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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-1284-2024(O&M)

Reserved on: 09.01.2025

Date of Pronouncement: 21.01.2025

STATE BANK OF INDIA

. . . . Appellant

Vs.

SUTEEKSHAN MIRD

. . . . Respondent

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Akshay Jain, Advocate
for the appellant.Mr. Shreenath A. Khemka, Advocate
for the respondent.

SANJEEV PRAKASH SHARMA, J.

1. The appellant by way of this Appeal assails the judgment dated 04.04.2024 passed by the learned Single Judge in CWP No.6629 of 2020, whereby the learned Single Judge passed the following order:

“20. In the light of above discussion and findings, the question of promotion in subsequent years has become irrelevant, nevertheless, it is noticed that the petitioner was considered in subsequent years i.e. 2019 and 2020. The promoting authority considered his case along with other candidates but did not select him. The respondent has not made promotions on the basis of seniority but on the basis of merit/performance. The petitioner failed to compete with others. This Court cannot substitute opinion of promoting authority. It was subjective opinion of promoting authority which was based upon past record and viva voce. Thus, claim

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of the petitioner qua decision of promoting authority in subsequent years is hereby rejected.

21. In the wake of above discussion and findings, it is hereby held that petitioner is entitled to promotion w.e.f. 17.12.2017. He shall not be titled to arrears but for all other service benefits, his date of promotion as Chief Manager would be 17.12.2017.”

2. Brief facts which need to be noticed for adjudication of this appeal are that the original writ petitioner (respondent herein) had preferred a writ before this Court wherein he made several prayers which included quashing of the appellant's action in reverting the writ petitioner vide order dated 02.08.2018 and rejecting his appeal thereto vide order dated 04.10.2019 whereby the petitioner's promotion to the post of SMGS-IV with effect from 14.08.2017 was declared as *void ab initio*.
3. Learned counsel for the writ petitioner submits that he had also challenged the enquiry report; the punishment orders passed by the disciplinary authority; and the orders whereby the appeal and review were rejected and the punishment of stopping of two increments for 30 months without cumulative effect was upheld. The petitioner had also prayed that he should be promoted on the post of SMGS-IV with effect from 17.12.2017, instead of 14.08.2017 as originally promoted, and to release the salary for the post of Chief Manager (SMGS-IV), since the currency of the aforesaid punishment ended on 16.12.2017.
4. A complaint had been filed on 14.06.2014 by one female Assistant Manager, State Bank of Patiala alleging sexual harassment against the petitioner who was working with the State Bank of Patiala, till the

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State Bank of Patiala was merged with the State Bank of India in 2017. On the basis of the alleged complaint, enquiry was conducted in terms of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred as 'Sexual Harassment Act, 2013'). The Committee formed under the Act held the petitioner guilty of the charges and proposed strict action for his misbehaviour. Accordingly, a charge-sheet was issued to the petitioner on 25.11.2014, and the petitioner was ultimately punished while working as Branch Manager on 17.06.2015 whereby two increments were reduced for a period of 30 months without cumulative effect. Appeal was preferred against the punishment order dated 17.06.2015. However, it was rejected vide order dated 01.03.2016.

5. After the merger of both the banks, State Bank of India initiated promotion process, and the petitioner was called for interview whereafter he was promoted with effect from 14.08.2017 as Chief Manager (SMGS-IV). Show cause notice was issued to the petitioner on 09.04.2018 alleging that he had been wrongly promoted as the punishment awarded to him was in currency as on the day, and the currency of punishment of stopping of two increments was for 30 months and ended only on 16.12.2017. The petitioner was reverted and relieved from his post on 02.08.2018, and the petitioner was transferred to office at Panipat, and thereafter to Karnal on 24.06.2019. It is stated that the petitioner had been reverted before taking any decision on the reply filed by him to the show cause notice, and finally

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he was conveyed vide letter dated 04.10.2019 informing that his promotion as SMGS-IV with effect from 14.08.2017 was *void ab initio*. The petitioner was further ignored for promotion against the vacancies of 2018 and 2019, and persons junior to him were promoted. The writ petition was therefore filed before this Court.

6. The contentions of the petitioner were considered by the Single Judge who observed that a person may not be promoted during the period of penalty, however, it is unjustified to conclude that he cannot be considered at all. The Single Judge therefore passed the order supra.
7. Learned counsel appearing for the appellant/Bank submits that the Rules of promotion are governed by various policy decisions of the SBI, and as per the Debarment Policy, the view taken by the Single Judge was not correct, and the petitioner could not have been considered for promotion.
8. He has invited attention of this Court to the State Bank of India (Officers) Service Regulations, 1992, and as per Regulation 17(1), promotion policies were framed and promotions were to be done on the basis of selection and were therefore required to be earned, and merely on account of seniority, a person could not claim an automatic promotion. The respondent/writ petitioner was considered for promotion for subsequent years namely 2018-19, 2019-20 and 2020-21 but remained unsuccessful.
9. As regards the order passed by the Single Judge granting promotion to the respondent with effect from 17.12.2017, it was submitted that a

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person is required to be considered for promotion if he is eligible.

