

(1991) 11 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 927 of 1991 (R)

D.P. Singh alias Dina Nath Prasad Singh and Others	APPELLANT
Vs	
Ranchi Kshetriya Gramin Bank and Others	RESPONDENT

Date of Decision : 20-11-1991

Acts Referred:

Citation : (1991) 11 PAT CK 0012

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This writ application is directed against an office order dated 30th March, 1991 issued by the respondent No. 2 whereby and where under the respondent Nos. 3 to 8 were promoted to the post of Area Manager/Senior Manager with effect from 8-3-1991.

2. According to the petitioners, they are seniors to respondent Nos. 3 to 8 as will appear from their respective dates of appointment which are as follows:--

- (1) D.P. Singh (Petitioner No. 1, 3-3-1981.)
- (2) Rabindra Nath (Petitioner No. 2) 3-3-1981.
- (3) K.K. Majhi (Petitioner No. 3) 26-12-1980.
- (4) Lain Oraon (Respondent No. 3) 26-12-1980.
- (5) Arjun Vishwakarma (Respondent No. 4) 3-3-1981.
- (6) Ashok Kumar Tetarbe (Respondent No. 5) 15-10-1981.
- (7) Ashok Kumar Sharma (Respondent No. 6) 15-10-1981.
- (8) Mukul Kumar Singh (Respondent No. 7) 15-10-1981.
- (9) Vijay Prakash Shah (Respondent No. 8) 15-10-1981.

3. Petitioner No. 3 K.K. Majhi claimed his seniority over respondent No. 3 also, apart from respondent Nos. 4 to 8 though both of them are members of the

scheduled tribe and in that category his name appears at serial No. 1; whereas the name of respondent No. 3 appears at serial No. 3 thereof.

4. According to the petitioners, a seniority list was prepared on 8-10-1984 wherefrom it would appear that the petitioners are senior to respondent Nos. 3 to 8.

5. It is admitted that the Central Government in exercise of its power conferred upon it u/s 29 read with Section 17 of the Regional Rural Banks Act, 1976 (in short to be referred to and called as the said Act) in consultation with National Banks and Sponsored Banks made the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988 governing the terms and conditions of service.

6. According to the petitioners, respondent No. 1, however, evolved a mode of selection which is wholly contrary to the aforementioned, Rule as also the guidelines of NABARD as thereby it was resolved that 40 marks would be given to seniority; 6 marks would be given to educational qualification; 24 marks would be given in relation to performance of last 3 years and 30 marks would be given for interview. The said mode of selection is contained in Annexure A to the counter affidavit filed by respondent Nos. 3 to 8.

7. The petitioners have contended that so far as promotion to the posts of Area Manager and Senior Manager is concerned, source of recruitment is 100% by promotion from amongst the confirmed officers working in the Bank and the promotion is to be given on seniority-cum-merit basis.

According to the petitioners, respondent Nos. 3 to 8 have been promoted in violation of the aforementioned policy decision.

8. Petitioners have further contended that out of four members constituting the Selection Committee, the Director nominated by NABARD was not present.

It was further submitted that in the meeting held by the said Committee, although Mr. Anant Kumar was nominated by Reserve Bank of India, the meeting was attended by one Mr. M.N. Singh,

9. In this case, a counter affidavit has been filed on behalf of respondent Nos. 1 and 2 and another counter affidavit has been filed on behalf of respondent Nos. 3 to 8.

The respondents have not denied that promotions were to be granted in terms of Rule 7 of the aforementioned Rules.

It was contended that upon coming into force of the Appointment Rules, which was published in the Gazette on 28-9-1988, all the guidelines issued from time to time by NABARD and the Sponsoring Banks stood repealed and the Committee was constituted in terms of Rule 10 thereof.

10. According to the respondents, pursuant to the aforementioned Rules, a

Selection Committee was constituted by respondent No. 1 in its meeting held on 29-9-89 consisting of the following persons:--

- (a) Chairman;
- (b) Director nominated by Reserve Bank of India;
- (c) Director nominated by NABARD, and
- (d) Director nominated by Sponsored Bank.

The aforementioned Selection Committee held its meeting on 8-3-91 and recommended the names of respondent Nos. 3 to 8 for promotion to the posts of Area Manager/Senior Manager.

11. It was further contended that in terms of Section 27 the said Act, any defect in the constitution of the Board or Committee shall not invalidate its act or proceeding.

12. Mr. A.P. Chatterjee learned Senior counsel appearing on behalf of the petitioners submitted that in view of the fact that Rule 7 is a statutory rule, the cases of all eligible candidates for their promotion to the posts of Area Manager/Senior Manager should have been considered only on the basis of seniority-cum-merit which means that seniority has to be given preference. According to the learned Counsel as by reason of Annexure A to the counter affidavit, merit of a candidate was to be judged, the impugned order of promotion must be held to be vitiated in law;

Learned Counsel in this connection has relied upon an unreported decision of the High Court of Kerala in W.A. No, 604 of 1988--North Malabar Grameen Bank Officers Association v. North Malabar Grameen Bank represented by its Chairman and Ors. which is contained in Annexure 5 to the reply of the petitioner to the counter affidavit filed on behalf of respondent Nos. 3 to 6 and 8.

