by the Management in 1983 and which was in existence in 1989. Under the said policy, a candidate had to secure in all 170 marks out of 300 for empanelment for promotion to Grade-D. Respondent no.1 herein secured 162 marks and consequently he failed to qualify. At this stage, it may be mentioned that the said respondent was interviewed at New Delhi center on 2.6.1989, wherein he was successful but over all he did not secure 170 marks, hence not found suitable for the panel year 1989. On 23.10.1990, he filed writ petition No.5483 of 1990 challenging the charge-sheet and his non-selection. During the pendency of the writ petition, disciplinary enquiry was completed and the competent authority imposed the minor penalty of lowering his substantive pay by one stage permanently, against which he filed departmental appeal, which was also rejected on 4.8.1994. Respondent no.1 filed an amendment application to the writ petition challenging the enquiry proceedings as well as the order of punishment. By impugned judgment, the writ petition was allowed on the ground that the charge of insubordination was not proved. The High Court also found fault with the non-selection of respondent no.1 on the ground that the procedure and the criteria adopted by the Selection Board was improper. It doubted the decision of the Selection Board in awarding only 162 marks on the ground that the said respondent had obtained the requisite 32 marks in the interview but he was given only 130 marks on performance appraisal. In the circumstances, the entire selection was set aside and the appellants were directed to reframe selection and consider the said respondent for promotion to scale-D from 1989. Aggrieved, the Reserve Bank of India has come to this Court by way of this appeal.

Two issues arise for determination, firstly, whether the appellant was justified in imposing the above penalty of lowering the substantive pay of the respondent by one stage permanently; and secondly, whether the High Court was right in setting aside the entire selection and directing the appellant to promote respondent no.1 to scale-D w.e.f. 1989.

On the first point, we are of the view that the High Court was right in coming to the conclusion that the conduct of respondent no.1 was not such as to warrant disciplinary action. As stated above, in the preliminary enquiry, respondent no.1 has given his explanation vide letter dated 12.6.1989. We have gone through the letter, as discussed above. Regulation 32 states that every employee shall obey directions given to him from time to time by his superiors. In the present case, we do not find any insubordination or disobedience as alleged. He has stated in his reply that he has no experience of opening and closing the vault and that he did all the work of Claims Department on 3.10.1988, except opening and closing of vault. In the circumstances, we are in agreement with the view taken by the High Court in the matter of disciplinary proceedings that there was no foundation for alleged misconduct.

The second issue is whether the High Court was right in setting aside the entire selection with the direction to the appellant to consider the said respondent for promotion to scale-D from 1989. Mr. Harish N. Salve, learned senior counsel appearing on behalf of the appellant submitted that respondent No. 1 was interviewed along with other candidates by the Selection Board. On 29.5.1990, respondent no.1 was advised about his non-selection and thereafter he had appeared in interview four times i.e. on 8.6.1990, 3.9.1991, 6.4.1992 and 5.2.1993 but was found unsuitable. It was submitted that the Selection Board was presided by a retired Judge of the High

Court of unquestionable impartiality who had no axe to grind. He contended that it was open to the Selection Board to formulate its own procedure in the matter of allotment of marks for interview, written test and performance appraisal and that the High Court had erred in fixing qualifying marks for interview. In this connection, it was pointed out that the Selection Board had prescribed 100 marks out of 300 for interview which the High Court has held to be on the higher side. He submitted that the High Court had erred in coming to the conclusion that non-selection of respondent no.1 was on account of extraneous factors. He submitted that the covering letter enclosing the mark-sheet has been signed by all the members of the selection board. Mr. Salve produced before us the entire record. Per contra, Mr. A.B. Rohtagi, learned senior counsel appearing on behalf of respondent no.1 submitted that the individual members of the Selection Board have not assigned individual marks in the mark-sheet and that all the members have allotted equal marks and, therefore, the procedure was faulty. He submitted that the mark list did not bear the signatures of the members of the Board though all the members have signed the forwarding letter. It was urged that no merit list was prepared and no policy was produced before the High Court on the basis of which marks came to be given. He submitted that the respondent was successful in the interview and for extraneous reasons, he was given less marks for his performance and consequently he could not obtain 170 marks. It was submitted that the High Court had examined the entire record and has given finding of fact and, therefore, this Court should not interfere in this matter under Article 136 of the Constitution.

We are of the view that the High Court had erred in setting aside the selection and in directing the appellant bank to consider respondent no.1 for promotion from 1989. The appellant had constituted high power Selection Board presided by a retired Judge of the Bombay High Court. The Selection Board, as stated above, held interviews of candidates from various centers at all India level. The Selection Board held its sitting at Calcutta, New Delhi, Bombay and Bangalore. It provided for 200 marks for service records and 100 marks for interview in terms of the policy formulated by the management as far back as July, 1983. Under that policy, the candidates were required to obtain aggregate qualifying marks of 170 out of 300. The Board was entitled to formulate its own procedure. Moreover, we have perused the records and proceedings of the Selection Board produced before us. The forwarding letter enclosing the mark-sheets has been signed by all the members of the Board. There is no interpolation in the marks given to the candidates as alleged. On facts it cannot be said, as held by the High Court, that the Board had taken into account extraneous factors. Hence, the High Court erred in setting aside the selection and directing the appellant bank to consider the case of respondent no.1 for promotion to Grade-D from 1989.

For the aforesaid reasons, we hold that there was no misconduct committed by respondent no.1 and the appellant had erred in imposing the penalty on respondent no.1 of lowering his substantive pay by one stage permanently. However, we hold that the High Court had erred in setting aside the selection made by the Selection Board and directing the appellant to reframe selection and consider respondent no.1 for promotion to scale-D from 1989.

Accordingly, the appeal stands partly allowed, with no order as to costs.

JUDIS