

State and ors Vs. Dr. Ashok Singhvi

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Court : Rajasthan Jodhpur

Decided On : Aug-06-2013

Appellant : State and ors

Respondent : Dr. Ashok Singhvi

Advocate for Def. : Mr. M.S. Singhvi

Advocate for Pet/Ap. : Mr. G.R. Punia

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR ****
:JUDGMENT: State of Rajasthan & Ors. Vs. Dr. Ashok Singhvi D.B. CIVIL
SPECIAL APPEAL (WRIT) NO.232/2013 Appeal under Rule 134 of the Rajasthan
High Court Rules against the order dated 04.01.2013 passed in S.B. Civil Writ
Petition No.10978/2010 DATE OF JUDGMENT:

6. h August, 2013 PRESENT HON'BLE THE CHIEF JUSTICE MR. AMITAVA
ROY HON'BLE MR. JUSTICE P.K. LOHRA Mr. G.R. Punia, Addl. Advocate
General & Senior Advocate, with Mr. Jamvant Gurjar for the appellants. Mr. M.S.
Singhvi, Senior Advocate with Mr. Hemant Dutt for the respondents. BY THE
COURT (PER HON'BLE LOHRA, J): The appellants have preferred this intra-
Court appeal against the impugned order dated 4th of January 2013, whereby the
learned Single Judge has accepted the writ petition and issued requisite directions
to the appellants for considering the candidature of the respondent-petitioner for

promotion to the post of Junior Specialist (Orthopedics) sans the Circular dated 26th of July 2006. 2 The facts apposite for the purpose of this appeal are that the respondent-petitioner laid a writ petition before the learned Single Judge for besetting the Circular dated 26th July 2006, whereby the appellants have issued instructions for debarring the State employees and officers from consideration of their candidature for the purpose of promotion for different durations keeping in view the magnitude and gravity of the punishment suffered by them. The respondent-petitioner has inter-alia pleaded in the writ petition that at the threshold of his service career he was appointed as Medical Officer on 24th of August 1984 and continued to serve the appellants in the same capacity until September 1994 when by order dated 20th of October 1994 he was appointed as Lecturer on adhoc basis as per recommendations of the Central Selection Committee. The adhoc appointment as Lecturer continued for more than a year and thereafter again the respondent-petitioner was ordered to be posted as Medical Officer on 21st of January 1996. In the year 1994, when the respondent-petitioner was discharging his duties as Medical Officer, a memorandum and charge-sheet dated 30th of July 1994 under Rule 16 of the Civil Services (Classification, Control & Appeal) Rules 1958 (for brevity, hereinafter referred to as Rules of 1958) was served on him. Precisely, in the chargesheet misconduct attributed to the respondent-petitioner was for unauthorized absence from duty. On completion of the 3 disciplinary enquiry, the respondent was visited with a penalty of withholding of five annual grade increments with cumulative effect vide order dated 16th July 1999. On 15th December 2007, State-wide seniority list of Medical Officers as on 01.4.2007 was published inviting objections, wherein the name of the respondent was figured at Serial No.42. Subsequently, the said seniority list was finalized on 23rd August 2008 and name of the respondent was shown just above the name of Shri Padam Chand Jain. The names of two incumbents, viz., Shri Pawan Kumar Gehlot and Shri Harshvardhan Bhati could not appear in the said final seniority list as both of them were accorded promotion in the higher cadre i.e. Junior Specialist (Orthopedics). Feeling dissatisfied with his supersession, respondent moved a representation before the higher authorities but the said representation was not paid any heed. Ultimately, on persuasions at the behest of respondent, the Honble Chief Minister intervened in the matter and directed the third appellant Director