Counsel has invited attention to the Debarment Policy wherein it is provided not to be considered during the period of penalty.

10. He further took this Court to the Promotion Policy for General Cadre Officers, Promotions to SMGS-IV and SMGS-V, which provided the date of eligibility to be 1st April of the relevant promotion year, and the provision clearly laid down that the various eligibility criteria shall be determined as on that day for the concerned year. He submits that as per clause 5(a), (b), (c), (d), the eligibility with regard to the concerned candidate has to be examined as on 1st April of that concerned year.

11. He therefore submits that as on 1st of April, 2017, while considering the case of the petitioner for promotion for 2017-18, the currency of punishment would come in way. However, as the petitioner belonged to State Bank of Patiala and his service record was not available at that relevant time, he was directly promoted and posted on deputation with the Government of USA. The petitioner was erroneously promoted with effect from 14.08.2017, while the punishment of stopping his two increments for 30 months would end only on 16.12.2017. He therefore submits that as the petitioner did not possess the eligibility, the incumbent could not have been promoted, and the claim of the petitioner was required to be rejected.

12. Learned counsel for the appellant further submits that the Single Judge ought not have exercised his powers under Article 226 of the Constitution of India to grant promotion to the respondent. He has

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invited attention to clause 5(f) of the Promotion Policy for General Cadre Officers which reflects that the officers who are under rigour of punishment on the date of eligibility due to imposition of penalty as a result of disciplinary action under the Service Rules will not be eligible to participate in the promotion process. Thus, since the date of eligibility is 1st of April of the concerned year, merely because the rigour of punishment ended on 16.12.2017, he cannot be treated as eligible for consideration for promotion against the vacancies of 2017-18.

13. *Per contra*, learned counsel appearing for the respondent/writ petitioner submits that the learned Single Judge has rightly allowed the claim of the petitioner for promotion with effect from 17.12.2017 i.e. from the day the currency of punishment ended. It is submitted that the petitioner would be entitled for the post which was lying vacant since long, and even though he admits that during the currency of the punishment, the petitioner incumbent could not have been promoted on 14.08.2017, but the stopping of two increments and punishment thereto ended on 16.12.2017. However, for the entire year, even if the vacancy may have occurred, the benefit would be available to him.

14. Learned counsel for the respondent further supported the order passed by the Single Judge. He submits that the petitioner cannot be continuously deprived of his promotion on the basis of a minor penalty. The appellant has wrongfully denied his promotion after the rigour of punishment was over. The vacancy was lying as on 17.12.2017, and

once the rigour was over, he was required to be considered. The action of the appellant also suffers from illegality as the petitioner was reverted even before the reply of the show cause notice. He submits that the petitioner has always had outstanding record, but the appellant did not consider him for promotion even for the subsequent years.

15. Learned counsel for the appellant has relied on judgment of Supreme Court in *Union of India and another vs. Narendra Singh, (2008) 2 SCC 750*, while the counsel for the respondent/writ petitioner has relied on judgment of Supreme Court in *Rani Laxmibai Kshetriya Gramin Bank and others vs. Manoj Kumar Chak, Civil Appeal Nos. 2970-2975 of 2013 and other connected appeals*, decided on 09.04.2013.

16. We have considered the submissions.

17. Regulation 17(1) of the State Bank of India (Officers) Service Regulations, 1992 provides as under:

“17(1) Promotions to all grades of officers in the Bank shall be made in accordance with the policy laid down by the Central Board or the Executive Committee from time to time.”

18. The promotion policy framed under the said Regulations provides for promotion by selection and not by seniority alone, which means that a person must possess a clean record of service for the purpose of promotion. During the tenure of a minor penalty, a person therefore cannot be granted promotion.

