

Madhya Pradesh High Court

Madhav Anant Rao Gore vs State Bank Of India And Ors. on 17 July, 1985

Equivalent citations: (1986) IILLJ 394 MP

Author: C Sen

Bench: C Sen, S Awasthy

ORDER C.P. Sen, J.

1. In this petition under Article 226 of the Constitution the petitioner is praying for striking down Annexure B.26 about the promotion policy of the State Bank as being ultra-vires and void, for consideration of his case for promotion and giving him seniority to the promoted post from 1980 in the Junior Management Grade Scale I, his order of suspension dated 25th July, 1978 be quashed and he be given suspension allowance after taking into account annual increments and the allowances which he would have drawn from the date of suspension.

2. The petitioner was appointed as a Clerk in the State Bank of India on 9th May, 1973 and he was confirmed in the post after six months. He was posted in the local head-office at Bhopal, then in the Central Office at Bombay and lastly at T.T. Nagar Branch of the Bank at Bhopal. On 20th January, 1978 Draft No. 196506 in favour of Dr. K. B. Singh for Rs 5000/- drawn on the Satna Branch was taken from the T.T. Nagar Branch of the Bank. It appears that the draft was not taken delivery" of and somebody got the repayment by cancellation on 1st August, 1978. Subsequently it was detected that there has been fraudulent encashment of the draft and the matter was enquired into. On 25th July, 1978 the petitioner gave a written confession that he committed the fraud on 1st March, 1978 by cancelling the draft for Rs. 5000/- as he found that the said draft was lying unattended in the undelivered drafts. He was tempted because he needed Rs. 2000/- very badly. He put a revenue stamp on the back of the draft; wrote Recieved payment by cancellation and signed 'Singh', then he sent a messenger for vouchers fortunately for him that day the vouchers could not be found. He, therefore, pressed his Accountant Joshi to pass it. He refused but the petitioner gave introduction and said that he knew the person, please do it. Keeping full faith in his staff, the Accountant passed it and sent it for payment. He went and received the payment from Agarwal. His confession was forwarded by the Branch Manager to the Regional Manager of the Bank on the same day and on instructions from him, the Branch Manager immediately suspended the petitioner. It appears mat the petitioner deposited the amount in the bank and submitted his resignation on 21st August, 1978. The Branch Manager forwarded his resignation with a recommendation for acceptance keeping in view the services of the petitioner's father who was a retired officer, Grade I, of the Bank and since no monetary loss was involved but immediately thereafter the petitioner resiled from his confession and submitted that it was taken from him under coercion and pressure and he has not committed any fraud. The Bank, therefore, charge-sheeted the petitioner on 30th December, 1978 which was served on him on 12th January, 1979 that on 1st March, 1978 he committed a fraud by encashing the draft of Rs. 5000/- by forging the signature of the drawer. Since then the departmental proceedings against the petitioner is pending. The petitioner was paid suspension allowance 1/3rd of his last pay for the first 3 months, thereafter half the pay and after one year full pay. In the meantime, the petitioner had been writing to the bank that he should be permitted to appear in the written examination for promotion to the post of Junior Management Grade Scale I for which he has become qualified since 1980 and his batchmates have already been promoted. The bank wrote back

saying that since he is put under suspension and disciplinary proceedings are pending against him, he is not eligible for promotion. So he has not been permitted to appear in the qualifying examination. The petitioner has also not been paid increments and quarterly allowances payable from time to time but he is being paid the salary which he was drawing when he was put under suspension. It is submitted by the respondents that the disciplinary proceedings are nearing completion and it could not be completed because of the unhelpful attitude of the petitioner, It is not disputed that the petitioner is governed by Sastry Award of 1953 & Desai Award of 1962.

