

(2007) 08 PAT CK 0072
In the Patna High Court
Case No : CWJC No. 9605 of 2005

Anil Kumar Srivastava No. 1 and Others	APPELLANT
Vs	
The Samastipur Kshetria Gramin Bank and Others	RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Regional Rural Banks Act, 1976 — Section 17, 29

Citation : (2008) 2 PLJR 514

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Rajendra Narayan and Bhola Prasad, for the Appellant; S.D. Sanjay and Suraj Samdarshi, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Heard learned counsel for petitioners and learned counsel for the respondents Bank. All the six petitioners have challenged the notification contained in Annexure-4 dated 11th February, 2005 by virtue of which promotions have been granted to people from Officer Scale I to Officer Scale II with effect from 1st February, 2005 to their detriment. The promotion is from Junior Management Grade, Scale-1 to Middle Management Grade, Scale II.

2. Learned counsel for petitioners submits that the decision to grant promotion to juniors, by the respondents bank, was in conflict with the existing rules in this regard as the rules provide for seniority-cum-merit. Therefore, there is no occasion for any juniors to be promoted over the head of seniors. Petitioners have brought on record the seniority list as existing on 31.3.2004 which is contained in annexure-6 to show that all these petitioners are senior over one or the other persons who have been granted promotion vide Annexure-4.

3. Petitioners further submit that the bank has not adhered to the rules because they have made comparative assessment on merit which is not permissible under law. The final contention on behalf of the petitioners is that the Board of

Directors of the bank committed an illegality because they fixed a minimum 55% marks for persons to be eligible for promotion to 34 posts in question.

4. Learned counsel appearing on behalf of the respondent bank however rebutted all the submissions of petitioners and they take a stand that there was no wrong doing on their behalf while granting promotion to officials as per Annexure-4. They have stated in the counter affidavit that the procedure adopted by them is in conformity with necessary rules which are statutory in nature and was notified on 29th July, 1998.

5. A perusal of the rules in question with regard to the post to which petitioners are claiming promotions relates to Scale-II Officer. The respondents categorically state that the posts are to be filled up by promotion. The promotions are to be made on the basis of seniority-cum merit. It lays down the eligibility in matters of selection as per the rules, such as, 60 marks will be awarded for written text, 20 marks for interview and 20 marks for performance appraisal report. All add up to 100 marks. The rules further provide that in written examination there was qualifying marks of 40% in two parts containing 30 marks each. In other words only those persons who got a minimum 40% marks in the written examination would be eligible for being called for interview. On the basis of the written text which was held on 7th November, 2004 a list of all the eligible persons based on seniority was published on 27.11.2004. 51 persons have figured in this list. The list is available at Annexure-3. Out of those 51 persons only 34 persons can be promoted to the next higher post. All 51 persons had to face the interview board and ultimately based on the marks which they got in the interview as well as the performance appraisal report, a final list of 34 persons was prepared. It seems from the final publication contained in Annexure-4 that some persons who were shown junior to some of the petitioners made it in the merit list and petitioners were left out despite having seniority.

6. The relevant rule i.e. Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988 as amended on 29.7.98 in this regard is hereby quoted below:

Mode of Selection

: the selection of candidates shall be made by the Committee on the basis of written test, interview and assessment of Performance Appraisal Reports for the proceeding five years as an officer in scale I/Field Supervisor.

Composition of Committee

: The, committee (for considering promotion) shall consist of the following persons, namely (i) The Chairman of the concerned Regional Rural Bank Chairman.

(ii) A Director nominated by the Sponsor bank-member

(iii) A Director nominated by the National Bank-member.

Note:-If none of the members of the Committee belongs to Schedule Castes/ Scheduled Tribes, the Board may nominate a person belonging to SC/ST as an additional member and such person shall participate in the process of selection by the concerned committee.

h) Reckoning of the minimum eligibility

: The minimum eligibility in terms of number of years of service for promotion shall be reckoned as on the 1st April, of the year in which the vacancy is expected to arise or has actually arisen.

(i) Number of candidates to be considered for promotion.

: The number of candidates to be considered for promotion from Officers Scale-I to Officers Scale- II shall be restricted to four times the number of vacancies available for promotion.

(j) Selection process for promotion

: The selection shall be on the basis of performance in the written test, interview and Performance Appraisal Reports for preceding five years as per the division of marks given below.

(a) Written test

: 60 Marks

(b) Interview

: 20 Marks

(c) Performance

: 20 Marks

Appraisal Report

total Marks

: 100 marks

(A) Written test (60 marks)

: The candidates shall be required to appear, for written test comprising of two parts viz. part (A) Covering Banking law and practice of Banking and Part (B) Covering credit policy, Credit management including Priority Sector, Economics and Management. 60 Marks allotted to written test shall be further divided as under

Part "A" 30 marks Part "B" 30 marks A list of only those candidates who secure a minimum of 40% marks in each part shall be prepared and such candidates shall be called for interview.