Learned Counsel has also drawn ray attention to an order of the Supreme Court of India dated 2-5-1990 in SLP (Civil) No. 6083/87/90 wherein the Supreme Court passed the following order:--

The SLP is dismissed. We make it clear that in making the appointment on the basis of seniority-cum-merit, the merit of the petitioner shall be assessed objectively and with reference to his records.

Learned Counsel further relied upon a decision of the Supreme Court in State of Mysore and Another Vs. Syed Mahmood and Others, .

13. Learned Counsel further submitted that as the meeting was not attended by the Director nominated by Reserve Bank of India, the selection made by the Committee was illegal. It was further submitted that non-participation of the Director nominated by NABARD has vitiated the entire proceedings of the Selection Committee inasmuch as had he taken part in the selection proceedings he would have remembered the guidelines issued by NABARD which was marked

as P-6 in the aforementioned judgment of the Kerala High Court.

It was further submitted that even if preference was to be given to a candidate who is graduate of a recognised University in Agriculture or Commerce or Economics, such a preference could have been given only when the respective candidates stand on equal footings.

According to the learned Counsel, in view of Rule 7 of the aforementioned Rules, the authorities could not have given any qualifying marks for interview or marks for the purpose of assessment of performance of last three years inasmuch as if the candidates are to be selected on the basis of seniority-cum-merit the interview Committee is only required to go through the performance of each candidate for last three years for the purpose of each candidate as to whether he is fit to hold the post or not.

Learned Counsel submitted that once marks are allotted on the basis of assessment of performance of last three years as also if interview is held or if any marks is allotted for the purpose of considering the educational qualification, the same would amount to judging the candidature on merits-cum-seniority and not on the basis of seniority-cum-merit.

14. Mr. N.K. Prasad learned Counsel appearing on behalf of respondent Nos. 1 and 2 and Mr. S.K. Chattopadhyay and Mr. P.K. Sinha learned Counsel appearing for respondent Nos. 3 to 8 on the other hand submitted that in terms of Rule 3 of the aforementioned Rules, respondent No. 1 is authorised to create posts.

It was further submitted that in terms of Rule 10, a Committee has to be constituted and upon coming into force the statutory Rules (Annexure-A to the counter affidavit), all the earlier guidelines issued by NABARD from time to time must be held to have been repealed by necessary implication and in that view of the matter, judgment of the Kerala High Court cannot be cited as a precedent.

It was further submitted that from the perusal of the order passed by the Supreme Court of India, as contained in Annexure-3 to the writ application itself, it would appear that a direction was given by the Supreme Court to test the merits of the candidates objectively.

It was further submitted that in any event, the aforementioned order of the Supreme Court of India is not the law laid down by the Supreme Court as contemplated under Article 14.1 of the Constitution.

15. Learned Counsel further submitted that allocation of marks for judging the merit of the candidates cannot be said to be arbitrary.

16. It was further submitted that while granting promotion on the basis of seniority-cum-merit, seniority cannot be the only criteria and as such where there is a concept of selection, merit has to be judged objectively, and the seniority has to be given mere a weightage and for that purpose it is not illegal to lay down the guidelines therefore or to lay emphasis on educational

qualification.

Learned Counsel in this connection have relied upon the following decisions:--

State of Mysore Vs. M.H. Bellary, State of Mysore Vs. C.R. Sheshadri and Others, . (State of Mysore v. P.N. Nanjundiah) 1979 (3) SLR 460 (L.B. Lal v. State of Bihar and Ors.) State of Orissa Vs. Durga Charan Das, Dr. (Mrs) Minakshi Bose Vs. The Union of India and Others, Judgment Today 410 (Government of A.P. v. P. Ravindera and Ors.) The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, .

17. Mr. P.K. Sinha further submitted that even 30 marks allotted for interview for testing the suitability of the candidates objectively cannot be said to be arbitrary. Learned Counsel in this connection has relied upon the following decisions:--

State Bank of India and others Vs. Mohd. Mynuddin, Mehmood Alam Tariq and Others Vs. State of Rajasthan and Others,

It was also submitted that the allotment of marks for judging the suitability of the candidates objectively as the rule is silent, executive instructions can be issued as has been held by the Supreme Court in Sant Ram Sharma Vs. State of Rajasthan and Another, and according to the learned Counsel, in this case, the said vacuum was filled up by the Board of Directors in terms of its resolution as contained in Annexure-A to the counter affidavit of Respondent Nos. 3 to 6 and 8.

18. The learned Counsel next contended that in terms of the provisions of the said Act and, particularly, Sub-section (2) of Section 27 thereof, the decision of the Selection Committee cannot become vitiated owing to any irregularity and in any event the petitioners having appeared before the Selection Committee cannot for the first time question the constitution thereof in this writ petition.