Medical & Health Services, Jaipur, but nothing transpired thereafter. As the grievances of the respondent subsisted, he made yet another representation on 9th April 2010 and in response to the same, a communication dated 13th August 2010 was addressed to him whereby he was conveyed that he has not been promoted on account of his blemished service record in the form of imposition of penalty of withholding of five annual grade 4 increments with cumulative effect and for the purpose of vacancies of year 2006-07 the same was treated as first year for giving effect to the penalty in the matter of promotion. Thereafter, the respondent-petitioner received a letter from Addl. Director, Medical & Health Services, Jodhpur, whereby it was conveyed in clear and unequivocal terms that the case of the petitioner for promotion to the next higher post shall be considered against the vacancies of the year 2012-13 in view of penalty imposed on him by the order dated 15th of October 2003. The department initiated the process for promotion against the vacancies of 2007-08 and 2008-09 and DPC was conveyed on 09.03.2009. However, the case of the respondent-petitioner was not considered for the reason that he has suffered penalty of withholding of five annual grade increments with cumulative effect. As emerges from the pleadings of the respondent- petitioner in the writ petition, he came to know about a Circular issued by the Department of Personnel dated 26th July 2006 wherein it is envisaged that the incumbents who have suffered punishment of stoppage of annual grade increments with cumulative effect are debarred from promotion for equivalent number of years as that of the number of increments. Adverting to the province of service rule governing the service conditions of the respondent, namely, Rajasthan Medical & Health Service Rules 1963 (for brevity, hereinafter referred to as Rules 0

1963. , the petitioner has pleaded specifically in the petition that under the Rules of 1963, candidature of Medical Officer is liable to be considered for promotion to the post of Junior Specialist (Orthopedics) and the criteria for promotion is seniority cum merit. Taking shelter of the Rules of 1963, the respondent- petitioner has averred in the writ petition that the Circular dated 26th July 2006 runs beyond the scope of Rules of 1963. Laying stress on the criteria for promotion, which is seniority cum merit, the respondent has asserted in the petition that simply because an incumbent employee has suffered the penalty of stoppage of five

annual grade increments with cumulative effect, he cannot be superseded for equivalent number of years, for which increments have been withheld. Categorizing the Circular as arbitrary and unreasonable, the respondent-petitioner has asserted that the same runs contrary to the Scheme of the Rules of 1963 wherein it is provided that the service record of a government servant eligible for promotion is to be seen only for preceding seven years with reference to vacancy for which promotion is to be considered. While referring to the penalty imposed, the respondent-petitioner has averred in the petition that the said order was made on 16th July 1999 and therefore there is absolutely no justification for not considering the candidature of the respondent-petitioner after 16th July 2006 and the candidature of the respondent-petitioner deserves 6 consideration for the vacancies of subsequent years. In the pleadings, the respondent has also referred to Assured Career Progression Scheme providing three financial upgradations on completion of 10, 20 and 30 years of regular service with reference to State Service officers. Placing on record communication dated 22nd of February 2010, the respondent- petitioner has stated in the writ petition that the Superintendent of MDM Hospital, Jodhpur has forwarded the case of the respondent for grant of financial upgradation by reckoning the services from the year 1984 when he had entered in the State service. According to the respondent-petitioner, the said communication has also not yielded the desired result and the fourth respondent vide order dated 2nd of August 2010 has declined financial upgradation to the respondent by taking shelter of punishment of stoppage of five annual grade increments with cumulative effect. The appellants submitted their reply to the writ petition and defended their action with full emphasis. In the return, the appellants have pleaded that Dr. P.K. Goyal and Harsvardhan Bhati were promoted against the vacancies of the year 2007-08 on the post of Junior Specialist (Orthopedics) and as such their names were not included in the final seniority list of medical officers. The respondents have specifically pleaded in the reply 7 that the candidature of the respondent-petitioner would be considered for promotion to the post of Senior Specialist (Orthopedics) for the vacancies of the year 2011-12 in general quota. Emphasizing the rigor of punishment order, whereby the respondent-petitioner has visited with the penalty of withholding of five annual grade increments with cumulative effect, the respondents have specifically averred

in the reply that the DPC has found the respondent-petitioner ineligible for promotion upto 2010-11. Taking shelter of the Circular dated 26th July 2006, as per the version of the appellants, the punishment order dated 16th July 1999 was affirmed by the order dated 15th October 2003 and as such the effect of penalty against the respondent- petitioner shall continue upto 15.10.2010 and as a consequence thereof the respondent-petitioner is not entitled for promotion up to the year 2010-11 as per rules. Stoutly defending their actions in communicating the respondent-petitioner order dated 2nd of August 2010, whereby he was denied financial upgradation under the Assured Career Progression Scheme, the appellants have narrated in the reply that the said order is not infirm considering the fact that the respondent-petitioner has suffered penalty of withholding of five annual grade increments. Joining the issue with the respondent-petitioner on validity of circular dated 26th July 2006, the appellants in their counter have averred with full vehemence that the said Circular is not contrary to the Rules o

