
(2008) 07 SHI CK 0009
In the High Court Of Himachal Pradesh

Bharat Bhushan and Another, Narender Sharma and Vinod Kumar and Others APPELLANT

Vs

Parvatiya Gramin Bank and Others
 G.L. Bhardwaj Vs RESPONDENT
Parvatiya Gramin Bank and Another

Date of Decision : 31-07-2008

Acts Referred:

Citation : (2008) 2 ShimLC 455

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—These five writ petitions are being disposed of by a common judgment as they involve similar questions of fact and law.

2. All the petitioners are employees of the Parvatiya Gramin Bank (hereinafter referred to as the Bank). According to the petitioners the respondent-Bank has not properly applied the principle of "seniority-cum-merit" while making promotions to the posts of Officers Scale-I and Scale-II. The Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988 (hereinafter referred to as the Rules), were published in the gazette on 29th July, 1998. In the present cases, we are concerned with promotions to the posts of officers Scale-I and Scale-II which are covered under 3rd Schedule framed under Rule 6, which provides the procedure to be followed for filling-in the posts.

3. Rule 6 of the Recruitment and Promotion Rules, reads as follows:

(6) Filling up of vacancies: All vacancies determined under Rule 5 by the Board shall be filled by promotion or direct recruitment in accordance with the provisions contained in the rules and third schedule to these rules.

4. The relevant portion of Item No. 3 of Third Schedule framed under Rule 6, dealing with the procedure to be followed while filling up the posts of Scale I officers reads as follows:

-- 3.(a) Name of post Scale I Officer

(b) Classification Group "A"

(c) Source of appointment 50% by the direct recruitment through Banking Service Recruitment Board and 50% by promotion.

(d) Whether promotion to be made Promotion shall be made on the basis of on seniority basis or seniority- seniority-cum-merit. cum-merit basis.

(e) Eligibility (i) Degree of recognized university in any discipline or its equivalent.

(A) For Direct recruits (ii) Proficiency in local language as may be laid down by the board.

(i) Qualification and eligibility for direct recruits.

(ii) Age Between 18 years and 26 years (relaxable in case of Scheduled Castes, Scheduled Tribe candidates or candidates belonging to other categories in accordance with the instructions/orders issued by the central government).

(B) For Promotees. Eligibility Promotion shall be made amongst employees holding the post in Group "B" post or regular basis in the concerned.

Regional Rural Bank and who possess following qualifications and experience namely: (i)(A) Must have passed matriculation or senior school certificate examination or equivalent examination of Bachelor's degree examination or equivalent from a recognized university and (B) Must have 10 years experience in the concerned Regional Rural Bank as a Group "B" employee

OR

(ii)(A) Must have passed Matriculation or senior school certificate or equivalent examination or bachelor degree examination or equivalent examination from recognized university and

(B) Must have passed part I examination of certificate of associate of Indian Institute of Bankers examination: and (C) Must have eight years experience in the concerned Regional Rural Bank as Group "B" employee.

OR (iii) (A) Must have passed Matriculation or Senior School Certificate examination or equivalent or Bachelor degree examination or equivalent from a recognized university or equivalent and

(B) Must have passed part I and part II examinations or the certificate of Associate of Indian Institute of Bankers Examination: and

(C) Must have six years experience in the concerned Regional? Rural Bank as Group "B" employees: Promotion unless he has been confirmed in the feeder grade post.

Note: (I) The incumbents" eligible for promotion on or before the publication of this notification shall continue to be considered for promotion to Scale I Officer post. (II).The service of the incumbents, who are holding the post eligible for promotion before publi- cation of this notification, shall continue to be counted for the purpose of promotion to Scale I Officer post.

(f) Mode of Selection (i) In the case of direct recruitment the selection of candidates shall be made by the Banking Service Recruitment Board on the basis of written test and interview and in accordance with the procedure specified by them.

(ii) In the case of promotion, the selection of the candidate shall be made by the committee on the basis of written test interview and performance appraisal reports.

(g) 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 committee belongs to Scheduled Castes and Scheduled Tribes, the Board may nominate a per- son belonging to Schedule Castes, Scheduled Tribes as an additional member and such person shall partici- pate in the process of selection by the concerned committee. (h) Reckoning of the minimum The minimum eligibility in terms of the eligibility. 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 All eligible candidates shall be considered Considered for promotion. for promotion.