Learned Counsel in this connection has relied upon Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others,

19. Mr. Tapen Sen, in reply to the submissions made on behalf of the learned Counsel for the respondents, submitted that from a comparison of % instructions given by NABARD and the Service Rules as laid down in Annexure-A to the counter affidavit, it would appear that the same are in pari materia and in that view of the matter the judgment passed by the Kerala High Court which, is contained in Annexure-5 and which has been upheld by the Supreme Court of India must be held to be still applicable.

Learned Counsel further submitted that in this case the allotment of marks was contrary to the Rules and, thus, the same cannot be acted upon. According to the learned Counsel, in service, there can be only one norm and for this purpose learned Counsel has relied upon Bal Kishan Vs. Delhi Administration and Another, .

It was further submitted that from a perusal of the entire records, it would appear that the Selection Committee was wrongly constituted inasmuch as Sri

B.L. Mishra was never present. It was further submitted that the respondents have not filed notification appointing Sri M. N. Singh and thus the petitioners can always question the constitution of the Selection Committee.

20. In view of the rival contentions aforementioned, the following questions arise for consideration in this writ application:--

(A) Whether the norms for promotion from officers to the post of Area/Senior Manager as contained in Annexure-A to the counter affidavit filed on behalf of respondent Nos. 3 to 8 is ultra vires Rule 7 of the said Rules ?

(B) Whether the impugned order as contained in Annexure-4 is vitiated in law by reason of non-participation of the Director nominated by NABARD and participation of Mr. M.N. Singh in place of Mr. Anand Kumar, Director, nominated by Reserve Bank of India ?

21. The Regional Rural Banks Act, 1976 (in short, to be stated as the "said Act") came into force with effect from 19th February, 1976.

Section 2 (Ka) of the said Act defines "National Bank" to mean-"National Bank for Agriculture and Rural Development established u/s 3 of the National Bank for Agriculture and Rural Development Act, 1981"-NABARD in short.

"Sponsored Bank" in relation to a Regional Rural Bank means "a bank by which such Regional Rural Bank has been sponsored."

In terms of Section 3 of the said Act, the Regional Rural Banks are to be established by the Central Government by reason of a notification if requested so to do by a Sponsor Bank. Such Regional Rural Bank is a body corporate with perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and may sue and be sued in its own name subject to the provisions of the said Act.

Sub-section (3) of Section 3 of the said Act provides that it would be the duty of the Sponsor Bank to aid and assist the Regional Rural Bank in relation to the matters as provided for therein

Chapter III of the said Act provides for the Management of the Banks.

Section 8 provides that the general superintendence, direction and management of the affairs and business of a Regional Rural Bank shall vest in a Board of Directors who may exercise all the powers and discharge all the functions which may be exercised or discharged by the Regional Rural Bank, subject to the provisions of the said Act.

Section 17 of the said Act empowers the Regional Rural Bank to appoint such number of officers and other employees as may be necessary or desirable in such manner as may be prescribed for the efficient performance of its functions and for that purpose it may determine the terms and conditions of their appointment and service.

Second proviso to Section 17, however, provides that remuneration of officers and other employees appointed by a Regional Rural Bank shall be such as may be determined by the Central Government.

Sub-section (2) of Section 17 provides for a non-obstante clause specifying that no award, judgment, decree, decision or order of any Industrial, Tribunal Court or Authority may before the commencement of the said Act shall apply to the terms and conditions in relation to the persons appointed by a Regional Rural Bank.

Section 24 of the said Act provides that a Regional Rural Bank shall, in the discharge of its functions, be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Reserve Bank, give.

Sub-section (2) of Section 27 of the said Act provides that no act of a Chairman, acting in good faith, shall be invalid merely on the ground of the existence of any vacancy in, or defect in the constitution of, such Board or committee, as the case may be.

Section 29 provides for the rule-making power and Sub-section (ba) thus inter alia, empowers the Central Government to make rules after consultation with the National Bank and the Sponsor Bank, by notification in the official Gazette, the manner in which the officers and other employees of the Regional Rural Banks shall be appointed.

Section 30 provides the Board of Directors of a Regional Rural Bank the power to make regulation which would not be inconsistent with the provisions of the Act or the Rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act, after consultation with the Sponsor Bank and the National Bank and with previous sanction of the Central Government. Such Regulations are to be provided for by notification in the official Gazette.

22. It has not been nor could it be disputed in view of various decisions of the different High Courts including that of Kerala High Court in Writ Appeal No. 604 of 1988 which is contained in Annexure-5 that the directions of NABARD are binding upon the Regional Rural Bank.

It has also not been disputed that NABARD issued a direction to the Chairman of all the Regional Rural Banks relating to appointment of General Managers, Senior Managers/Area Managers in Regional Rural Banks by its Circular letter dated 31st December 1984 which is contained in Annexure-1. The said guidelines had been issued as they were to be given the shape of Service Regulation. The guidelines relating to the appointment of Area Manager or the General Manager issued by the NABARD are as follows:--

The post of Area Managers and Senior Managers will be equivalent in rank and will be interchangeable Appointments to the post of General Managers/Area

Managers and Senior Managers will be according to the following guidelines:

1. Area Managers Senior/Managers:

(a) Source of recruitment: 100% by promotion from amongst Officers working in the bank. Promotions will be on the basis of seniority cum-merit. If suitable officers are not available internally, these posts could be filled by taking temporarily officers of the Sponsor Banks and other banks/organisations on deputation.