1963. Once again reiterating their earlier stand, the appellants have averred in the reply that against the punishment order, the reviewing authority has passed order on 15.10.2003 and as such period of seven years shall reckon from 15.10.2003 for the purpose of eligibility of the respondent-petitioner for consideration of his candidature for promotion to the higher post and the case of the respondent-petitioner shall be considered for the vacancies of the year 2011-12. As regards the Assured Career Progression Scheme, in terms of the reply, the respondent-petitioner shall be eligible for the same on 01.09.2011. The learned Addl. Advocate General, Mr. G.R. Punia, appearing for the appellants, has urged that while passing the order impugned, the learned Single Judge has not appreciated the controversy in right perspective. The contention of the learned Addl. Advocate General is that promotion cannot be claimed by an incumbent as a matter of right and right of an individual in the matter of promotion is confined to that of consideration. Stressing on the right of consideration, learned Addl. Advocate General would urge that State Government is well within its rights to lay down yardsticks and parameters for regulating right of consideration. Highlighting the laudable objects of the Circular dated 26th July 2006, learned Addl. 9 Advocate General Mr. G.R. Punia has argued that the same has been issued to supplement the Rules of 1963 and cannot be construed as administrative instructions dehors

the Scheme of promotion envisaged under the Rules of 1963. In nut-shell the submission of the Addl. Advocate General is that there is absolutely no contradiction in the Circular vis--vis the Rules of 1963 so as to construe the same as an attempt by the State Government to fetter the powers of the DPC in the matter of consideration of the candidature of an individual/aspirant eligible for promotion. Emphasizing with full vigor the blameworthy service profile of the respondent-petitioner, the learned Addl. Advocate General has urged that an incumbent, who has suffered a major penalty, cannot be permitted to avail the promotion in the form of advancement in the service career. Mr. Punia has argued that the true purport of the Circular dated 26th July 2006 is not debarment of an individual from his right of consideration for promotion but for putting a restraint to adjudge him suitable for promotion for his blameworthy credentials. Placing heavy reliance on basic tenets of service jurisprudence, the learned Addl. Advocate General has argued that an incumbent having blameworthy service profile can be passed over and a junior incumbent can be promoted to maintain efficiency in the services even if the criteria for promotion is seniority cum merit. Reiterating his submissions, the learned Addl. Advocate General 10 has further argued that even in the matter of grant of selection grade, it can be deferred keeping in view the punishment suffered by an individual and such deferment is not infirm and same analogy can be applied in the matter of promotion. Referring to Rule 24A of the Rules of 1963, the learned Addl. Advocate General would urge that the impugned circular cannot be construed as an attempt by the State Government to chip the wings of the DPC and the basic intent of the circular is to fill in the gaps and to provide assistance to the DPC for adjudging suitability of an individual for promotion. In support of his contentions, the learned Addl. Advocate General, has placed reliance on a decision of Apex Court in case of Union of India & Ors. Vs. A.N. Mohanan [(2007) 5 SCC 425]. In this verdict, the Apex Court while examining the impact of punishment censure, has held that penalty of "censure" is a blameworthy factor and can be taken into account by the DPC while considering candidature of an individual for promotion. The Apex Court made following observations in this regard in Para 11 & 12 of the verdict:

11. Awarding of censure, therefore, is a blameworthy factor. A bare reading of Para 3.1 as noted above makes the position clear that where any penalty has

been imposed the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course.

12. Having regard to the penalty imposed on him, undisputedly the respondent has been given 11 promotion with effect from 26.11.2001. His claim for promotion with effect from 1.11.1999 was clearly unacceptable and, therefore, the CAT and the High Court were not justified in holding that he was entitled to be promoted with effect from 1.11.1999. The order of the High Court affirming the view taken by the CAT cannot be sustained and is, therefore, set aside. Substantiating his arguments, the learned Addl. Advocate General has also placed reliance on a decision of Apex Court in case of Union of India & Anr. Vs. S.K. Goel [(2007) 14 SCC 641]. In the said decision, the Apex Court has held that DPC enjoys full discretion to devise its own method by objective assessment of competitive merit of individual officers and scope of judicial review in such matters of promotion is very much limited. The Apex Court on the issue of procedure to be adopted by the DPC and interference with its recommendations by the law courts, has made following observations in Para 27 & 28:

27. In our opinion, the judgment of the Tribunal does not call for any interference inasmuch as it followed the well settled dictum of service jurisprudence that there will ordinarily be no interference by the courts of law in the proceedings and recommendations of the DPC unless such DPC meetings are held illegally or in gross violation of the rules or there is mis-grading of confidential reports. In the present case, DPC had made an overall assessment of all the relevant confidential reports of the eligible officers who were being considered. DPC considered the remarks of the reviewing officers. There was clear application of 12 mind. Respondent No.1 did fulfill the bench mark. Hence, the impugned direction of the High Court ought not to have been issued as the same will have the impact of causing utter confusion and chaos in the cadre of the Indian Revenue Service and the Customs and Central Excise Service.

28. It was also argued by the learned senior counsel appearing for respondent No.1 that the entries for the period had an element of adverse reflection and for that purpose the seniority of respondent No.1 was downgraded and, therefore,

ACR ought to have been communicated to respondent No.1. In our opinion, the observations of the High Court are wholly unjustified inasmuch as the post of Commissioner of Customs and Central Excise is a post required to be filled up on selection made strictly on the basis of merit. No judicial review of the DPC proceedings, which are ordinarily conducted in accordance with the standing government instructions and Rules is warranted. The norms and procedure for DPC are prescribed in O.M. dated 10.4.1989. It is thus seen that the decision taken by the appellants has been as per the instructions issued on the subject that only adverse entries and remarks are to be communicated and there is no provision to communicate the downgrading of ACR to a government employee. The decision of the Central Government is in strict accordance with the prevailing rules and government instructions. In the absence of any violation, the impugned order of the High Court while undertaking a judicial review under Art. 226 of the Constitution of India, is wholly unjustified. Since the matter of seniority has been well settled and this Court in a plethora of cases has held that the seniority/promotion granted on the strength of DPC selection should not be unsettled after a lapse of time. Therefore, in the facts and circumstances of the present case, where there are no adverse remarks whatsoever against respondent 13 No.1, the High Court ought not to have interfered with and passed the impugned direction. This apart, as per the instructions contained in para 6.21 of DOP&T Order No. 22011/5/86/Estt.D dated 19.4.1981, as amended, DPC is not required to be guided merely by the overall grading, if any, that may be recorded in CRs but to make its own assessment on the basis of the entries in CRs. The DPC enjoyed full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it. Hence, the impugned order of the High Court, in our opinion, is liable to be set aside. The Court finally concluded in para 31 as infra:

31. For the foregoing reasons, we hold that DPC enjoyed full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it. Hence, the interference by the High Court is not called for. Learned counsel for the appellants has also placed reliance on a decision of Apex Court in case of State of Rajasthan & Ors. Vs. Shanker Lal Parmar (AIR 201.SC 1913.and urged that the Hon'ble Apex Court, while

construing the Circular issued by the State Government for grant of selection grade, has held that an incumbent employee who has suffered the punishment of "censure" is not entitled for the same in the year he really deserves for it and the deferment of the grant of selection grade for a year cannot be said to be illegal, arbitrary, 14 unconstitutional or without authority of law. The Apex Court made following observations in this behalf in Para 22 & 23:

22. In the case in hand, it is a question of grant of Selection Grade. A Selection Grade has higher pay but in the same post. A promotion post is a higher post with higher pay. A Selection Grade is intended to ensure that capable employees who may not be able to get a chance of promotion on account of limited outlets of promotion, should at least be placed in the Selection Grade to prevent stagnation at the maximum of the scale. Selection Grade was created to remove stagnation in service and consequently leading to greater efficiency. State has permitted grant of Selection Grade to those who had good service record but for those who had earned censure, the same has been deferred by one year. Thus, according to us, it would clearly fall in the category of reasonable classification which is permissible in accordance with the mandate of the Constitution and also on account of various judgments pronounced by this Court on this topic from time to time.