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

(A) Written Test 70 marks

(B) Interview 20 marks

(C) Performance Appraisal Report 10 marks Total Marks: 100 marks.

(A) Written Test (70 marks) The candidates shall be required to appear for written examination comprising test in English and test in Banking law, Practice and procedure including working procedures in the Regional Rural Bank concerned. 70 marks allotted to written test shall be further divided as under: English 35 marks Banking law Practice & Procedure 35 marks Total marks: 70 marks.

A list of only those candidates who secured a minimum of 40% marks each in English, Banking Law practice and procedures shall be prepared. The Bank, thereafter, shall prepare the list of selected candidates in the order of seniority to the extent of two hundred per cent of the vacancies for promotion for the purpose of calling for interview.

(B) Interview (20 marks): There shall be no minimum qualifying marks in the interview.

(C) Assessment of Performance The performance Appraisal Reports for the Appraisal Report: preceding three years of the concerned employees shall be considered. -----

5. With respect to Scale II, the relevant rules are virtually identical except that in Scale I, 50% of the appointments are by direct recruitment and 50% by promotion whereas in Scale II 100% appointment is by promotion.

6. The main contention of the petitioners is that they were eligible and were senior to the persons selected and, therefore, according to the petitioners the respondent-Bank has violated the principle of "seniority-cum-merit" to be followed for selection to the promotional post. The petitioners have banked heavily on the judgment of the Apex Court reported in B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., . This case also related to the Rural Banks and the Apex Court came to the conclusion that the posts were promotional posts to be filled up by following the rules of seniority-cum-merit. After considering the entire case law and various judgments, the Apex Court held as follows:

18. We thus arrive at the conclusion that the criterion of "seniority-cum-merit" in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.

7. There can be no dispute with regard to the proposition that the principle of merit-cum-seniority lays greater emphasis on merit and ability and seniority plays a less significant role. However, seniority has to be given weightage when merit and ability are approximately equal. On the other hand, as between the two principles of seniority and merit, the criteria of "seniority-cum-merit" lays greater emphasis on seniority. In case the candidate fulfills the minimum necessary merit requisite for efficiency of administration, the senior even though

less meritorious, shall have priority in promotion. According to the petitioners once they had passed the requisite test then it must be deemed that they had the minimum requisite merit and promotion thereafter should have been based solely on seniority. In support of this contention, the petitioners have also relied upon the observations of the apex Court in *Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another*, wherein the apex Court held as follows:

12. Wherever fitness is stipulated as the basis of selection, it is regarded as a non-selection post to be filled on the basis of seniority subject to rejection of the unfit. Fitness means fitness in all respects. "Seniority-cum-merit" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed. Subject to fulfilling this requirement the promotion is based on seniority. There is no requirement of assessment of comparative merit both in the case of seniority-cum-fitness and seniority-cum-merit. Merit-cum-suitability with due regard to seniority as prescribed in the case of promotion to All India Services necessarily involves assessment of comparative merit of all eligible candidates, and selecting the best out of them.

In 2000 (7) SLR 651, *S.V. Narayana and Ors. v. The Kolar Gramin Bank (Kar.)*, the Karnataka High Court was dealing with a case where the recruitment rules provided that the promotion was to be made on the basis of seniority-cum-merit. However, thereafter the management of the Bank issued a circular incorporating the guidelines to be followed by the agency in the Bank for promotion to the post of Field Supervisors. Following the judgment in *B.V. Sivaiah's case (supra)*, the High Court held that since the rule postulated promotion only on the basis of seniority-cum-merit, the guidelines were against the rules and held that the Bank had violated the principle of seniority-cum-merit.

In *Harigovind Yadav Vs. Rewa Sidhi Gramin Bank and Others*, the apex Court held that in *B.V. Sivaiah's case (supra)*, the Apex Court had not accepted the promotion policy circulated on 2.2.1989 as the same was not in consonance with the principle of "seniority-cum-merit". The Court also reiterated the principles relating to promotion to be made on seniority-cum-merit. The Court after considering the entire law held as follows:

17. This Court also noted that while the principle "seniority-cum-merit" lays greater emphasis on seniority, "merit-cum-seniority" laid greater emphasis on merit and ability and seniority plays a less significant role, becoming relevant only when merit is approximately equal. After referring to several decisions bearing on the issue, this Court enunciated the following general principle in regard to promotions by seniority cum merit (at para 18) which is relied on by the Appellant:

We thus arrive at the conclusion that the criterion of "seniority-cum-merit" in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less

meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.

