

CASE NO.:
Appeal (civil) 959-960 of 2000

PETITIONER:
D.C. Aggarwal (Dead) by LRs.

RESPONDENT:
State Bank of India and another

DATE OF JUDGMENT: 27/04/2006

BENCH:
B.N. Srikrishna & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

Srikrishna, J.

These two appeals arise between the same parties and are interconnected. Hence, they can be disposed of by a common judgment.

The appellants are the legal representatives of one D.C. Aggarwal, an erstwhile employee of the respondent\026State Bank of India, who have brought these appeals claiming: (a) the benefits of an extension in service of the said D.C. Aggarwal up to the age of sixty years; and (b) the benefits arising out of notional promotion which ought to have been granted to the said employee, etc. For the purpose of convenience, the said D.C. Aggarwal shall be referred to as "the appellant" in the course of our judgment.

Background to the Promotion Issue

The appellant joined the respondent-bank as Probationary Officer on 15.1.1960. He got repeated promotions during the period 1960-1980, reaching all the way to Top Executive Grade Scale VI (hereinafter "TEGS VI") as a Deputy General Manager on 27.7.1980. On 4.1.1981, the appellant was posted as Deputy General Manager of the respondent-bank at Chandigarh and was put in charge of the respondent-bank's branches in the State of Haryana and in the Union Territory of Chandigarh. On 8.7.1981, the appellant's explanation was called for in respect of some irregularities pertaining to his work. He gave an explanation, which was not acceptable to the respondent-bank and on 11.7.1981, he was placed under suspension. The respondent-bank conducted an inquiry and the investigating officials held an ex-parte inquiry. The appellant challenged the investigation and the matter ultimately landed up in this Court. This Court disposed of the matter by a direction that the Central Vigilance Commission appoint an inquiry officer who would re-open the inquiry from the stage it was closed. Further directions were given so as to enable the parties to lead evidence and to ensure that the inquiry was conducted expeditiously.

The inquiry was conducted by one A.K. Rastogi, a senior IAS officer, who submitted his report on 30.5.1985 by which he exonerated the appellant of most of the major charges; and put on record that most of the charges were fabricated and were intended to denigrate the conduct of the appellant as a senior and responsible official of the bank. The report of A.K. Rastogi was considered by the Central Vigilance Commission, which, however, disagreed with his findings and found the charges proved against the appellant. It recommended that, at the very least, the appellant be removed from

service. The Disciplinary Authority of the respondent-bank, through an elaborate order, agreed with the findings of the Central Vigilance Commission, except with regard to the recommendation on the quantum of punishment. It found that the recommended punishment of removal from service, was too harsh and instead imposed the punishment of demotion by two grades on the appellant. Consequently, the appellant was relegated to Middle Management Scale IV, virtually resulting in the forfeiture of almost more than a decade's service of the appellant. This order was confirmed by the executive committee of the respondent-bank on 4.11.1987. The appellant joined the demoted post of Secretary, Banking Services Recruitment Board, Chandigarh, though under protest. Within twenty-six days, he was transferred to Bhopal. He, however, did not join the post at Bhopal on the ground that it was against the rule for officers of Middle Management Grade Scale to be transferred out of the circle. After about six months, the transfer of the appellant was cancelled and he was permitted to join in the demoted post as Officer on Special Duty, Zonal Office, Chandigarh. A departmental appeal carried by the appellant against the order of the penalty imposed on him, was dismissed.

During the aforesaid period, the appellant was not considered for promotion to the post of General Manager (TEGS VII) on 1.8.1984, 20.2.1986, 8.6.1987, 1.8.1988, 24.4.1989 and 3.2.1992. Also, the appellant's case was not considered under the "sealed cover procedure" pending finalisation of the departmental proceedings. On 17.4.1989, the appellant moved a Civil Writ Petition No.15874/1989 challenging his order of demotion before the Punjab and Haryana High Court. The learned Single Judge allowed the writ petition and granted him the relief sought for. A Letters Patent Appeal No. 553/1991 carried by the respondent-bank was dismissed by the Division Bench of the High Court. The respondent-bank moved this Court by filing Special Leave Petition No. 10198/1991. This Court dismissed the appeal by holding that the appellant had been prejudiced in the matter of his defence; it was held:

"\005The order is vitiated not because of mechanical exercise of powers or non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of sub-rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent (appellant herein) without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry."