3. The petitioner's contentions are that (i) the promotion policy of the bank that an employee shall not be eligible for any promotion during the period of his suspension irrespective of the period involved is arbitrary and unreasonable and violative of petitioner's right under Articles 14 and 16 of the Constitution. Not only in the State Bank, but in other nationalised banks also an employee against whom disciplinary action is pending is considered for promotion and the recommendations are kept in sealed cover and withheld pending completion of the disciplinary proceedings but there has been hostile discrimination, so far as the petitioner is concerned and he is not being permitted to appear in the written examination and in the event of his being exonerated from the charges, he would suffer great irreparable injury because it may not be possible to give him promotion from 1980 when it became due. (ii) Pending disciplinary enquiry against an employee, he can be suspended but the suspension order can only be passed after the employee is charge-sheeted. In the case of the petitioner he was charge-sheeted on 12th January, 1979 but he has been put under suspension from 25th July, 1978. Besides, the order of suspension was passed by the Branch Manager and not by the Regional Manager who was the disciplinary authority. Therefore, the order of suspension is illegal and without jurisdiction, (iii) **Though he is being paid suspension allowance but he is not being paid increments and quarterly allowances which are payable to him from time to time under the awards. In calculating the quantum of subsistence allowance, pay and allowances which he would have got but for suspension, should have been taken into account.** This is what is being done by the other nationalised banks to their employees who are under suspension. The respondents in their return submitted that there is a rational policy of promotion enunciated by the bank and this was after entering into bipartite settlement between Indian Banks Association and All India Workmen Unions and, as such, it is binding on the petitioner. Under this policy, an employee who is put under suspension for major misconduct is not to be considered for promotion till he is under suspension. Neither it is arbitrary nor unreasonable. There is no discrimination so far as the petitioner is concerned and he has not pointed out a single instance that another employee of the bank similarly placed has been considered for promotion during suspension. The petitioner was put under suspension after he confessed about the fraud committed by him in encashing bank draft of Rs. 5000/-. But for the delaying tactics of the petitioner, the D.E. would have been completed by now. In order to ensure fair and impartial enquiry, full latitude is being given to the petitioner. Pending an enquiry, an employee can be suspended and it is not correct to say that order of suspension could only be passed when the employee is actually chargesheeted. Clause in the award about suspension, pending enquiry has been modified by 4th bipartite settlement and the words 'pending such enquiry' have been qualified by the words or 'initiation of such enquiry'. Therefore, the petitioner could be suspended when the enquiry was initiated against him. The order of suspension was passed by the Branch Manager on oral instructions from the Regional Manager after involvement of the petitioner was brought to his notice and since then there is a written

confirmation by the Regional Manager. Since the petitioner is put under suspension, payment of increments and quarterly allowances are also under suspension and, therefore, the petitioner is not entitled to increments and quarterly allowances during the period of suspension. The petitioner can only get suspension allowance provided under the award, he is already getting full pay which he was getting at the time of suspension and he can have no grievance. The petition is wholly misconceived and the petitioner wants to prejudge the result of the disciplinary proceedings.

4. After having heard the parties at length, we are of the opinion that there is no merit in this petition, except to the extent that the petitioner is entitled to be paid the increments and quarterly allowances which he would have drawn if he was not under suspension. The learned Counsel for the petitioner tried to impress on us that irrelevant matters have been brought forth by the respondents with the purpose of prejudicing the Court against the petitioner. This contention cannot be accepted because we cannot shut our eyes regarding the development which had taken place resulting in the suspension of the petitioner. We will have to consider the reasons for which he was suspended while considering whether the suspension is for major misconduct or minor misconduct inasmuch as the promotion policy of the bank which has been arrived at with the Federation of the Workers categorises 33 types of cases (i) if the employee is censured or has adverse remark in his service record then there will be no bar of his being considered for promotion although these facts would be taken into consideration, (ii) in case of minor misconduct, he can be considered for promotion but the result will be withheld till disciplinary proceeding is over and (iii).in case of major misconduct, employee shall not be eligible for any promotion during the period of suspension. It is true that the Supreme Court in *Ramama v. I.A. Authority* 1979- II-L.L.J. 217 at page 230 (Para 22) has held that it is now well settled that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory. It must not be guided by any extraneous or irrelevant consideration because that would be denial of equality. This principle has been reiterated by the Supreme Court in (*Gujarat State Financial Corporation v. Lotus Hotels Pvt. Ltd.*) that the rule inhibiting arbitrary action by the Government would equally apply where such corporation dealing with the public whether by the way of giving jobs or entering into contracts or otherwise and it cannot act arbitrarily and its action must be in continuity with some principle which meets the test of reason and relevance. According to us, there is no arbitrariness or unreasonable-ness in the policy laid down by the bank. The policy is rational. It prohibits only those employees who are put under suspension for major misconduct from being considered for promotion during the period of his suspension. There is no hostile discrimination so far as the petitioner is concerned because there is no other case pointed out in which an employee similarly placed as the petitioner has been treated differently. We fail to understand how this can be arbitrary when this policy has been arrived at after bipartite settlement with the federation of workers. It stands to reason that an employee who is charged with major misconduct should not be considered for promotion till he is cleared of the charges. It is not the case of the petitioner that there is no basis for charging him with a major misconduct or action of the respondents in putting him under suspension is mala fide. It cannot also be said that there is no prima facie case against the petitioner. We think the petitioner ought to have been satisfied after the bank was prepared to accept his resignation and drop the matter there. Of course, we do not want to go into the merits of the charge against the petitioner which is under enquiry. Therefore, the man contention of the petitioner that