23. Thus, in our opinion, there is a basic and fundamental difference between the two categories of the employees. Appellant-State was fully justified in issuing the subsequent Office Order/letter dated 24.07.1995, putting all controversies at rest. We do not find that any case of discrimination has been made out against the Respondents/Employees. Subsequent Office Order/letter cannot be said to be illegal, arbitrary, unconstitutional or without authority of law. We find merit in the arguments advanced by Dr. Manish Singhvi, Advocate for the Appellants and thus, have no hesitation in allowing these Appeals. It is also pertinent to mention here that Respondents/Employees had not challenged the subsequent Office Order/letter dated 24.07.1995, as being illegal, unconstitutional, arbitrary or without jurisdiction. As long as this Office Order/letter holds good, it is to be implemented in the same manner and spirit in which it was issued. 15 Per contra, learned Senior Counsel, Mr. M.S. Singhvi appearing for the respondent, has argued that the contentions raised by the learned Addl. Advocate General are not

touching the real lis involved in the matter, and therefore, all these contentions are absolutely alien for the issue involved in the matter. Learned counsel for the respondent, Mr. Singhvi, while defending the impugned order passed by the learned Single Judge would urge that the learned writ Court has addressed the issue which was germane to the matter viz., whether an incumbent can be debarred from right of consideration for promotion on the strength of Circular dated 26th of July 2006? According to submission of Mr. Singhvi, while construing the Circular, the learned Single Judge has concluded that it is an affirmative attempt of the Government to fetter the powers of the DPC to consider candidature of an individual for promotion who has suffered punishment. While conceding on the issue that an incumbent, who is having blameworthy service profile can be passed over for promotion even if the criteria for promotion is seniority cum merit, Mr. Singhvi has argued that such an incumbent cannot be denied his right of consideration. Thus, in nut-shell, the submission of Mr. Singhvi is that the learned Single Judge has rightly concluded that the Circular dated 26th of July 2006 cannot come in the way of the respondent for his right of consideration for promotion, which is guaranteed under Article

16. of the Constitution. Categorizing the Circular dated 26th of July 2006 as administrative instructions, Mr. Singhvi would urge that circulars or administrative instructions can be issued for supplementing the rules or filling up the gaps and not to create a new state of things which were never intended in the relevant service rules governing the province of promotion. Inviting attention of this Court towards Rule 24A of the Rules of 1963, Mr. Singhvi has submitted that Rule 24A prescribing criteria, eligibility and procedure for promotion, nowhere envisages that an incumbent who is having blameworthy service profile can be denied his right of consideration for promotion. Thus, describing the Circular as a blatant attempt by the Government to brow beat the DPC, Mr. Singhvi has argued that by adhering to the Circular the appellants have acted de hors Rule 24A of the Rules of 1963 and as such the impugned order passed by the learned Single Judge cannot be faulted and calls for no interference in this intra- court appeal. For substantiating his this argument, learned Senior Counsel, Mr. Singhvi has placed reliance on a Constitution Bench decision of the Apex Court in case of Guman Singh Vs. State of Rajasthan & Ors. [(1971) 2 SCC 452]. In the said verdict, the Apex Court has

held that the Government cannot amend or supersede statutory rules by administrative instructions and any circular containing the provisions for making the system so rigid that it curtail or restrict the powers conferred 17 on the selection committee and the appointing authority by the rules. The Court further opined that such circular/administrative instruction is per-se opposed to the selection procedure envisaged under the rules. The Apex Court made following observations in Para 39 of the verdict:

39. Then the question is whether Government is competent to issue the said Circular and whether the Circular in any manner affects the discretion and powers of the Committee functioning under the statutory rules. The position is clear, as laid down by this Court in *Sant Ram Sharma v. State of Rajasthan & Anr.* (supra) It is true that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. The Court further proceeded to observe on evaluation of the Circular, in Para 47, as under:

47. One gets a fairly good picture of the nature of the instructions contained in the circular issued by the Government. No doubt a properly evaluated marking system may be helpful for assessing the merit of persons who are already in service. But the instructions given in the circular are so rigid that they are opposed to the selection to be made strictly on merit as provided under Rules 28-B and 32. 18 While appreciating the object of the Circular, the Apex Court proceeded to observe that such a circular offend the Rules, in Para 53 of the verdict:

53. The object of the circular may be to bring about uniformity in the award of marks. But the directions contained therein do offend the rules. This is not a case of the Government filling up the gaps or of giving executive instructions on matters not provided for by or not inconsistent with the rules. The learned Judges of the Division Bench of the High Court, have by and large, upheld the validity of the marking system as well as the other instructions contained in the circular of 1966 on the ground that the marking system as pointed out by the State has been in vogue from 1960, on the basis of a previous circular, dated August 31, 1960,

issued by the State Government. Reliance placed upon this circular of 1960 by the High Court, in our opinion, is not justified. We have gone through the circular of 1960 which is not F.1(6)Appts.(D)/60, dated August 31, 1960. That circular was issued by the State to clarify the misapprehension that appears to have been caused in the application, for promotion on the principle of merit-cum-seniority or seniority-cum merit. For the purpose of having uniformity, the State Government had laid down certain principles in the said circular to be borne in mind by the Promotion Committees. No doubt there is a marking system indicated therein. But there are two features which distinguish the circular of 1960 from that of the 1966 circular. In Paragraph 3 of the former circular, it is specifically laid down that the principles mentioned therein are only in the nature of executive instructions to be kept in view by the Committees when marking promotions. It is made clear that those Committees should however, exercise their own discretion while applying the above principles in view of the fact that occasionally the Confidential Rolls may not have been written with full sense of responsibility. Moreover, some of the rules permit interview before selection and in such cases the Selection Committee will have to assess suitability of the officer as a result of the interview also. Under the circular of 1966, we have already indicated, no such discretion is left to the Selection or Promotion Committees to adopt any method other than that indicated in the circular. In fact, it is emphasised that the Statutory Service Rules and the instructions contained in the circular are to be treated as a complete code by the Committees. Another point to be noted is that in 1960 the question of promotion on the basis of merit alone had no place. That principle was adopted only, as pointed out by us earlier, in 1965 which led to the amendment of the rules. Therefore, the principles mentioned in the circular of 1960 cannot be relied on when considering the validity of the present circular, when promotion by merit alone has been recognized by the Rules from 1965. We have already indicated that the instructions in the 1966 circular contravene the Rules. Therefore, we are of the opinion that the circular, dated August 27, 1966, is bad and accordingly it is struck down. We make it clear that we express no opinion on the validity or otherwise of the circular of August 31, 1960. We have only referred to that circular to show that the High Court has committed an error in placing reliance on the same. Reliance in this behalf can profitably be made to a recent pronouncement of the Apex Court in

case of *Sarva U.P. Gramin Bank Vs. Manoj Kumar Chak* [(2013) 6 SCC 287]. The Apex Court while reiterating the principles laid down in the Constitution Bench judgment in *Guman Singh's case* (supra), has held as under:

43. We also do not find any merit in the submission of Mr. Dhruv Mehta that Circular No.17 of 2009 dated 30.11.2009 and Circular dated 12.7.2010 are to ensure that the individual members of DPC do not recommend for promotion an individual officer despite having been punished in the preceding five years. Such curtailment of the powers of 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 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 an 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.

44. 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 plus five 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 case.

45. In our opinion, the observations made by this Court in Ram Ashish Dixit are a complete answer to the submissions made by the learned counsel for the appellants, Mr. Dhruv Mehta. Therefore the High Court, in our opinion, has rightly quashed the aforesaid two circulars and directed 21 that the respondent be considered for promotion in accordance with the applicable rules. We have heard the learned counsel for the parties at length, scanned the materials on record and perused the impugned order passed by the learned Single Judge. A glance at the impugned order passed by the learned Single Judge clearly and unequivocally reveals that the learned Single Judge has simply confined the relief to the respondent vis- a-vis his right of consideration for promotion and question of his suitability for promotion has been left open to be decided by the competent authority. Learned Single Judge has further observed that if the penalty suffered by the incumbent adversely affects minimum merit necessary for efficiency of administration, the DPC can adjudge him unsuitable for promotion. Learned writ Court has further concluded that debarring an incumbent from his right of consideration for promotion on the strength of Circular dated 26th of July 2006 is not sustainable and that being so issued directions to consider the candidature of the respondent ignoring the said Circular. On examining the impugned order in the light of Rule 24A of the Rules of 1963 and on the touchstone of the Constitution Bench judgment of the Apex Court in Guman Singh's case (supra), and the latest verdict of the Hon'ble Apex 22 Court in case of Sarva U.P. Gramin Bank's case (supra), we do not feel persuaded to interfere with the impugned order. The legal precedents which are cited by the learned Addl. Advocate General, are having no bearing whatsoever on the issue involved in the matter, and therefore, these judgments are of no help to the appellants. We, therefore, fully concur with the impugned order passed by the learned Single Judge and find no merit in this appeal. Resultantly, this intra-court appeal is hereby dismissed. Costs are made easy. (P.K. LOHRA), J.

(AMITAVA ROY), CJ.

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