

(2008) 04 GAU CK 0032
In the Gauhati High Court

Dipak Thakur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Regional Rural Banks Act, 1976 — Section 17, 29

Citation : (2008) 3 GLT 565

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.N. Sarma, J.—Being aggrieved by the refusal of the Respondent-Bank to promote the petitioner from clerical cadre to Scale-I Officer(Group A) on the ground of alleged misinterpretation of the relevant service rule and promoting the private respondents, the petitioner has approached this Court by filing this writ petition and challenges the action of the Respondent-Bank.

2. Heard Mr. R.P. Sarma, learned Senior Counsel for the writ petitioner. Also heard Mr. S. Dutta, learned Counsel for the Bank and Mr. P. Deka, learned Counsel for the Respondent Nos. 7 and 10 and Respondent Nos. 13 to 18. Mrs. Phukan represents the State respondents.

3. The broad facts are not in dispute rather admitted one. The petitioner was appointed in the Respondent-Bank on 1.9.1981 as Clerk-cum-Cashier and since then he is serving in the said post. Under the relevant service rule the promotion to the cadre of Scale-I Officer is to be made on the basis of seniority-cum-merit. The set of rules known as Regional Rural Bank (Appointment and Promotion of Officers and Other Employees) Rules, 1998 framed in exercise of power conferred by Section 29 of the Regional Rural Bank Act, 1976 read with Section 17, governs the field.

4. The aforesaid rule was framed replacing the earlier rule viz. Regional Rural Bank (Appointment and Promotion of Officer and other Employees Rules), 1998.

The procedure for promotion to Scale-I Officer has also been prescribed in the said rule.

At this stage, I deem it fit to refer the relevant provisions of the rules which are required to be followed in case of promotion of an officer to Class-I Scale.

5. Rule 3 provides that the source of appointment to Scale-1 Officer is by way of direct recruitment and promotion. Promotion is to be made on the principle of seniority-cum-merit. Necessary eligibility criteria for promotion has been provided under Rule 4. The mode of selection for promotion is also prescribed under Rule 4.

Rule 4(ii) provides that in case of promotion selection of candidates shall be made by the Committee on the basis of the written test and interview and performance appraisal report. The Committee is composed of one Chairman of the concerned Regional Rural Bank-Chairman, a Director nominated by the sponsor Bank-Member and a Director nominated by the National Bank Member. It is further provided that selection shall be made on the basis of the performance in the written test, interview and 5 years Performance Appraisal Report as per the division of marks given below:

A) Written Test - 70 marks B) Interview - 20 marks C) Performance Appraisal - 10 marks Reports Total Marks - 100 marks

6. Written test is to be conducted to test the knowledge of the candidates in English, Banking Law, Practice and Procedures. After conducting the written test a list of only those candidates who secure 40% marks each in English, Banking Law, Practice and Procedures shall be prepared and thereafter the Bank shall prepare the list of selected candidates in order of seniority to the extent of two hundred percent of the vacancies for promotion for the purpose of calling for interview. The minimum qualifying marks fixed for the interview is 20.

7. The petitioner having possessed the necessary educational qualification applied for such promotion to Officer Cadre (Scale-I) in Group-A when Management Bank invited applications from the employees serving in the Clerical Cadre for filling up of 12 numbers of vacant posts of Officer Cadre (Scale-I) to be filled up by way of promotion.

8. Upon scrutiny of the applications the petitioner called for the written test vide letter dated 11.5.2005 which was fixed on 29.5.2005. The petitioner having come out successful in the written test, the respondent authority vide letter dated 25.7.2005 informed the petitioner that he has come out successful in the written test so conducted for promotion from Clerical to Officer Cadre (Scale-I) held on 29.5.2005 and he was asked to appear in the interview on 6.8.2005. Accordingly, the petitioner appeared in the interview on the date fixed. The petitioner was intimated about the result by the Chairman of the Bank vide Letter dated 10.8.2005 congratulating him that he was selected for promotion from Clerical Cadre to Officer Scale-I w.e.f. 8.8.2005. However at the later point of

time the petitioner found that he was not promoted and the Respondent Nos. 7 to 13 were promoted by filling up the entire twelve nos. of vacant posts of Scale-I Officer. Be it mentioned herein, that the petitioner is the seniormost employee in service and his seniority position is reflected at Serial No. 4 in the List dated 28.10.2004, which is also an undisputed fact.

