

Delhi High Court Canara Bank (Nationalized Bank) vs The Union Of India (Uoi) Through ... on 20 September, 2006 Author: S N Dhingra Bench: S N Dhingra JUDGMENT Shiv Narayan Dhingra, J. Page 3068

1. By this writ petition the petitioner has challenged the Award dated 24.6.2004, passed by the Labour Court whereby the Labour Court held that the respondent was entitled to be posted as Special Assistant with effect from 3.10.1989 and he should be given benefits of the post of Special Assistant with effect from 3.10.1989.
2. Brief facts of the case are that respondent No. 2 was working as clerk with Lakshmi Commercial Bank Limited. Lakshmi Commercial Bank Limited got merged with the Canara Bank in August 1985 and respondent No. 2 became employee of petitioner bank. Respondent No. 2 was transferred to Madras branch on 23.12.1985. He made a representation against his transfer on the ground that his wife was working in Delhi and he had two children who were studying in Delhi. His request was accepted and the petitioner was permitted to work at Janpath branch. After two and a half years i.e on 7.5.1988 he was again transferred to Madras branch. He again made a request that he be retained in Delhi branch itself due to his family circumstances. Considering his request, though he was not transferred to Madras but he was transferred to Etah Branch, U.P on 1.11.1988. He joined Etah branch as an Accountant on promotion and after joining he made another representation dated 25.3.1989 to transfer him to Delhi. It is undisputed fact that transfer was a condition of the service and respondent No. 2 could be transferred to a branch of the bank any where in the country. Respondent No. 2 also requested in his representation that in case he could not be posted at Delhi as an officer then he be reverted to the clerical cadre but posted at Delhi. He made various representations for his transfer from Etah to Delhi and considering his representations, management transferred him to Delhi by reverting him to clerical cadre on his giving undertaking that he shall not claim posting as Special Assistant for a period of three years from the effective date of his reversion. After his transfer from Etah to Delhi, he worked in the clerical cadre and was not given posting of Special Assistant which is a posting under clerical cadre. Later on he raised an industrial dispute claiming that he had a right to be posted as Special Assistant and to have special allowances of the Special Assistant, which was referred for adjudication to the CGIT-cum-Labour Court, New Delhi, in the following terms: Whether the action of the management of Canara Bank, New Delhi in not posting Shri Gulshan Rai Mehta as Special Assistant and not paying Page 3069 him the special allowance attached to that post after his reversion from officer cadre w.e.f. 3.10.1989 is justified ? If not, what relief is the said workman entitled to
3. The Tribunal after noting the facts observed that the main grouse of the respondent No. 2 was that five officers namely Shri T.R. Manoharan, Shri G.N. Jhndran, Shri V. Sundram, Shri S.K. Narayan Swamy and Shri T.R. Sharma, who got reverted to the clerical cadre in the similar circumstances, were posted as Special Assistant while this posting was denied to the petitioner. The contention of the management to this allegation was that the cases cited by the respondent No. 2 were of prior to November 1988. After November 1988. the management had adopted a uniform policy according to which it imposed three

conditions on the officers who preferred to forgo their promotion and sought reversion to the clerical cadre and posting at the place of their choice. One of such condition was that such an officer shall not be eligible for consideration for posting as Special Assistant for a period of three years from the effective date of reversion. An officer could be reverted to the clerical cadre and posted at the place of his choice only by giving his consent to the three conditions including the condition that he would not claim posting as Special Assistant. Respondent had also given an undertaking to this effect before his request for reversion and posting of his choice was accepted. This policy was adhered to uniformly and only one exception was made in respect of an officer Shri Narayan Swamy, who reverted on the ground of his son suffering from a disease 'Hemophilia' requiring consistent treatment and attention. The Tribunal, however, observed that the management adopted a policy of pick and choose and indulged in discrimination in the posting of clerks as Special Assistant before 1988 and even thereafter. The Tribunal, therefore, held that respondent was entitled to be posted as Special Assistant. The management had raised a contention of estoppel against the workman on the basis of his undertaking. This contention was turned down by the Tribunal on the ground that such a condition was not imposed on Narayan Swamy. 4. The Award of the Tribunal has been challenged on the ground that posting as a Special Assistant was not a right of the respondent No. 2. The Tribunal could pass an Award only if the respondent No. 2 had a right to be posted as a Special Assistant. The order of the Tribunal was contrary to the principles of equity and law. The respondent had given an undertaking before seeking reversion to clerical cadre and posting of his own choice. The respondent No. 2 was bound by the undertaking. The Tribunal also could not have given order contrary to the policy of the bank. Making policy was prerogative of the bank and Court cannot interfere in the policy matters of the bank. 5. It is not disputed that the respondent No. 2 had sought reversion from the officer grade to clerical grade when he was posted at Etah branch for his own benefit because his wife was working in Delhi and he wanted to remain in Delhi. As per the guidelines of the bank prevalent at that time, an employee seeking reversion from the officer cadre to clerical cadre was to give an undertaking in following terms: (i) He shall not be eligible for consideration for posting as Special Assistant for a period of three years from the effective date of reversion; Page 3070 (ii) He shall not be eligible for entrustment of temporary supervisory duties for a period of three years from the effective date of reversion; (iii) Reversion will be to Clerical Cadre only. 6. Once the respondent No. 2 had given an undertaking, accepting all three conditions, he could not have turned around and demanded that he should be posted as Special Assistant with all benefits. He could not claim posting as a Special Assistant as a matter of right. After having accepted the conditions for reversion, the principles of estoppel would apply against the respondent No. 2 in view of undertaking given to the bank that if he was reverted to the clerical cadre and posted at Delhi (the posting of his choice) he shall not claim posting as a Special Assistant for a period of three years. I consider that the Tribunal failed to appreciate that the Tribunal and the Court cannot interfere with the policy matter of the

banks or other institutions. The respondent had exercised choice reversion to the post of clerk knowing all consequences. Once he had exercised the choice, he could not wriggle out from the undertaking given by him. 7. The Tribunal's conclusion that respondent No. 2 was discriminated does not stand the scrutiny of reasons. All cases except one cited by respondent No. 2 were prior to 1988. The policy of not giving posting as Special Assistant to those who are seeking reversion and station of their choice was adopted by the bank in 1988. After 1988 except in case of Shri V.K. Narayan Swami, whose son was suffering from a serious disease, policy was followed uniformly. An exception was made in this case by the management on the ground of special circumstances. This leniency or deviation from the policy shown by the bank was not in accordance with the rules. The Tribunal could not have directed the management to commit another wrong if the management had already committed one wrong. Two wrongs do not make one right. If a department or an officer had violated the rules and policies in one case he cannot be given directions to violate the same in another case. 8. In *Ramana Dayaram Shetty v. International Airport authority India* 1979-II LLJ 217, Supreme court observed that it is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. 9. The compliance of bye-laws and policies laid down by the bank is very necessary. If the bank has earlier made deviation, the court cannot give directions to the bank to make deviation in other cases. Article 14 of the Constitution of India does not mandate negative equality. It only mandates the equality. 10. I consider that Tribunal has wrongly given directions that respondent No. 2 should be given posting and allowances of Special Assistant with effect from 3.10.1989. 11. In view of above facts, writ petition is allowed and the Award dated 24.6.2004 of the Labour Court is hereby set aside.