(b) Qualifications and (i) A graduate of recognised University, preference to Agricultural/ Commerce/Economics Graduates. (ii) Eight years service as an officer in the bank.

The above condition (ii) will be relaxable by a maximum period of two years with the specific prior approval of National Bank of Agriculture and Rural Development if suitable candidates with requisite experience are not available.

(c) Reservation of Posts; As may be laid down by Government of India from time to time. (d) Procedure and Agency As may be laid down by Government for selection of India from time to time.

The above posts of Area Managers/ Senior Managers will carry a Special pay of Rs. 75 p. m. over the grade pay of the officer concerned.

23. The Central Government, however, by reason of notification dated 28th September, 1988 framed Rules in exercise of the powers conferred upon it u/s 29 read with Section 27 thereof after consultation with the National Bank and the Sponsor Banks specified in the first schedule to this Rules and in exercise of the powers conferred upon it u/s (1) of Regional Rural Banks (Amendment) Act, 1987 directed that the said Rules should come into force with effect from 20th September, 1988.

24. The relevant Rules with regard to the manner of appointment of Senior Managers and Area Managers is contained in Schedule II of the said notification which reads as follows:

7. Area Managers or Senior Managers:

(a) Source of recruitment: Hundred per cent by promotion from amongst confirmed officers working in the bank. Promotions will be on the basis of senior-cum-merit. If suitable officers are not available internally those posts could be filled by taking temporarily officers of the sponsor banks and other banks or organisations on deputation.

(b) Qualifications and (i) A Graduate of recognised eligibility University or any equivalent qualifications recognised as such by Government of India, preference being given to Agriculture or Commerce or Economic Graduates. (ii) Eight years service as an officer in the regional rural bank concerned; Provided that the Board may, with the prior approval of National Bank relax

the period of service by a period not exceeding two years, if suitable candidates of requisite experience are not available. Note.--The post of Area Managers and Senior Managers will be equivalent in rank and will be interchangeable.

(c) Mode of selection: Interview and assessment of performance reports for the proceeding three years period as officer for promotion.

25. In the aforementioned background, the questions which have been raised in this application has to be considered.

Re: question No. A

26. It is admitted that selection of candidates took place on 20th February, 1990 and 21st February, 1990 and the Board of Directors made final selection of the candidates for promotion to the posts of Senior Managers or Area Managers in its meeting dated 8-3-1991.

27. It is not in dispute that the vacancy of officers and employees in terms of Rule 7 of the aforementioned Rules can be filled up in accordance with the provisions of second schedule of the said Rules and subject to such guideline as may be issued by the Central Government from time to time.

28. It is not in dispute that the Central Government has not issued any direction with regard to the manner of appointment but despite the same, the Board of Directors had adopted a resolution of allotment of marks which is contained in Annexure-A to the counter affidavit filed on behalf of the respondent Nos. 3 to 6 and 8 laying down the norms for promotion from officers to the posts of Area/Senior Managers which reads as follows:

Norms for promotion from officer to the post of Area/Senior manager.--Total marks for selection on the basis of seniority-cum-merit on the pattern of Government of India Notification dated 28-9-1989 are as under:

(i) Seniority: Total 40 marks (one mark for each completed quarter of service).

(ii) Educational qualifications: Total 6 marks Graduate in Commerce/Agriculture/Economics/ CAIIB I/Diploma in Rural Development ... 3 marks Post Graduate in do-do-/CAIIB-I ... 2 marks Doctorate in do- -do- ... 1 mark _____ 6 marks.

(iii) Assessment of Performance of last 3 years ... Total 24 marks.

Very good (A) ... 8 marks Good (B) ... 6 marks

Average (C) ... 5 marks

Poor (D) ... 0 mark

(iv) Interview: Total 30 marks (qualifying marks for interview ... 10 marks)
_____ Grand total ... 100 marks _____

29. In the aforementioned background, the questions raised in this application

are to be determined.

The posts are to be filled up only by promotion from amongst the confirmed employees. Only in the event of non-availability of suitable officer, the posts could be filled up by obtaining the services of temporary officers of the Sponsor Bank etc. on deputation. Permanent vacancy in the post of Area Managers/Senior Managers can, therefore, be filled up only on promotion and not otherwise and, thus, no direct appointment can be made nor can the post be permanently filled up in any other manner e.g. transfer, deputation etc.

30. Rule 7, as noticed hereinbefore, provides that the vacancy can be filled up only in accordance with the provisions of the Second Schedule to the Rules and subject to such guidelines as may be issued by the Central Government from time to time. In terms of the aforementioned Rule, mode of selection is interview and assessments of performance reports for the preceding three years only subject to the officers having minimum qualifications and eligibility as mentioned in Clause "b". Further, it has been laid down therein that preference has to be given to the Agricultural/Commerce or Economic Graduates.