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19.The question however arises in the present case is whether the petitioner could be considered for promotion against the vacancies of the year 2017-18. As per the Promotion Policy for General Cadre Officers, Promotions to SMGS-IV and SMGS-V, as it existed upto 2017-18 is concerned, Annexure R-1 reflects at clause 7 and 8 as under:

“7. At the time of finalizing the promotions, a list of officers found suitable for promotion is to be prepared. However, in respect of the officers whose results for promotion cannot be declared immediately, the findings are held in a sealed cover and recorded separately, and an indication evidencing that such a cover exists is recorded, if the officer is exonerated of the charges, the findings of the Promoting Authority held in sealed cover are acted upon. If he/she is found suitable for promotion, he/she is promoted thereafter with retrospective effect from the date he/she would have been promoted but for the pendency of disciplinary proceedings against him/her against a vacancy in the higher grade that may have arisen in the meantime. If no such vacancy has arisen, he/she is promoted to the higher grade with retrospective effect on a supernumerary basis and absorbed against a future vacancy in that grade.

8. The procedure stated above is followed, mutatis mutandis, in considering the confirmation of an officer against whom disciplinary action is pending or contemplated.

(i) Where the departmental proceedings have ended with the imposition of a minor penalty, viz., censure, recovery of pecuniary loss to the bank, withholding of increment of pay or withholding of promotion, the decision of the Promoting Authority in favour of the employee, kept in sealed cover, is not to be given effect to. However, in the case of censure, the first sealed cover is not given effect to, but subsequent sealed covers, if any, are opened in chronological order and the findings of the Promoting Authority acted upon. Officers punished on the conclusion of the disciplinary proceedings

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are not to be considered during the period of penalty i.e., during the period of rigour.

(ii) In the case of imposition of major penalties, all sealed covers are rendered infructuous.

(iii) Insofar as the confirmation of an officer in similar circumstances is concerned, the Competent Authority is required to review the case of the confirmation immediately after the conclusion of disciplinary proceedings and if the findings held in sealed cover are in favour of the officer, he/she will be confirmed in the relative grade or scale from a retrospective date.”

20. Thus, as the punishment of stoppage of two increments was imposed vide order dated 17.06.2015 and the said punishment was to operate for a period of 30 months, the increments would be restored only after the end of period of 30 months i.e. with effect from 17.12.2017.

21. Learned counsel for the appellant/bank has further relied on Annexure ‘A’ to the Promotion Policy which provides as under:

“Withholding of increments of pay with or without cumulative effect: The Officer is not eligible for consideration for promotion for the period his/her increment(s) is/are withheld.”

22. In view of the policy which was brought into force from the year 2018-19 onwards, date of eligibility has also been mentioned to mean that the eligibility criteria shall be determined as on 1st of April of the relevant promotion year. Thus, for 2018-19, the date of eligibility has to be examined as on 1st of April, 2018 and so on and so forth. But for the year 2017-18, the aforesaid promotion policy clause would have no application. Reading of the promotion policy as it existed prior to

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2018-19 reflects that the consideration for promotion would only occur after the rigour of punishment is over. Thus, when the rigour of punishment ends on 16.12.2017, since the vacancy was available as on 17.12.2017, the case of the petitioner was required to be considered as he became wholly eligible on that day.

The contention of learned counsel for the appellant that the petitioner was not eligible as on 1st of April, 2017, relying on the clause of the promotion policy which has come into force for the year 2018-19 onwards, cannot be accepted as the promotion policy of 2018-19 onwards specifically is prospective and would not apply to 2017-18.

23. The judgment cited at bar would therefore have no application to the present case, which has to be examined on the facts of the case alone.

24. Learned counsel for the respondent/writ petitioner has relied on judgment of Supreme Court in ***Rani Laxmibai Kshetriya Gramin Bank and others***(supra), wherein it was held as under:

“36. There is no doubt that punishment and adverse service record are relevant to determine the minimum merit by the DPC. But to debar a candidate, to be considered for promotion, on the basis of punishment or unsatisfactory record would require the necessary provision in the statutory service Rules. There is no such provision under the 1998 Rules.

*37. In **B.V. Sivaiah** (supra), this Court laid down the broad contours defining the term “bare minimum merit” in the following words:*

“We thus arrive at the conclusion that the criterion of ‘seniority-cum-merit’ in the matter of

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promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.”

From the above, it becomes clear that the determination of the bare minimum criteria is the function of the DPC and cannot be taken-over by the management at the time of determining the eligibility of a candidate under Rule 2(e).