In the result, this Court was of the view that the inquiry against the appellant had been rightly quashed by the High Court.

Consequent to the aforesaid Order, on 7.11.1992, the appellant was transferred to Hyderabad as Deputy General Manager, but he refused to join there as a matter of protest and remained absent without leave. Subsequently, the appellant's posting in Hyderabad was cancelled and he was posted at Chandigarh once again and he retired with effect from 10.9.1993 after working as Deputy General Manager.

However, when the appellant was still in service, on 28.12.1992, the appellant was given a fresh showcause notice for an inquiry against him. The appellant challenged the fresh show cause notice by filing Contempt Petition No.1098/92 before the High Court in which two Managing Directors of the respondent-bank V. Mahadevan and P.V. Subba Rao were made respondents. The said respondents challenged the initiation of the contempt proceedings against them, before this Court, by Special Leave Petition Nos.

1707-08/1993. Leave was granted therein and Civil Appeal Nos. 1017-18/1993 was disposed of by this Court with the following three directions :

1. "\005no fresh enquiry shall be held against the respondent for the act or commission for which action was taken against him which resulted in reduction from rank in 1987. Notice dated 28th December, 1992 shall stand withdrawn."

2. "The State Bank of India shall reconsider the claim of promotion of the respondent to higher scale in accordance with rules. We do not express any opinion on the question if interview for higher scale is necessary and if there was any valid justification for not promoting the respondent whose record prior to these proceedings is unblemished but if under the policy framed by the bank and followed in other cases, constitution of a committee and interview is necessary then the committee be constituted but the Managing Director, State Bank of India, Central Office, Bombay and Managing Director (Personnel), State Bank of India, Central Office, Bombay who are appellants in this Court may not be its members."

3. "The committee shall be constituted within three weeks from today which shall decide if respondent (the appellant herein) was entitled to be promoted to higher scale\005" and if the committee decides that the appellant is not suitable for promotion it shall give reasons therefor.

4. In view of the abovesaid conditions, the contempt proceedings against the two Managing Directors of the respondent-bank were dropped.

Pursuant to the directions issued by this Court, the General Manager (Operations) Chandigarh issued a letter dated 26.8.1993 calling upon the appellant to attend an interview so as to adjudge his suitability for promotion to TEG Scale VII (General Manager's Post). The appellant appeared before the Interview Committee on 1.9.1993. The Committee awarded him only 25.7% marks as a result of which he was informed by a letter dated 8.9.1993 that his claim for promotion was rejected as he was found unsuitable by the Interview Committee. The appellant made a representation thereagainst to the Chairman of the respondent-bank. He also approached this Court by a Contempt Petition No. 324/1993 in Civil Appeal No. 4017-18/1993 for initiation of contempt proceedings against the respondent-bank and its officers. This Contempt Petition was withdrawn on 17.9.1993 with liberty to move the High Court for appropriate relief. The appellant thereupon filed Civil Writ Petition No.15245/1993 before the High Court by which he impugned the action of the respondent-bank in not granting him the promotion he sought. He also claimed therein salary from November 1992 to 16.6.1993, which was denied to him on the ground that he had failed to report to Hyderabad where he had been posted and had remained absent without leave.

The appellant's Writ Petition No. 15245/1993 was allowed on the ground that, under the policy applicable to the appellant's case, an interview by the Departmental Promotion Committee was not envisaged and that his claim for promotion had to be decided by an informal interview by the Managing Director and some other officers. The Single Judge also held that it could not be said that the appellant had been absenting himself from 8.11.1992 to 16.6.1993 as his posting at Hyderabad was unfair and had been cancelled. Thus, his claim for salary was allowed. The respondent-bank challenged the learned Single Judge's judgment by filing Letters Patent Appeal No. 364/1998 in which the appellant also filed cross-objections.