31. From the norms of promotion for officers to the posts of Area/Senior Managers as mentioned hereinbefore, it would appear that whereas 40 marks have been given to the seniority on the basis of one mark for each completed quarter of service, 60 marks have been provided for judging the merits of the candidates, namely, educational qualifications, assessment of performance of last three years and interview.

32. From a perusal of Annexure-A to the counter affidavit filed on of respondent Nos. 3 to 6 and 8 it appears that the total marks for selection behalf was allegedly fixed on the basis of seniority-cum-merit on the pattern of Government of India notification dated 28-9-1989. The aforementioned has not been filed by the parties. It is not known as to whether the rule of promotion in the said case was on the basis of seniority-cum-merit. or merit-cum-seniority.

33. The Kerala High Court in its judgment having taken into consideration the guidelines and circulars issued by NABARD came to the conclusion that the posts of Senior/Area Managers are non-selection post. The Kerala High Court upon consideration of the said guidelines issued by NABARD held as follows:

The process of screening should be confined to eliminating the unsuitable candidates and not for selecting the more meritorious of the candidates. It should also be remembered that while the criterion for posts of Area Managers/Senior Managers is on the basis of seniority-cum-merit Ext. P 1 itself lays down the criterion of merit only for appointment to the post of General Managers. The guidelines never contemplated assessment of comparative merit. This is clear from the fact that in the subsequent clarification given by the NABARD it clearly pointed out that it is a promotion post " on non-selection rule of seniority-cum merit" and it also further says that the rule envisages promotion by seniority with due considerations to minimum merit/fitness. It also lays down that there

should be no supersession unless warranted by adverse remarks, disciplinary action etc. It clearly mentions that the promotions made should be reviewed on the basis of these clarifications, and see that there are no supersessions unless warranted in the light of the above guidelines, we find that though the guidelines indicated seniority-cum-merit basis, under the guise of implementing the guidelines the Gramin Bank resorts to applying the principle of "merit-cum-seniority" and the process of assessing comparative merit. What the Gramin Bank has done is not contemplated by the guidelines. In this context it may also be mentioned that even Ext. R 1 (d) the subsequent clarification does not indicate a different situation. It only mentions that promotions are not to be given automatically without any screening, whatsoever and the management is entitled to make objective assessment to consider the insuitability. This clearly indicates that the screening is meant to weed out people who are not suitable for the post. It is not meant to give a chance for junior people with more merit to supersede the seniors.

The Division Bench of the Kerala High Court in coming to the aforementioned decision relied upon the decision of the Supreme Court in *State of Kerala and Another Vs. N.M. Thomas and Others*, .

34. In *State of Orissa v. Durga Charan Das* reported in AIR 966 SC 1547, upon which reliance has been placed by Mr. P.K. Sinha, the post was a selection post and the Supreme Court while considering the provisions of Rule 6 framed u/s 23(2) of the Government of India (Construction of Orissa) Order, 1936 held:--

As we have already indicated, promotion to a selection post depends upon several relevant factors, the number of vacancies in the posts of Registrars is one factor, the number of persons eligible for the said promotions is another factor; and the seniority of (he said competitors along with their past record and their merits as judged by the Public Service Commission, is yet another factor.

The Supreme Court, therefore, held.:--

The very concept of selection involves the consideration of seniority coupled with merit, which is generally described as the seniority, cum-merit

This decision, therefore, has no application in the facts of this case.

35. In *State of Mysore and Another Vs. Syed Mahmood and Others*, , the Supreme Court held:--

Where the promotion is based on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone. If he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted.

(underlining is mine for emphasis)

36. In *State of Mysore and Anr. v. P.N. Nanjundiah and Anr.* reported in : (1969)3SCC633 , the Supreme Court was considering a case of deputation and

held:

So long as the service of the employee in the new Department is satisfactory and he is obtaining the increments and promotions in that Department, it stands to reason that the satisfactory service and the manner of its discharge in the post he actually fills should be deemed to be rendered in the parent Department.

The Supreme Court, however, following the decision of Syed Mahmood's case (supra) held that the High Court should not have issued a writ of mandamus to promote the officer with retrospective effect stating:--

The correct procedure for the High Court was to issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to his seniority and fitness the 1st respondent should have been promoted on the relevant date and so what consequential benefits should be allowed to him.

37. The decision of the Supreme Court in Syed Mahmood's case (supra) as also in P.M. Nanjundiah's case (supra) were followed by it in State of Mysore Vs. C.R. Sheshadri and Others, wherein it was held:--

On the other hand if seniority-cum-merit is the rule as the Supreme Court decisions cited before us promotion is problematical. In the absence of positive proof of the relevant service rule, it is hazardous to assume that by efflux of time the petitioner would have spiralled up to Deputy Secretaryship. How could we speculate in retrospect what the rule was and whether the petitioner would have been selected on merit and on the strength of such dubious hypothesis direct retroactive promotion and back pay.