the promotion policy of the bank debarring an employee who is under suspension for major misconduct is hit by Articles 14 and 16 of the Constitution is unsustainable. The policy is valid and legal. We are supported in our view by a Single Bench decision of the Madras High Court in the (*State Bank Staff Union v State Bank of India and Anr.*). Writ Misc. Petition No. 11690/84 decided on 20th July, 1984 wherein the learned Single Judge held that what we are now concerned here is whether, during disciplinary proceedings for major misconduct, the employees are entitled, as of right, to sit for the examination and whether the first respondent had no power to refuse permission to them to sit for the examination. After all, the appearance for the promotional test is part of the promotional process and, therefore, the first respondent can legitimately contend, on the basis of the award policy that has been formulated in consultation with the Federation, that only persons charged for minor misconduct can be allowed to appear provisionally for the test but not persons charged for major misconduct. On account of these factors, the contention of the petitioner cannot be accepted. It is true that in some nationalised banks the policy is to consider an employee who is facing departmental enquiry and to keep the promotion in abeyance till the completion of the enquiry. This rule is similar to the rule applicable to the Govt. employees wherein an employee, who is facing departmental enquiry, his case is considered and the recommendation is kept in a sealed cover to be opened after the enquiry is over and that is considered thereafter taking into consideration the result of the enquiry. The petitioner has given instances of certain employees of the State Bank who have been considered for promotion while facing disciplinary proceedings but those cases are already distinguishable because it has not been pointed out that they were facing charges for major misconduct or were put under suspension. No case of an employee who was under suspension was considered for promotion, was brought to our notice. Therefore, this contention must fail.

5. Now the next question is whether the petitioner could have been put under suspension prior to being charge-sheeted. Admittedly, he was put under suspension on 25th July, 1978 but he was charge-sheeted on 30th December, 1978 which was served on him on 12th January 1979. Clause 521(10-b) of the Sastry Award empowers the bank to put an employee under suspension pending such enquiry.

Cl. (10-a) lays down procedure for the disciplinary proceeding initiated by giving a charge-sheet. The Supreme Court in R.P. Kapur v. Union of India held, on general principles the Government, like any other employer, would have right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings. What amount should be paid to the employee during suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. In Khemchand v. Union of India 1963-I L.L.J. 665 and in B.R. Patel v. State of Maharashtra A.I.R. (1963) S.C. 800 the Supreme Court has held that the real effect of the order of suspension is that though he continues to be a member of the Government service he is not permitted to work and further during the period of his suspension he is paid only some allowance generally called subsistence allowance which is normally less than his salary, instead of the pay and allowances he would have been entitled to, if he had not been suspended. The Supreme Court in (State of M.P. v. State of Maharashtra) held that there can be no question of salary accruing or accruing due so long as orders of suspension stand. Interpreting similar Clause to Clause