Background to the Extension Issue

During the pendency of the litigation between the appellant and the respondent-bank, the appellant was granted extension in service from 10.3.1991 to 9.9.1993 i.e. upto the age of fifty-eight years by a letter dated 9.9.1993. He was also informed that the Review Committee had not recommended further extension of his service in terms of Rule 15 of the

State Bank of India Service Rules; as a result of which, the appellant would retire on attaining the age of superannuation with effect from 10.9.1993. The appellant preferred an appeal before the Chairman of the respondent-bank, which was turned down. Thereafter, he filed Civil Writ Petition No.12062 of 1993, which was also dismissed by the Division Bench on 5.10.1993. He then carried Special Leave Petition 17752/1993 to this Court. Leave was granted therein and the resultant Civil Appeal No. 1609/1994 was allowed on 11.3.1994. This Court disposed of the appeal by the following operative order:

"In the result, this appeal succeeds and is allowed. The orders passed by the High Court, the Appellate Authority and the Review Committee are quashed. The respondents are directed to constitute a fresh committee of the personnel mentioned in the rule itself. In case the appellant had made any allegation against any of those Deputy Managing Directors, then the committee shall comprise of Deputy Managing Directors, other than those who are mentioned in the rules. The earlier Deputy Managing Directors who were the members of the committee shall not be members of the new committee. The recommendations of the committee shall be placed before the competent authority who shall be different and higher in rank than (sic-than) the members who shall constitute the committee. Such committee shall be constituted within two weeks from today and the decision by the competent authority shall be taken within two weeks thereafter."

The respondent-bank filed I.A. No. 3/1994 for clarification of the aforesaid order on the ground that the Chairman and Managing Director is the Appellate Authority and as a consequence, he could not deal with the Committee to consider the case for extension of the appellant. It was pointed out that the appellant had made serious allegations against several senior officers, as a result of which, they could not be nominated as members of the Review Committee. Accordingly, in pursuance of the time bound directions of this Court, the Executive Body of the respondent-bank decided on 27.5.1994 to formally constitute a three-member committee comprising S. Doreswamy, Chairman-cum-Managing Director, Central Bank of India as its Chairman/Competent Authority, and the two other members were R. Vishwanathan, Deputy Managing Director (Commercial Banking) and G. Kathuria, Deputy Manager Director (Treasury and Investments Management). The three-member Review Committee would consider and decide the claim of the appellant for extension of his term in accordance with the rules. It was also made clear in the order of this Court that it was not open to the parties to challenge the constitution of the Committee in any further proceedings. It was also directed that, the Committee be constituted within two weeks and thereafter the Competent Authority take a decision within two weeks.

R. Vishwanathan and G. Kathuria held two meetings on 6.6.1994 and 9.6.1994 and on 16.6.1994 recommended to the Chairman/Competent Authority that it was not in the interest of the respondent-bank to extend the services of the appellant beyond the age of fifty-eight years. The Chairman accepted the recommendation on the very same day. All the three members of the Committee met on 16.6.1994, and recorded the minutes of the proceedings making a recommendation against granting an extension of service to the appellant. The appellant once again challenged this by way of Contempt Petition No. 4/1995 which was dismissed as withdrawn with liberty to impugn it by appropriate proceedings.

The appellant filed Civil Writ Petition No. 5567/1995 challenging the decision of the respondent-bank not to grant an extension to him. The learned Single Judge was of the view that the Committee was biased against the appellant on account of his history of previous litigation; that other officers who were not as competent as the appellant had been granted extensions up to the age of sixty years and thus, there was discrimination against the appellant. Consequently, the learned Single Judge interfered and

set aside the recommendation and held that the action of the Review Committee and the Competent Authority was arbitrary. Thus, the writ petition was allowed and the relevant orders were quashed. The respondent-bank challenged the said judgment of the learned Single Judge in Letters Patent Appeal No.81/1999 in which the cross-objections were also filed by the appellant.

The Division Bench of the High Court by its impugned judgment dated 9.3.1999 referred commonly to the Letter Patent Appeals in the Promotion and Extension matters. It allowed both the appeals and set aside the judgments of the learned Single Judge by holding that the action of the respondent-bank was not liable to be interfered with on any ground. Hence this appeal.