The Supreme Court also observed:--

Nothing has been suggested against the petitioner in his career to disentitle him to promotion and we have no doubt Government will give him his need. However if the criterion for promotion is one of seniority-cum-merit, comparative merit may have to be assessed if length of service is equal or an outstanding junior is available for promotion.

(Underling is mine for emphasis)

38 This aspect of the matter was again considered by the Supreme Court in State of Kerala and Another Vs. N.M. Thomas and Others, wherein it was held:

The principle of equality is applicable to employment at all stages and in all respects, namely, initial recruitment, promotion, retirement, payment of pension and gratuity. With regard to promotion, the normal principles are either merit-cum-seniority or seniority-cum-merit. Seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority. This will not violate Articles 14 16 (1) and (2). A rule which provides that given the necessary requisite merit, a member of the backward class shall get priority to ensure adequate

representation will not similarly violate Article 14 or Article 16 (1) and (2). The relevant touchstone of validity adequate representation for the unrepresented backward community or goes beyond it.

(Underlining is mine for emphasis)

39. In *L.B. Lall v. State of Bihar and Ors.* reported in 1979 (3) SLR 460 upon which Mr. N.K. Prasad has placed strong reliance, this Court was considering a case where it was contended that the case of the petitioner thereof was not considered at all; whereas on fact it was found that his case was considered.

40. In *Dr. (Mrs) Minakshi Bose Vs. The Union of India and Others*, upon which Mr. P.K. Sinha has relied upon, the court was considering a case where the order of promotion was to be passed on the basis of merit and seniority, that is, merit-cum-seniority and, therefore, the said decision has no application in the facts and circumstances of this case.

41. There cannot be any doubt that promotion cannot be claimed as a matter of right and for the purpose of promotion, the minimum educational qualification and other eligibility criteria may be laid down.

42. However in this case petitioner's claim for promotion was denied not on the ground that they do not have the requisite minimum educational qualification.

43. In *Government of Andhra Pradesh and Anr. v. P. Ravinder and Ors.* reported in 1991 (3) Judgment Today 480, the question which arose for consideration if by reason of a policy decision, the State Government had issued a notification awarding 5 marks to those persons who would answer the question in Telugue language in the examination held by the Andhra Pradesh Service Commission, the said benefit could not have been extended to the examination conducted by Bodies other than the State Public Service Commission. The said decision, therefore, has no application in the facts and circumstances of this case.

44. In *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, , the Supreme Court merely held that laying down qualifications for promoting a person to a higher post is not violative of Article 14 of the Constitution of India. The aforementioned decision of the Supreme Court is also not applicable to the facts and circumstances of this case.

45. In *State Bank of India v. Mel. Moinuddin* reported in AIR 1987 SC 1879, the Supreme Court held that whenever promotion to a higher post is made on the basis of merit, no officer can claim, promotion to a higher post as a matter of right by virtue of seniority alone. In that case, the Supreme Court followed Syed Mahmood's case (supra) in the matter of grant of relief. In that case, promotion was to be made not merely upon the eligibility but also on. merit and as such promotion was as to accorded only after proper evaluation of the service record, performance, appraisal and potentiality of the officer concerned to assume higher responsibility. The case of the writ petitioner was considered by the Management but he was not found fit for promotion.

In that situation, the Supreme Court held that whenever promotion to a higher post is to be made on the basis of merit, no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone.

46. In this case, as noticed hereinbefore, the petitioners contend that the basis of consideration evolved by the Board of Directors was itself illegal and vitiated in law.

47. In *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, , the selection was made by an Expert Committee appointed by the University. However, the High Court considered the comparative merits of the candidates and in that situation, the Supreme Court held that the High Court in exercise of its writ jurisdiction cannot sit in appeal over selection so made. The aforementioned decision, therefore, has also no application in the facts and circumstances of this case.

48. From the conspectus of the decisions as referred to hereinbefore, therefore, there is no doubt that the judgment of the Kerala High Court is applicable despite the fact that promotion is to be effected in terms of the statutory Rules which is contained in Annexure-A to the counter affidavit filed on behalf of respondent Nos. 1 and 2.

49. Evidently in view of Rule 7, the Board of Directors have exceeded their limits in laying down the norms for promotion of officers to the posts of Area/Senior Managers. From Annexure-A to the counter affidavit filed on behalf of respondent Nos. 3 to 6 and 8 and as noticed hereinbefore, it will appear that they have fixed only 40 marks towards seniority and 60 marks for other qualifications for the purpose of judging the comparative merits of the candidates. Even in laying down the marks for educational qualification, they have allotted three marks not only in respect of those persons who are Graduate in Commerce/Agriculture/Economics but has allotted the same marks for CAIIB I/Diploma in Rural Development which is clearly contrary to the Rule. Similarly no mark should have been allotted for post graduate degree or Doctorate in the aforementioned subjects, as in respect thereof the rule does not authorise the Board so to do.

Similarly for interview not only total 30 marks have been allotted to it, but qualifying marks therefore had been laid down as being 10 marks, Laying down of qualifying marks for interview must be held to be in total disregard of the statutory Rules, as such qualifying marks may be laid down in the cases of direct appointment in a selection post or where the job is of a particular nature.

