

GAHC010021882015



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/5793/2015

SAMSUL ISLAM
S/O LT. ABDUR RAHIM, R/O GRAHAM BAZAR, DIBRUGARH, P.O. and DIST-
DIBRUGARH, ASSAM

VERSUS

THE UCO BANK and 7 ORS
REP. BY ITS CHAIRMAN and MAMAGING DIRECTOR, UCO BANK, HEAD
OFFICE, 10 B.T.M. SARANI, KOLKATA, WEST BENGAL-01

2:THE GENERAL MANAGER
UCO BANK
PERSONAL DEPTT.
12 OLD COURT HOUSE STREET
KOLKATA
WEST BENGAL-1

3:THE DY. GENERAL MANAGER
UCO BANK
PERSONAL DEPTT.
12 OLD COURT HOUSE STREET
KOLKATA
WEST BENGAL-1

4:THE CIRCLE HEAD
N.E.CIRCLE
UCO BANK
SILPUKHURI
P.O. SILPUKHURI
GHY-3
ASSAM

5:THE ZONAL MANAGER
UCO BANK
SILPUKHURI
P.O. SILPUKHURI
GHY-3
ASSAM

6:ABANI KR. BARUAH
MANAGER
UCO BANK
DIBRUGARH BRANCH
R.K. BORDOLOI PATH
THANACHARALI
P.O. DIBRUGARH
ASSAM
PIN-786001

7:GOBIND RAJKHOWA
CHIEF MANAGER
UCO BANK
BHUBENESWAR ZONAL OFFICE
UCO BANK BUILDING
3RD FLOOR
C-2, ASHOK NAGAR
UNIT-II
BHUBENESWAR-09

8:F.H. CHOUDHURY
CHIEF MANAGER
UCO BANK
HALDIA BRANCH
SUPER MARKET BUILDING
P.O. DURGACHAK PURBO MEDINIPUR
WEST BENGAL
PIN-72160

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri R. Islam, Advocate.

Advocates for the respondents : Shri M. Sarma, UCO Bank.

Date of hearing : **25.04.2024**

Date of Judgment : **25.04.2024**

JUDGMENT & ORDER

Heard Shri R. Islam, learned counsel for the petitioner whereas the respondent-UCO Bank is represented by Shri M. Sarma, the learned counsel.

- 2.** The grievance raised in this petition is with a claim for certain benefits accruing from the services rendered by the petitioner, including claim for promotion and appropriate fitment.
- 3.** The facts projected are that on 19.05.1983, the petitioner was appointed as a Clerk and subsequently he was promoted to the rank of Junior Management Grade Scale-I on 01.02.1999 and thereafter vide an order dated 02.02.1999, he was promoted to the rank of Middle Management Grade Scale-II which however was given effect from 19.12.1997. The said promotion was however withdrawn vide an order dated 20.09.2000 on the ground that a criminal case was pending against the petitioner pertaining to the Prevention of Corruption Act in which prosecution sanction was also granted.
- 4.** Shri Islam, the learned counsel for the petitioner has submitted that the criminal case which was registered as Special Case No. 103/2004 in the Court of the Special Judge, Assam at Guwahati had culminated in an order of acquittal dated 15.07.2014 and there was no further appeal by the State. He had accordingly submitted a representation on 19.07.2014 for granting him the benefits. However, vide communication dated 25.05.2015, restricted benefits were given to the petitioner in the following manner:-

“Consequent upon your acquittal from charges by Hon’ble Special Judge CBI, Assam, Competent Authority is pleased to restore your promotion from JMGS-I to MMGS-II notionally with effect from 19.12.1997 and to allow

monetary benefits arising out of restoration of the above promotion to you from 22.05.2015."

5. It is submitted that in the intervening period, there were 6 numbers of promotional exercise in which the petitioner had participated and his consideration has been kept in sealed covers. It is also submitted that three more promotional exercise were conducted in the years 2002, 2004 and 2007 in which the petitioner was not considered. By placing reliance on the case of the Hon'ble Supreme Court in ***Union of India and Ors. vs K. V. Jankiraman and Ors.*** reported in **(1991) 4 SCC 109** the learned counsel for the petitioner has submitted that he is entitled to all the benefits in a case of the present nature. Specific reference has been made to paragraph 26 of the said judgment which reads as follows:-

"26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not 'found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases' where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To

ignore however, such circumstances when they exist and lay down' an inflexible rule that in every case when an employee is exonerated in disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz.. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

6. The learned counsel has also relied upon the case of ***Sulekh Chand and Salek Chand Vs Commissioner of Police and Ors.*** reported in ***1994 Supp (3) SCC 674*** which has also endorsed the views expressed in the case of ***Janakiraman*** (supra)

7. Shri Sarma, the learned counsel for the Bank submits that the law has been settled in the case of ***Janakiraman*** (supra). It is however submitted that in the said judgment, more specifically in paragraph 39, a caveat has been laid down by the Hon'ble Supreme Court that such benefit would not extend to a case.

8. Shri Islam, the learned counsel in his rejoinder has submitted that the petitioner is restricting his prayer only for a due consideration and giving the benefits of the promotion to higher levels for which his contemporaries were considered and promoted in the promotional exercise wherein the petitioner had participated and the results were kept in a sealed cover.

9. The law in this field being settled by the Hon'ble Supreme Court in the aforesaid case of **Jankiraman** (supra), the present claim made by the petitioner appears to be reasonable.

10. The writ petition is accordingly allowed by directing the respondent Bank to open the sealed cover regarding the consideration of the promotion and thereafter to give the benefits of promotion to the petitioner. It is however made clear that though the benefits which have been directed to be notional in nature, the petitioner has to be placed in the proper fitment and position *vis-a-vis* his contemporaries and be given benefits from the first instant when his case was also taken up for consideration.

11. The aforesaid exercise be undertaken and completed within a period of 90 days from the date of receipt of certified copy of this order.

12. At this stage, Shri Islam, the learned counsel submits that the petitioner has already retired from service on attaining the age of superannuation on 31.08.2019. It is accordingly directed that the aforesaid benefits should be constituted so as to come to a correct rate of pension and/or post retirement benefits which the petitioner is entitled.

13. Writ petition accordingly allowed in the manner indicated above.

JUDGE

Comparing Assistant