Promotion Matter

The learned counsel for the appellant elaborately pointed out the history of the litigation between the parties commencing from the first showcause notice given to the appellant and the final order made against him. Counsel also highlighted the fact that all the disciplinary orders had been set aside by this Court from time to time. His contention was that, this had resulted in an institutional bias against the appellant. Counsel suggested that all the top officers of the respondent-bank were biased against the appellant and were unanimously against him.

The second contention of the learned counsel is that the appellant was a brilliant officer who, between the period 1960 to 1981, had succeeded to the top echelons of the respondent-bank by dint of his merit. It was only thereafter that, the top officers deliberately spoiled his good record by giving him showcause notices on frivolous grounds, which were ultimately quashed by this Court. He submitted that the appellant had already reached TEGS VI and the case of the appellant for TEGS VII had to be considered on four different dates: 1.8.1984, 20.2.1986, 8.6.1987, 1.8.1988 and thereafter on 24.4.1989 and 3.2.1992. It is contended that, during the period the appellant was under suspension, the respondent-bank was bound to consider his case under the "sealed cover procedure", which the respondent-bank had failed to do. Thus, the legitimate claim of the appellant was defeated on account of the bias against him, as well as, for not following the procedure prescribed.

Taking the second point first, it appears to us that the contention is misconceived. The learned counsel contends (and the learned Single Judge agreed with this) that the respondent-bank had erred by retrospectively applying the procedure prescribed in the policy document dated 11.3.1989, for promotions to be considered between 1.8.1984 to 1.8.1988. We are satisfied that this was a mistake on the part of the learned Single Judge for he failed to take notice of a document which was placed on record. This document was dated 23.2.1984, and modified an earlier promotion policy enunciated in the year 1982. There is no dispute that such a document existed and that it was placed on record before the learned Single Judge. There is also no dispute that such a policy governed the case of the appellant. With this in mind, the Division Bench has correctly analysed the facts and pointed out that for the first four dates on which the appellant's promotion had to be considered i.e. on 1.8.1984, 20.2.1984, 8.6.1987 and 1.8.1988, the assessment had to be made under the terms of the policy dated 23.2.1984. While learned Single Judge was under the impression that the case of the appellant for promotion was governed by the policy of 1982, the Division Bench rightly points out that by this time the modified policy of 1984 had already come into force. By the Government of India Circular dated 28.9.1983, guidelines were issued to add to Regulation 17 of the Officers Service Recruitments the following:

"All promotions to Senior Management Grade, Scale V and Top Executive Grade, Scale VI and VII will be made by a Committee of Directors consisting of the Managing Director, the Government Director and the Reserve Bank of India Director on the basis of the evaluation of the past performance and the assessment of the potential of the eligible officers by

the said Committee."

The memorandum titled "Executive Selection System", prepared for the Central Board of the respondent-bank dated 21.2.1984 in respect of the promotion system inter alia for TEGS VI, TEGS VII, TEG Special Scale, noted (vide paragraph 2):

"The system is essentially merit based, seniority being given due weightage for the purpose of reckoning eligibility (among officers of equal merit or suitability, seniority would count). While performance on a given job is assessed in terms of the identified key responsibility areas, potential to shoulder the responsibilities in the higher management cadres assumes importance\005"

For assessing these factors, the memorandum prescribed (vide paragraph 2(iv)) "\005a supplementary process of structured interview for promotion to Senior Management Grade Scale V and Top Executive Grade Scale VI." The interviews were to be held by a Committee consisting of the Managing Director and any one or more of the other members of the Central Management Committee "\005with a view to assessing the officer's potential".

More importantly, the memorandum noted (vide paragraph 2(v)):
"The eligible officials are assessed separately on the basis of their (a) past performance and (b) potential for handling higher assignments. An officer who is unable to get a minimum score of 60% (or equivalent rating) either in the appraisal of his performance or in the interview, is not considered for promotion. Giving equal weightage to the two processes, the merit list is prepared by adding the ratings/scores in respect of both the aspects and officers equivalent to the number of vacancies are recommended to the Executive Committee of the Central Board for promotions strictly according to their positions in the merit list."