50. Further, it is now well settled by various decisions of the Supreme that for judging the merits of the case, 30 marks should not be allotted for interview.

Reference in this connection may be made to *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, and in *Mahendra Singh Garg. v. State of Punjab* reported in 1990 (4) (SC) 704, wherein it has been held that not more than 15 marks should be fixed for interview.

The Supreme Court in *Munindra Kumar and others Vs. Rajiv Govil and others*, held that marks for interview and group discussion should not exceed 10% and 5% i.e. 15% of the total marks.

51. The Supreme Court, however, in the facts and circumstances of that case and keeping in view the fact that the petitioners thereof were aware of the decision of the employer appearing before the Interview Board and keeping in view the other considerations, did not consider it just and proper to set aside the selection already made. It further took into consideration that even if a direction is given to the Board to create three more posts and give chance to all candidates securing equal or higher marks than the writ petitioners, there is no chance for the writ petitioners being selected and thus it held that such exercise would be in futility. The Supreme Court however struck down Rule 4 for future guidance.

52. Mr. P.K. Sinha firstly submitted that in view of the decision of the Supreme Court in *Mehmood Alam Tariq and Others Vs. State of Rajasthan and Others*, , 30 marks given for interview cannot be said to be bad in law. There cannot be any doubt in view of various decisions of the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, ; in *Lila Dhar Vs. State of Rajasthan and Others*, ; in *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, ; in *State of U.P. Vs. Rafiquddin and Others*, that allocation of marks for viva voce including the minimum qualifying marks may vary from service to service and from purpose to purpose. There is thus not inflexible formula and the same is required to be considered on the facts of each case and upon taking into consideration the relevant provisions of the service rules.

However, as noticed hereinbefore in this case the petitioners are to be promoted to a non-selection post. It is not a case where the fresh appointment has to be made based upon written test and viva voce test. It is also not a case where the promotion has to be made on the basis of merit-cum-seniority. As noticed hereinbefore, the Supreme Court itself has laid down that for the purpose of giving promotion on the basis of seniority-cum-merit the comparative merit is required to be considered once they stand equally so far as the seniority is concerned.

I may, however, hasten to add that it does not mean that for the purpose of considering the suitability of a candidate to hold higher post, seniority alone will have to be taken into consideration.

53. In this case, as noticed hereinbefore, the mode of selection for interview and assessment of performance report for the preceding three years and the mode of selection being seniority-cum-merit, there cannot be any justification for awarding only 40 marks for seniority and 60 marks for evaluating the merits including assessment of performance of last three years.

54. The purpose of assessment as also the interview as laid down in the statutory Rules must be judged in the context of the decisions of the Supreme Court as referred to hereinbefore, namely, for the purpose of taking into

consideration as to whether the person who is to be promoted is suitable for discharging a higher responsibility or not. It is not a case whether comparative merits have to be considered for the purpose of giving promotion to a person having a better merit either on the basis of educational qualification or assessment of performance or his performance in the viva voce.

55. However, the case of a candidate having outstanding merit may be considered for supersession of a senior.

56. From a perusal of Clause 4 of Annexure 2 to the writ application, which contains the seniority list, it would appear that it was expected of all the Bank employees that they would show due respect to the senior officers and employees and in "discharge of their official duties shall comply with their directions.

57. It is true that the petitioners have not alleged any mala fide on the part of the members of the Selection Committee, but in this case they have questioned the very basis of selection, namely, whether the selection could have been on the basis of seniority-cum-merit or merit-cum-seniority. Annexure-A to the counter-affidavit filed on behalf of respondent Nos. 3 to 6 and 8, according to the petitioners, was not circulated. The validity thereof has been questioned only when the same was produced before this Court as annexure to the aforementioned counter-affidavit.

The Supreme Court in *Munindra Kumar's* case (Supra) held:--

It is no doubt correct that they cannot be estopped from challenging the rule which is arbitrary and violative of Article 14 of the Constitution, but in nodulating the relief their conduct and the equities are the relevant consideration.

As contended by the learned Counsel appearing for the respondents that the rule being a statutory rule, is binding upon everybody and supersedes the guidelines issued by NABARD from time to time.

58. Rule 7 of the said Rules provides that the vacancy have to be filled up in accordance with the provisions of Second Schedule to the Rules and subject to such guidelines as may be issued by the Central Government, from time to time.

The Central Government having not issued any guidelines, in my opinion, the respondent-Bank has exceeded its jurisdiction in laying down the guideline for such promotion as noticed hereinbefore and thus took into consideration the irrelevant matters.

However, there cannot be any doubt that the Selection Committee for the purpose of selection may lay down such suitable criteria within the frame work of the decisions of the Supreme Court as referred to hereinbefore for promoting the suitable persons to the posts of Senior/Area Managers. It is pertinent to notice that guidelinss were issued by NABARD which were to be given the shape of service regulation. From a comparison of the said guidelines (Annexure-1) and

the relevant provision of the service rules, there cannot be any doubt that the same are in pari materia. In the rules only the mode of selection has been provided.