8. On the face of it, the argument made on behalf of the petitioners sounds attractive. However, there is a basic difference between this case and the cases cited before us. In all the cases cited before us, the rule provided that promotion would be made on the basis of seniority-cum-merit and later a circular was issued where criteria/guidelines were laid down for making the promotion and the emphasis shifted from seniority-cum-merit to merit-cum-seniority. In the present case, the schedules to the Revised Recruitment and Promotion Rules, 1998 published on 29.7.1998 provide the complete criteria to be followed by the Committee for making promotions. The criteria is a part of the rules. All eligible candidates are to be considered for promotion. The mode of selection for Scale I officers provides that in case of promotion, selection shall be made by the Committee on the basis of a written test and performance appraisal reports. It is further provided that 70 marks are earmarked for written test, 20 marks for interview and 10 marks for performance appraisal reports. The written test consists of written examination in English and test in Banking law, practice and procedure. The candidates are required to secure minimum 40% marks in each of the papers. Thereafter the Bank prepares a list of selected candidates to be called for interview on the basis of seniority. It is also provided that candidates equal to twice the number of posts available shall be called for interview. There are no minimum qualifying marks prescribed for the interview.

9. As far as Scale II posts are concerned, the difference is that eligible candidates equal to four times the vacancies available for promotion only shall be considered. In this case the written test is of 60 marks, interview for 20 marks and 20 marks are earmarked for performance appraisal reports. The papers in the written test are Banking Law and Practice of Banking, credit policy and credit management. The candidates are required to secure 40% in each of the parts and thereafter selection has to be made on the basis of the interview. No minimum marks have been provided for the interview.

10. According to the respondent-Bank it has made the selection strictly in accordance with rules. It is further contended that in the case of Scale I officers, a merit list of all the candidates who obtained the minimum qualifying marks in the written test is drawn up irrespective of their merit in the test. Thereafter candidates equal to twice the number of vacancies available are called for interview strictly in accordance with their seniority and merit in the written test is not taken into consideration. Thereafter the marks of the interview are counted

and selection made. In respect to the post of Scale II Officers seniority is given due recognition by initially calling eligible candidates equaling four times the number of vacancies available for promotion.

11. It is contended that the system which the bank is following is a system of seniority-cum-merit. We are unable to agree with this proposition. In the case of Scale I officers, as noticed above, till the stage of holding of written test there is no violation of the principle of "seniority-cum-merit" since the only requirement is that only the candidates who have secured 40% marks are to be called for interview. Thereafter the select list is prepared by calling for the interview twice the number of candidates solely on the basis of their seniority and not on the basis of the marks obtained in the test. However, thereafter interviews are held. Assessment of appraisal of reports is also done. At this stage, the marks in the test are also added. This in our opinion brings in an element of merit and seniority is given a go-by. Similar is the situation in the case of Scale II Officers since the marks in the written test are counted while assessing the suitability of the candidates.

12. Having held so, the question which arises is whether the selection made in accordance with the rules should be set aside. As pointed out above, in the present case the bank has followed the criteria laid down in the recruitment and promotion rules. True it may be that in one portion of the rules the selection process has been described as a process of selection by seniority-cum-merit. But when the rules lay down the entire procedure for selection then the mere use of the phrase "seniority-cum-merit" cannot override the other portion of the same rules. Both parts of the rules have to be construed harmoniously.

13. After going through the rules, we are of the considered view that the employer was following a hybrid system which combined both seniority-cum-merit and merit-cum-seniority. In one of the petitions a challenge has been laid to the validity of the rules on the ground that the latter part of the rules infringe the principle of "seniority-cum-merit" as explained by the Apex Court in a number of judgments. We cannot read the phrase "seniority-cum-merit" in isolation. It has to be read in conjunction with and in the context of the entire rules which provide for the selection process, mode of selection, mode of giving marks etc. A reading of the entire rules reveals that the stress was not on seniority alone and weightage was sought to be given to merit also.