*38. The reliance placed by Mr. Dhruv Mehta on the judgment of this court in the case of **Ram Ashish Dixit(supra)** is also misconceived. In the aforesaid case, the officer had been considered for promotion during the pendency of the departmental proceedings to Middle Management Grade II. However, the result was kept in a sealed cover. After finalization of the proceedings, the appellants requested the authority to open the sealed cover. He was, however, informed that he can not be promoted in view of the bank Circular dated 28th March, 1998 as he had been punished. Subsequently, again his case was to be considered for promotion in September, 1999. However, he was denied consideration for promotion in view of the conditions contained in Circular dated 28th March, 1998. It was submitted on behalf of the appellants that the punishment imposed upon the staff of the Bank can not be treated to be an*

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ineligibility for promotion since the eligibility for promotion is prescribed under the RRB Rules, 1988. It was submitted on behalf of the bank (respondent therein) that since stoppage of increment for 3 years is a punishment imposed upon the appellants, during the period, he would be undergoing punishment, he could not have been considered to be eligible for promotion. Therefore, according to the bank, respondent had been rightly held to be ineligible under Circular dated 28th March, 1998. It was also claimed by the bank that the Circular is supplementary in nature and can not be said to be in any manner inconsistent and ultra vires of the rules. In answering the rival submissions, this Court held as under:-

“The criteria for promotion from Junior Manager Grade-I to Middle Management Grade-II is on the basis of the seniority- cum-merit. Clearly therefore, the fact that the appellant has been punished for a misconduct, the same would form a part of his record of service which would be taken into consideration while adjudging his suitability on the criteria of seniority-cum-merit. If on such assessment of his record of service the appellant is not promoted, it cannot be said to be by way of punishment. It is a non- promotion on account of the appellant not reaching a suitable standard to be promoted on the basis of the criteria.”

39. We also do not find any merit in the submission of Mr. Dhruv Mehta that the Circular No.17 of 2009 dated 30th November, 2009 and Circular dated 12th July, 2010 are to ensure that the individual members of the DPC do not recommend for promotion an individual officer despite having been punished in the preceding 5 years. Such curtailment of the power of the DPC would have to be located in the statutory service rules. The 1998 Rules do not contain any such provision. The submission needs merely to be stated, to be rejected. We also do not find any merit in the

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submission of Mr. Mehta that without the aforesaid guidelines, an officer, even though, he has been punished for gross misconduct would have to be permitted to be promoted as no minimum marks are prescribed for interview or performance appraisal. In our opinion, it is fallacious to presume that under the 1998 Rules, once an officer gets the minimum marks in the written examination, he would be entitled to be promoted on the basis of seniority alone. There is no warrant for such a presumption. The misconduct committed by eligible employee/officer would be a matter for DPC to take into consideration at the time of performance appraisal. The past conduct of an employee can always be taken into consideration in adjudging the suitability of the officer for performing the duties of the higher post.

*40. There is another very good reason for not accepting the submissions made by Mr. Dhruv Mehta. Different rules/regulations of the banks provide specific punishments such as “withholding of promotion, reduction in rank, lowering in ranks/pay scales”. However, there is another range of penalty such as censure, reprimand, withholding of increments etc. which are also prescribed under various staff regulations. To debar such an employee from being considered for promotion would tantamount to also inflicting on such employee, the punishment of withholding of promotion. In such circumstances, a punishment of censure/ reprimand would, in fact, read as censure/reprimand + 5 years debarment from promotion. Thus the circulars issued by the bank debarring such employees from being considered would be clearly contrary to the statutory rules. The circulars clearly do not fall within the ratio in **Sant Ram’s case (supra)**.”*

25. However, we are of firm view that a person cannot earn a promotion during the pendency of a punishment order. If a person has been punished with stopping of increments for a particular period, he cannot

be granted promotion during that period, because on promotion, he would be entitled for increment. Both the things cannot go together.

26. In ***Union of India and others vs. K.V. Jankiraman and others, (1991)***

4 SCC 109, the Supreme Court observed as under:

“29. According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such

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circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub- paragraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal.”

27. Having considered the law as above, we find that the respondent/writ petitioner could not have been promoted with effect from 14.08.2017 on account of currency of his punishment. However, his case was required to be considered afresh after the currency of the punishment lost its effect i.e. from 17.12.2017 onwards. Vacancy was available as on 17.12.2017, and the Promotion Committee would therefore have to take into consideration his record as on 17.12.2017 ignoring the minor punishment, which lost its relevancy.

28. It is settled law that the Courts would not themselves direct or declare anyone as promoted from a particular date, because promotion of an individual not only requires consideration of his eligibility but other aspects also.

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29. In view thereof, we set aside the order passed by the Single Judge to the extent of declaring entitlement of respondent/writ petitioner for promotion with effect from 17.12.2017, and instead we direct the appellant to now consider the case of the petitioner for promotion against the vacancy available as on 17.12.2017, after ignoring the minor punishment order supra. If the petitioner is found fit for promotion, the same shall be ordered with consequential benefits.

However, his pay would be fixed notionally.

30. The appeal is accordingly disposed of with aforesaid directions.

31. Compliance of this order shall be done within a period of three months henceforth.

32. All pending applications stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

21.01.2025*Mohit goyal*

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No