521(10-b) the Supreme Court in (Govinda Menon v. Union of India) f 1967-II-L.L.J. 249 has held that under Rule 7(1) an employee can be : suspended during disciplinary proceeding which means that the Government servant can be put under suspension having regard to the nature of the charge and circumstances of the of the case and it is not correct to say that the suspension order can only : be passed after the employee is actually charge-sheeted under Rule 5(2). In view of the difference of language in Rule 5(2) and Rule 7(1) the Supreme Court held that the word 'charge' in Rule 7(1) should be given a wider meaning as denoting the accusations or imputations against the member of the service. Here under Clause (10-B) words 'suspension during enquiry' are of wider amplitude which according to us mean that the bank employee could be suspended pending enquiry once the bank'. comes to the conclusion that there is a prima facie case for proceeding against employee for major misconduct and he can be put under suspension under this clause and the suspension will continue till the enquiry is over. It is not correct to restrict the meaning by saying that the suspension order can only be passed after the employee is charge-sheeted under Sub-clause (10-a). We are fortified in our view by a Single Bench decision of this Court in (State Bank of India v. B.K. Unde and Anr), M.P. No. 883 of 1979 decided on 20-3-1981. This Court held that Sub-clause (a) of Clause (1) provides for giving a charge-sheet and Sub-clause (b) talks of suspension pending an enquiry, but there is nothing in the language of Sub-clause (b) to indicate that suspension could but be ordered before issuance of a charge-sheet. In fact, while providing the procedure, Sub-clause (a) provided for the issuance of a charge-sheet and Sub-clause (b) provides for suspension pending enquiry. Therefore, it only shows that a person could be suspended pending an enquiry to be conducted in accordance with the procedure provided in Clause (10). But there is nothing on the basis of which it could be inferred that suspension could but be ordered before the charge-sheet is issued. It is true that the language of Sub-clause (b) clearly shows that suspension pending enquiry can only continue until the enquiry is pending, that means the limit for the period of suspension cannot go beyond the pendency of the enquiry. A different view has been taken by a Single Bench of the Allahabad High Court in (State Bank of India v. P.N. Mishra and Anr.), S. A. No. 291 of 1973 decided on 9-2-1977, putting a restricted interpretation to the words 'pending enquiry' by saying that enquiry has to be preceded by a charge-sheet and so unless charge-sheet is issued, employee cannot be suspended. We are unable to accept this view. Clause (a) speaks of disciplinary action while Clause (b) speaks that pending such enquiry an employee can be suspended. As pointed out by us earlier, pending an enquiry need not mean that it is to be after issuing of the charge-sheet. Enquiry starts as soon as the management comes to the conclusion that there is a prima facie case for proceeding against an employee for major misconduct. Therefore this contention must also fail.

6. The last contention is regarding payment of increments and quarterly allowances to the petitioner during the period of his suspension. Since there is a provision in Clause 17 of Desai Award, suspension allowance has to be paid according to this provision in the award. During the suspension period, pay and allowances of the employee under suspension remains suspended but this is subject to the rules that may be applicable to a particular case. Here Clause 17 as it stands today provides (i) for the first 3 months 1/3rd of pay and allowances, (ii) thereafter half of the pay and allowances (iii) after one year full pay and allowances, if the enquiry is not delayed for reasons attributed to the concerned workman or any of his representative. The clause speaks of full pay and allowances which means that the employee under suspension is entitled to pay and allowances which the workman would have got but for the suspension. Since the disciplinary proceeding could not be completed

within one year, the petitioner is getting full pay which he was last drawing but he has not been paid the allowances which has accrued from time to time including the increments. The interpretation put by the respondents cannot be accepted that the employee is not entitled to increments and allowances during the period of suspension and further if after enquiry the employee is not found guilty of the misconduct alleged, he gets back all the increments which are due to him and he is treated as if he was not under suspension. This is against the specific provision in the award itself. Reliance has been placed on a decision of the Supreme Court in State of M.P. v. State of Maharashtra, (supra) but the observations therein that the real effect of the order of suspension is that though the civil servant continues to be a member of the service, he is not permitted to work and is paid only subsistence allowance which is less than his salary and there can be no question of salary accruing or accruing due so long as orders of suspension stand. That was a case where there was no specific provision like Clause 17 of the award. Here the award says that the suspended employee is entitled to pay and allowances which the petitioner would have got if he was not under suspension. **Therefore, the petitioner has to be paid all the increments and quarterly allowances which he would have been entitled if he was not under suspension from the date of his suspension in addition to the amount already paid to him by the clause has been correctly interpreted by the other nationalised banks who are paying a suspended employee increments and quarterly allowances payable to an employee which the employee would have got if he was not put under suspension.** This clause has also been arrived at under the bipartite agreement between the management of the bank and the federation of the workers. This clause is equally binding on the State Bank of India.

7. Under the circumstances, **the petition is allowed to the extent that the bank is directed to pay the petitioner all the accrued increments and quarterly allowances from the date of his suspension which he would have been entitled to draw if he was not put under suspension.** The rest of the claims of the petitioner are disallowed, There shall be no order as to costs looking to the facts and circumstances of the case. The outstanding security amount be refunded to the petitioner.