9. Mr. Sarma, learned senior counsel submits that the promotion from Clerical Cadre to Officer Scale-I, as per service rules, being on the basis of seniority-cum-merit and there being no qualifying marks fixed for the interview and the petitioner being the senior most in service than the private respondents, on interpretation of the rules, such promotion could not have been denied to him, he having qualified in the written test. In support of his contention Mr. Sarma has relied on the decision of the Apex Court reported in B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., . The learned Counsel has also placed reliance on the decision of the Apex Court reported in Harigovind Yadav Vs. Rewa Sidhi Gramin Bank and Others, The learned Counsel has categorically submitted that the authority while promoting the private respondents have made a complete departure from the statutory rules and misinterpreting such rules denied promotion to the petitioner though he was the senior most candidate and has got legitimate right for consideration for such promotion.

10. The stand of the Respondent-Bank is that the petitioner though qualified in the written test, on the basis of the interview and Performance Appraisal Report, the position of the private respondents gone above the petitioner and accordingly they were appointed and no such appointment could be offered to the petitioner as his merit position was below the private respondents as per performances in the interview.

11. Relying on the counter affidavit filed, Mr. Dutta, learned Counsel for the Bank submits that on proper interpretation of the rules the action of the respondent authorities in not promoting the petitioner cannot be said to be unjust or improper and need not be interfered with. Such action was taken on true and correct interpretation of the relevant rules. The learned Counsel further submits that the whole purpose of making the interview and consideration of the Performance Appraisal Report is to make some sort of selection amongst the candidates and in such selection process the petitioner could not come at par with the private respondents and accordingly he is not entitled to claim for such promotion. Mr. Dutta places reliance on the decision of the Apex Court reported in State of Mysore Vs. C.R. Sheshadri and Others,

12. Mr. Deka, learned Counsel for the private respondents also endorsed the submissions made by Mr. Dutta. That apart, the learned Counsel referring to the observations made at Paras 10 and 11 in the case of B.V. Sivaiah (supra) has submitted that the principles of holding such interview is to make necessary assessment about the suitability of the employee for promoting a candidate to the next higher grade and such course having been adopted by the Respondent Bank, the same cannot be said to be illegal. Learned Counsel further submits

that the Respondent-Bank has not committed any error apparent on the face of record in promoting the private respondents as the petitioner could not come at par with the private respondents in the interview.

13. I have given my anxious consideration to the submissions made by the learned Counsel for the parties.

14. The Service Rule referred to above regulating and guiding promotion from Clerical Cadre to Scale-I Officer in Group (A) is a statutory rule. Hence, it is incumbent upon the respondent authorities to strictly follow the said rules while considering the case for such promotion to the rank of Scale-I Officer. Under the service rule the promotion to the Cadre of Scale-I Officer is to be made on the basis of seniority-cum-merit. There is no dispute about the eligibility criteria of the petitioner for promotion to Scale-I Officer, as regards his educational qualifications. The mode of selection has also been specifically laid down under Rule 4(h). By holding the written test, interview and consideration of the Performance Appraisal Report it is further provided under the rule that a candidate who secures 40% of the marks in the Written Test, in English, Banking Law, Practice and Procedures his name would be empanelled in the list of the selected candidates and such list is to be prepared in order of seniority. The written test is held to select a candidate for the purpose of calling in the interview.

15. As per the aforesaid Rule once a candidate's name is included in the select list he/she is called for the interview then the purpose of written test is over. For the purpose of interview 20 marks have been allotted and there is no minimum qualifying marks fixed in the interview. Thus the non-fixation of any qualifying marks appears to be for the reason that as the basic criteria for promotion is seniority-cum-merit such principle is to be applied in promoting the selected candidates. When promotion is to be made on the basis of seniority-cum-merit greater emphasis is laid on seniority.

16. The learned Counsel at the Bar drawing my attention to the decision made by a learned Single Bench of this Court in W.P.(C) No. 1954/2000 disposed on 14.6.2007, also took the aforesaid view while interpreting the present recruitment rule in question.

17. In the case of B.V. Sibhaya (supra), referred to by Mr. Sarma, it is held at Para 18 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.