14. It is a well settled law that the employer can always lay down the criteria for promotion. Normally, it is true that the promotions are made either on the basis of (i) seniority subject to rejection of unfit (ii) seniority-cum-merit and (iii) merit-cum-seniority. This, however, does not mean that there can be no other method. The Supreme Court in a number of cases has approved another category also i.e. a hybrid mode of selection where seniority is duly respected and merit is also given due recognition.

15. The petitioners have also relied upon the judgment of a learned Single Judge

of the Punjab & Haryana High Court rendered in CWP No. 8744/2005 wherein on consideration of the same set of rules, the learned Single Judge held that by making the selection in accordance with the criteria, the bank had violated the principle of "seniority-cum-merit". With due respect to the learned Single Judge, we are unable to agree with the said preposition. The learned Single Judge has relied only on the judgment of the Apex Court in B.V. Sivaiah's case. In all the cases decided by the Apex Court in B.V. Sivaiah's case the appointment were made prior to the notification of the rules 1998. This aspect has not been considered by the learned Single Judge. The learned Judge also did not take into consideration the fact that the criteria for selection was a part of the recruitment and promotion rules. Hence with due respect, we cannot agree with the judgment rendered by him.

In JT 2003 (1) SC 400, K. Samantaray v. National Insurance Co. Ltd. the apex Court held as follows:

10. In Syndicate Bank case (supra) observations in para 14 throw considerable light on the controversy. The third mode (apart from seniority-cum-merit and merit-cum-seniority modes) has been recognized. It has been described as a "hybrid mode of promotion". In other words, there is a third category of cases where seniority is duly respected and merit is appropriately recognized.

11. While laying down the promotion policy or rule, it is always open to the employer to specify area and parameter of weightage to be given in respect of merit and seniority separately so long as policy is not colourable exercise of power or has the effect of violating of zany statutorily scope of interference and other relatable. The decision in B.V. Sivaiah case (supra) is clearly distinguishable on facts and in law. That was a case where statutory rules governed the field. This Court, inter alia, held that fixing terms which are at variance with the statutory rules is impermissible. In the case at hand, prior to the formulation of policy in February, 1990, there were no codified prescriptions. It was the stand of the respondent-employer that prior to the formulation of the policy, certain guidelines existed and the objectives of the policy were to rationalize and codify the existing guidelines relating to promotions within officers cadre. There is no statutory rule operating. It is for the employer to stipulate the criteria for promotion, the same pertaining really to the area of policy making. It was, therefore permissible for the respondent to have their own criteria for adjudging claims on the principle of seniority-cum-merit giving primacy to merit as well, depending upon the class, category and nature of posits in the hierarchy of administration and the requirements of efficiency for such posts.

In Hargovind Yadav's case (supra), while distinguishing the judgment in K. Samantaray's case, the Apex Court held as such:

But in that case promotions were not governed by any statutory rules, but by a promotion policy. The above observations made with reference to such a policy, which wholly occupied the field insofar as promotion is concerned, are not

relevant where the statutory rules require promotion by seniority-cum-merit.

These observations fortify our view that where the field is wholly occupied by rules as in the present case then the hybrid mode of selection is legal and valid.

16. Admittedly, the promotions of the private respondents have been made by the Bank in accordance with the rules laid down. The contention made on behalf of the petitioners is that the seniority has not been given its due recognition and, therefore, that portion of the rule which is against the principle of "seniority-cum-merit" should be struck down. We are unable to agree with this contention. We cannot simply go by the nomenclature given in the column of mode of selection wherein it is provided that the promotion shall be based on seniority-cum-merit. As pointed out above, in the subsequent portion of the Schedule, the rules provide for the entire procedure for making the promotion. It is apparent that the seniority has been given a very important role in the rules but merit has also been given its due role.

17. Therefore, though it may be true that the promotions have not been made on the basis seniority-cum-merit but by following the hybrid system, the same cannot be said to be illegal since the Bank has followed the procedure prescribed in the rules while making the promotions.

18. In view of the above discussion, we find no merit in these writ petitions which are accordingly rejected.