The above memorandum was placed before the Central Board of the respondent-bank and was considered by it during its meeting on 23.2.1984. In pursuance of the memorandum, the Central Board resolved that a Departmental Promotion Committee act as the Recommending Authority for promotions to Senior Management Grade Scale V and above. Thus, it is clear that the appellant's case for promotion between 1.8.1984 to 1.8.1988 had to be considered in the light of the promotion policy of 1982, as modified by the policy of 1984. Hence, the Division Bench was right in its view that there was no question of the policy of 1989 being applied retrospectively in the case of the appellant. We agree with the view of the Division Bench in this regard.

The Interview Committee noted that the appellant had been under suspension from 21.7.1981 to 12.11.1987 and his service upto 21.7.1981 only had to be taken into consideration for appraisal of the past performance of the appellant in the same manner as had been done for other eligible officers. Considering the case of the appellant on each of the relevant dates, the Committee found that although the appellant had obtained 60% marks for "performance appraisal", his performance at the interview was very poor as he had obtained only 25.7% marks. Thus, on each of the relevant dates, the Committee was of the view that his case could not be considered for promotion to TEGS VII. The High Court rightly points out that, whatever might have been the assessment of the appellant on the basis of an informal interview conducted under the promotion policy prior to 1982, he was now required to undergo a structured and formal interview before a Committee which would adjudge him on the basis of indicia as prescribed in the 1984 policy. We can hardly find fault with the Committee for its decision in rejecting the claim of the appellant for promotion to TEGS VII, which undoubtedly, is a grade at the highest level requiring extreme responsibility on the part of the officer concerned.

Taking the first argument of the learned counsel for the appellant, that the appellant's case was rejected because of institutional bias, we are of the view that this is nothing but resurrection of an issue which had been finally laid to rest by this Court. Having examined the matter between the parties, this Court had said by its order that the appellant's acts should be considered by a Committee which did not include any of the officers who had been made respondents in the previous litigations. The general argument of institutional bias or that of senior officers being biased against him, does not cut ice with us. Having noted the questions that were asked of him, and the manner in which the appellant replied to them, it appears to us that there was no doubt that the appellant (who had been adjudged to be excitable by the Interview Committee, the learned Single Judge, the Division Bench and even this Court) had either displayed ignorance of the requisite knowledge to answer the questions or was taking up an obstructive attitude in order to scuttle the interview, which according to him could not have been held. The Division Bench was being charitable in assuming that the appellant had sufficient knowledge but deliberately obstructed the interview. We cannot say that the assessment made by the Division Bench is in anyway erroneous or does not arise from the facts placed before it. The Division Bench of the High Court came to the conclusion that the appellant had never intended to submit to the interview but wanted to filibuster and ultimately to scuttle it, although he was aware of the consequences of his actions.

We agree with the impugned judgment of the High Court that no fault could be found with the Interview Committee when they assessed the performance of the appellant to be poor. We have seen the record and the three questions that the Committee put to the appellant. Answers to those three questions would have demonstrated the depth of knowledge the appellant had in his professional field. The answers given by him to the questions asked, suggest that either he was incapable of answering them or that he was deliberately filibustering the interview. In either event, he did not deserve to be selected by the Interview Committee. No fault can be found with the decision of the Interview Committee or with the decision of the respondent-bank that the appellant was not fit for promotion to TEGS VII.

Extension Matter

As a result of the order made by this Court in Civil Appeal No.1609/1994 dated 11.3.1994, together with the order made on 13.5.1994 in I.A. No. 3/1994, the respondent-bank requisitioned the services of S. Doreswamy, Chairman-cum-Managing Director, Central Bank of India to act as the Chairman/Competent Authority of a three-member committee to make recommendations as to whether the appellant's services were to be extended till the age of sixty years. As we have already pointed out, the other two members of the committee were R. Vishwanathan, Deputy Managing Director (Commercial Banking) and G. Kathuria, Deputy Manager Director (Treasury and Investments Management). In the course of the hearing, the parties accepted the names of the above-mentioned officers without demur or protest. The two members of the Committee i.e. R. Vishwanathan and G. Kathuria, considered the entire service record of the appellant and recommended that it was not in the respondent-bank's interest to give an extension in service to the appellant. The Chairman of the Committee/Competent Authority also concurred with this recommendation. The recommendations thus made by the Committee were accepted by the management of the respondent-bank.