(B) Interview (20 marks)

: There shall be no minimum qualifying marks for the interview.

(C) Performance Appraisal Reports (20 marks)

: Performance Appraisal Reports for the preceding five years shall be considered for the purpose of awarding marks for promotion.

7. The contention therefore on behalf of the bank is, that even if seniority was kept in mind but since marks obtained in the written examination coupled with the marks of the interview as well as performance appraisal report gave an advantage to a junior to steal a march over his seniors then it has to be so. the policy of promotion is based on seniority-cum-merit. Therefore all juniors who established their merit by getting higher marks in the written examination, interview and performance appraisal reports cannot be given a go by to maintain seniority, it is further submitted that if the legislature in their wisdom wanted to keep only seniority the basis of promotion then there was no occasion to hold written examination of 60 marks 20 marks each for interview and performance appraisal report for all eligible persons irrespective of his seniority. If this component has been provided in the rules then obviously that part of the merit will be reflected in the final result, irrespective of the seniority of the individuals working under the organisation.

8. Learned counsel for the petitioners tries to find loopholes in the procedure and submits that there was no occasion for the Board of Directors to keep 55% marks to be qualifying marks for final promotion as this position ought to have been made clear to all the candidates before examination. If they have done so later then they have to incorporate something more in the rule to make it a valid and fair procedure.

9. Counsel for the respondents has explained this position. They have stated that this was required to be done because of the 51 eligible candidates after the written examination only 34 posts were available for next promotional post. If that was so then in the wisdom of the Board of Directors the percentile figure worked out to 55% for those 34 posts. In any case the final list contained in Annexure-4 contains names of individuals based on total marks obtained in written, interview and performance appraisal report. Even if the decision to keep 55% was not taken there would be no change in the final promotion list.

10. Learned counsel for the petitioners relies on two decisions of the Hon'ble Supreme Court reported in B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., and Harigovind Yadav Vs. Rewa Sidhi Gramin Bank and Others, to show that it is not open to the bank to make a comparative assessment of merit. This Court can only observe that after the decision was rendered in the case of B.V. Sivaiah this new rule was notified by the Central Government and they have laid down the parametre under which the selection has to be made keeping the rule of seniority-cum-merit as a whole.

11. It is not understood as to how the above two decisions cited by learned

counsel for the petitioners support his case. Even the Hon"ble Supreme Court in the case of Hargovind Yadav (supra) has this to say in paragraph- 22 of the judgment:-

"22. Interview can be held and assessment of performance can be made by the Bank in connection with promotions. But that can be only to assess the minimum necessary merit. But where the procedure adopted does not provide the minimum standard for promotion, but only the minimum standard for interview and does the selection with reference to comparative marks, it is contrary to the rule of "Senioritycum-merit"...."

12. The Supreme Court further taking into consideration the case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., has this to observe in paragaph 23:-

"...As we have already noticed, in this case, the procedure is not one of ascertaining the minimum necessary merit and then promoting the candidates with the minimum merit in accordance with seniority, but assessing the comparative merit by drawing up a merit list, the assessment being with reference to marks secured for seniority, performance, postings at rural/difficult places and interview. The fact that the appellant had failed to secure the minimum marks in the interview, is not relevant as the entire procedure adopted by the Bank (of which interview is a part) is found to be vitiated and not in consonance with the principle of "Seniority-cum-merit".

13. Issues of promotions based on "seniority-cum-merit" have come up for consideration before the Hon"ble Supreme Court in many a cases and in most of these cases including the latest one the Supreme Court had deprecated insistence of judging the basic merit first by keeping minimum qualifying marks in interview first before granting promotion irrespective of the marks obtained in written examination and performance appraisal and ignoring of seniority all together.

14. Present case is not one of those cases where a minimum qualifying marks for interview was kept first and promotions have been granted after taking into consideration marks obtained by eligible candidates in the written examination, interview and performance appraisal report. Therefore the seniority as such has not been given a go bye. When the final merit list was prepared if some seniors fell by the way side then it cannot be said that the bank has not followed the senioritycum-merit rule.

15. In above view of the matter decisions cited by the petitioner in the given fact of the present case is not applicable. This Court is satisfied that the respondents bank have carried out the selection process for promotion to the next higher post strictly in accordance with rules as notified on 29th July, 1998. This rules have been notified under the powers existing u/s 29 of the Regional Rural Bank Act, 1976 read with section 17.

16. In the given facts and circumstances and the position in law existing in this regard the petitioners have not made out a case before this Court to interfere with the list of promotion. This writ application has no merit. The same is accordingly dismissed.