18. In the case of Harigovind (*supra*) the High Court held that if "seniority-cum-merit" criteria is adopted for the purpose of promotion, then first the senior most eligible employee has to be tested to find whether he possesses the minimum required merit for holding the higher post and only if he is not found suitable or fit, the person junior to him may be considered for the purpose of promotion.

As against the said finding of the High Court, Apex Court in the aforesaid case held at Para 22 of the Judgment as follows:

22. Interviews 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 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 "seniority-cum-merit". This aspect of the matter has been completely lost sight of by the learned Single Judge and the Division Bench of the High Court in this round of litigation. As noticed above, they have proceeded on the basis that the appellant having failed to secure the minimum marks prescribed for interview, was rightly denied promotion, by ignoring the principle laid down by this Court in *Sivaiah* in regard to seniority-cum-merit. At all events, as the promotion policy adopted by the Bank was held to be illegal in the earlier round of litigation (WP. No. 4485 of 1993 dated 13.10.1988), the Bank could not have adopted the same policy to again reject the appellant for promotion. We may also note that the law laid down in *Sivaiah* was reiterated in *Sher Singh v. Surinder Kumar* wherein this Court had occasion to consider a similar question relating to the promotion for the post of clerk to Field Supervisor in the case of another from the post of clerk to that of Field Supervisor was seniority-cum-merit but the Bank did not follow the criterion of seniority-cum-merit but made promotions on the basis of merit-cum-seniority, the promotion was vitiated and therefore invalid.

19. The Apex Court also noted that while the principle of "merit-cum-seniority" lays greater emphasis on merit and ability and seniority plays a less significant role, seniority should be given weight only when merit and ability are approximately equal.

20. In the case in the hand in order to consider the suitability as to whether the employee is fit to be promoted or not, separate written test was conducted comprising test in English and Banking Law, Practice and Procedures allotting 35 marks in each subject and the employees qualified by securing 40% marks in the written test, his/her name is empanelled for the purpose of calling for interview on consideration of performance appraisal report, Although it is provided in the Rules that selection shall be made on the basis of performance in the written test/interview and five years appraisal report, it is specifically provided therein that there shall be no minimum qualifying marks in the

interview. In that view of the matter, it does not appear that the interview of the candidates is taken for the purpose of making further selection ignoring seniority. The list of selected candidates prepared by the Respondent-Bank as produced by Mr. Dutta during the course of argument, disclose that while making such selection the Bank also took note of the marks obtained by the candidates in the written test which is a clear departure from the provisions of the Rule as indicated above.

21. The marks obtained in the written test ought not to have been calculated in selecting the candidates, after oral interview; in-as-much as the said written test was held only for the purpose to empanel the candidates who are entitled to be called for the interview and the list is to be prepared on the basis of seniority.

22. On close scrutiny of the Rules leaves no doubt that seniority for promotion has been given much importance. The Respondent-Bank prepared the aforesaid Select List and serial positions of the candidates were fixed on erroneous interpretation of the relevant rules.

23. In view of the above discussions, I have no hesitation to hold that the Respondent-Bank has committed error in the decision making process in preparing the select list ignoring the case of the petitioner for such promotion.

24. Situated thus, I hold that the petitioner has been illegally deprived from consideration of his case for promotion to the Scale-I Officer on the basis of his seniority though he had qualified in the written test. The rejection of the case of the petitioner for promotion on the grounds as disclosed above are not found to be correct and proper in terms of the Rules referred to above.

25. Accordingly, this writ petition is accepted and it is directed that the respondent authority shall pass appropriate order to consider the case of the petitioner for promotion from the date when the candidates juniors to him were promoted. Since the petitioner was denied promotion, his seniority position shall be reckoned from the date of promotion of the private respondents and fixation of pay from the date of promotion. It is further made clear that in the event, applying the correct interpretation of the rules, if the authority finds that the petitioner is entitled for promotion and there is no vacant post at present to accommodate him, the junior most officer must give way for promotion of the petitioner. But if it is possible the petitioner be promoted by not disturbing the promotion of the private respondents.

26. The entire exercise shall be done within a period of forty (40) days from the date of receipt of the certified copy of this order.

With the aforesaid observations and direction this writ petition stands allowed to the extent indicated above.

27. No costs.