The appellant could not have challenged the constitution of the Committee as this Court had specifically precluded any such attempt. The learned counsel before us contended that there was an institutional bias that affected the decision of the three-member Committee, which was not objective in its assessment. We find this difficult to accept. That there was bad blood between the appellant and some top officers of the bank is an admitted fact. It was precisely because of this that this Court took the trouble of formulating a Committee headed by an outsider as its Chairman, so that a decision could be taken objectively as to the suitability of the appellant to be

granted the extension he sought. The Committee went into the entire service record and after scanning through the Annual Confidential Reports of the appellant, took a decision, which we think was fair and objective, that no extension as sought for, could be granted.

The learned counsel for the appellant further contended that the decision of the Committee was influenced by a report made by the General Manager, Chandigarh Circle and that the Committee did not independently look into the facts of this case. This is an argument that cannot be countenanced. It is difficult to believe that the two top-most officers of the respondent-bank, who were accepted without demur or protest as members of the Committee, and a person of the rank of Chairman-cum-Managing Director of an unconcerned bank and who had no interest in the matter whatsoever, would all conspire together so that the appellant was denied an extension.

The argument for the learned counsel for the appellant proceeded on a misapprehension of the manner in which extension of service is to be granted. In *State Bank of Bikaner and Jaipur and others v. Jag Mohan Lal* (hereinafter "*Jag Mohan Lal*") this Court had occasion to point out that a rule under which extension of service can be granted beyond the normal age of retirement, does not invest a legal right in the employee to be granted such an extension. The very same regulation as in this case was interpreted in *Jag Mohan Lal* (supra) and it was pointed out therein that the sole purpose of giving extension of service is to promote the interest of the bank and not to confer any benefit or favour on retiring officers. It was pointed out that it was not a conferment of a benefit or privilege on officers. Merely because the officer has put in the requisite number of years of service, that does not earn him/her that benefit or privilege. This Court observed:

"The Bank, however, is required to consider the case of individual officers with due regard to (i) continued utility; (ii) good health; and (iii) integrity beyond reproach of the officer. If the officer lacks one or the other, the Bank is not bound to give him extension of service. In this case, the Bank has shown to the High Court that the case of the respondent was considered and he did not fit in the said guidelines. The High Court does not sit in an appeal against that decision. The High Court under Article 226 cannot review that decision."

If the bank considers that the continuance of services of an officer is desirable in the interest of the bank, it may allow him to continue beyond the age of superannuation. If the bank considers that the service of the officer is not required beyond the age of superannuation, that is the end of the matter. Further, non-extension of service is no reflection on the calibre of the officer and it carries no stigma.

It appears to us that these principles were not kept in mind by the learned Single Judge when he interfered with the discretion of the respondent-bank not to grant an extension to the appellant. The Division Bench has, however, rightly applied the legal principle stated in *Jag Mohan Lal* (supra) and found that there was no such right vested in the appellant to demand an extension beyond the age of fifty-eight years. Further, in the facts and circumstances of the case, the Division Bench found that the extension had been refused for good reasons and was not liable to be interfered within its writ jurisdiction. We agree with this reasoning of the High Court.

Relief Prayed For

There is another issue that precludes any relief being granted to the appellant. As a matter of fact, the appellant retired from service on 9.9.1993 and died in 2005. The learned counsel for the appellant contended that even though the appellant had died, his legal heirs could be granted the monetary benefits on the footing that the appellant was entitled to get extension of

service by two years and was also entitled to promotion to TEGS VII. In our view, both these contentions are unsustainable. Even if the appellant were to succeed in his appeal, the most favourable order for him could have been a direction to the respondent-bank to reconsider his case for promotion to TEGS VII as also to reconsider extension of his service beyond the age of fifty-eight years. Thus, even with such a direction, it would not have been possible for us to say that the respondent-bank was bound to grant either of the appellant's claims. Thus, there is no question of monetary relief being granted to the legal heirs of the appellant. Further discussion on this aspect becomes unnecessary since we are not satisfied that the appellant was entitled to any relief.

In the result, we find no substance in both the appeals. The impugned judgment of the High Court is unexceptionable. Consequently, the appeals before us are hereby dismissed. In the circumstances of the case, there shall be no order as to costs.