It is, therefore, clear that the judgment of the Kerala High Court (Annexure-5) still holds the field and must be held to be applicable even now, so far as its interpretations relating to the rule of promotion on the basis of "Seniority-cum-merit" is concerned. From the decisions cited hereinbefore also it is clear that the contention of the learned Counsel appearing for the respondents that comparative merits of the candidates are to be judged, is not correct and thus cannot be accepted.

59. At this juncture, argument of Mr. N.K. Prasad with reference to the order of the Supreme Court as contained in Annexure-3 to the writ application to the effect that even the Supreme Court therein directed that the merit of the petitioner would have to be assessed with reference to his records, may be noticed.

60. In SLP (Civil) No. 5941/90, the Supreme Court was evidently considering a special leave application arising out of Writ Appeal No. 679/88. In that case, the person who was promoted by the Bank was earlier punished in a departmental proceeding, but still then he was given a very high ranking. In that situation, the Division Bench of the Kerala High Court opined:--

This clearly indicates that even persons with adverse remarks were not excluded and on the other hand they were given undue advantage. If the guidelines are to be taken into account, a person like Sri Mukundan should have been eliminated on the ground of unsuitability. Though Sri Mukundan is guilty of filing a false affidavit, we do not feel that, in the background of this case we should take any action against him. At the same time we express our strong displeasure for his conduct and we hope and trust that at the time of selection the Bank would take into account his conduct and the earlier disciplinary proceedings against him.

Only on this background, the Supreme Court gave the direction that "the case of petitioner of SLP (Civil) 5941 of 1990 should be assessed objectively and with reference to his records and without considering the observations made by the High Court, in paragraph 28 of the judgment impugned before us."

61. As the law relating to seniority-cum-merit has been laid down by the Supreme Court in the decisions as quoted hereinbefore, it is not necessary to dwell upon the aforementioned subject any further.

62. In this view of the matter, it must be held that the impugned order of promotion dated 30th March, 1991 as contained in Annexure-4 must be held to be vitiated in law. Respondent, Bank is, therefore, directed to consider the matter afresh in the light of the decision of the Division Bench of the Kerala High Court (Annexure-5) as also in the light of the decisions of the Supreme Court and the

observations made hereinbefore.

Re. Question No. B:

63. A Selection Committee was constituted by the Board of Directors consisting of (a) Chairman; (b) Director nominated by Reserve Bank of India (c) Director nominated by NABARD and (d) the Director nominated by Sponsor Bank. However, the Chairman was authorised to nominate a person belonging to Scheduled Caste or Scheduled Tribe if none of the members of the Committee belongs thereto. In terms of the aforementioned resolution, the presence of any three members listed in (a), (b), (c) and (d) abovementioned would form the Interview Board.

64. As noticed hereinbefore, Section 27 of the Act also provides that no act of the Chairman acting in good faith shall become invalid on the ground of the existence of any vacancy in or defect in the Constitution of such Board or the Committee, as the case may be.

65. In paragraph 12 of the counter-affidavit filed on behalf of the respondent Nos. 1 and 2, it has categorically been stated that Dr. B.N. Singh was the Chairman; Shri Anant Kumar, Director nominated by Reserve Bank of India; Shri B.L. Mishra, Director nominated by National Bank, Shri H.N. Chaturvedi, Director nominated by the Sponsor Bank.

The Selection Committee held its meeting on 8-3-1991 and recommended the names of the candidates selected by it on the basis of seniority, educational qualification, appraisal report of three years and marks obtained at the interview for consideration for promotion.

66. It is therefore, not correct to say that the Director nominated by NABARD was not present. This fact has also been reiterated by respondent Nos. 1 and 2 in Paragraph 4 of the supplementary counter-affidavit filed on 16-9-1991.

67. With regard to the participation of Sri M.N. Singh it has been pointed out in the said supplementary counter-affidavit that Sri M.N. Singh was originally the nominee Director of the Reserve Bank of India in the Selection Committee as would appear from letter No. 197 dated 7-9-1988 as contained in Annexure-B to the supplementary counter-affidavit but subsequently the Reserve Bank of India by its letter dated 17-11-1990 intimated that Sri Anand Kumar of Reserve Bank of India had been nominated by it (Annexure-C).

68 It is, therefore, evident that there has been no defect in the constitution of the Selection Committee. Further, the petitioners themselves have appeared before the said Committee and, thus, they cannot be permitted to question the validity thereof.

Reference in this connection may be made to Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, and in Kamal Kumar Sinha Vs. Indira Gandhi Institute of Medical Sciences and Others, .

69. In this view of the matter, the petitioners in the facts and circumstances of this case could not have questioned the validity of constitution of the Selection Committee. This question, therefore, must be answered in favour of the respondents and against the petitioner.

70. In view of my findings aforementioned, this writ application is allowed and the impugned order of promotion as contained in Annexure-4 is quashed. Let a writ of mandamus be issued to the respondent-Bank for consideration of the matter relating to promotion of all eligible candidates keeping in view the directions made hereinbefore. However, in the facts and circumstances of this case, there will be no order as to costs.