
(2015) 11 OHC CK 0038
In the Orissa High Court
Case No : O.J.C. No. 16314 of 1998

Jayanarayan Mishra and Others

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Regional Rural Banks Act, 1976 — Section 29

Citation : (2016) 1 ILR (Ori) 141 : (2016) LabIC 1112

Hon'ble Judges : B.R. Sarangi, J.

Bench : Single Bench

Advocate : A.K. Mishra, B.B. Acharya, J. Sengupta, D.K. Panda, P.R.J. Dash, C. Mohanty and G. Sinha, for the Appellant; P.V. Ramdas and P.V.B. Rao, for the Respondent

Final Decision : Disposed Off

Judgement

Dr. B.R. Sarangi, J.—The petitioners, who are the clerical cadre people of State Bank of India, have filed this application claiming for promotion to Junior Manager Post Grade-I in the normal channel in consonance with promotion policy issued by the State Bank of India pursuant to Circular Special Letter No. CDO/PER & HRD/87 of 1997-98 dated 24th February, 1998 in Annexure-3 and further seeking to quash the promotion of opposite party Nos. 3 to 12 as per Annexure-5 and to grant all the consequential financial benefit as admissible to them in accordance with law retrospectively.

2. The short fact of the case, in hand, is that the petitioners have been appointed as Clerk in State Bank of India on different dates. Promotion to the Officer's grade JMG Scale-I is being done by the State Bank of India under two channels i.e. merit channel and normal channel. The merit promotion is being conducted from amongst the incumbents, who have to compete with regard to the posts which are going to be filled up by way of merit and merit alone. With regard to normal channel, promotion has to be made on the basis of seniority- cum-merit. Opposite party No. 2 issued a staff circular on 14.10.1992 bringing modification

of the promotion policy in both the channels such as (i) normal channel and (ii) appointment of Trainee Officers channel. So far as normal channel is concerned, it was provided that the number of employees to be called would henceforth be five times the number of vacancies with a proviso that once an employee is called for the written test, he/she would continue to be called in the subsequent years also till he/she exhausts all the chances available to him/her even if the later exercise would lead to calling of employees in excess of 1:5 ratio. The number of chances that would be available to an employee would stand increased to 5 and all such chances would have to be availed of in consecutive occasions with no gap between the availing of the penultimate and fifth and final chance. The guideline issued on 14th October, 1992 was subsequently amended in staff Circular No. 5 of 1993 on 7th January, 1993 in which it was provided that the clerical and cash department staff, who have not crossed 50 years as on 1.8.1992 and 21 years as on 1.8.1992, are eligible to appear in the examination and the ratio of 1:5 has also been amended. Then the Management issued Circular Special Letter dated 24.2.1998 referring to earlier staff circular dated 14.10.1992 and 7.1.1993 in terms of which the policy for promotion of clerical cadre staff to Jr. Management Grade under both the channels, i.e., normal as well as Trainee Officers was partially modified. In Clause-4 it has been specifically mentioned that an employee with a minimum service of 15 years is eligible to appear for the test for promotion to Junior Management Grade under normal (seniority-cum-merit) channel. The petitioners state that while considering their promotion vis-à-vis opposite parties 3 to 12, the Circular Special Letter No. CDO/PER & HRD/87 of 1997-98 dated 24th February, 1998 in Annexure-3 has not been taken into consideration. Being aggrieved by such conduct of the opposite parties 1 and 2, they have approached this Court by filing this application seeking for the aforementioned reliefs.

3. Mr. D.K. Panda, learned counsel appearing on behalf of Mr. A.K. Mishra, learned Sr. Counsel for the petitioners urged that the promotion of the opposite parties 3 to 12 having been made contrary to the Circular Special Letter dated 24.2.1998 in Annexure-3, they seek for quashing of the same. He further states that the promotion should be effected on the basis of seniority-cum-merit. To substantiate his contention, he has relied upon the judgment of the apex Court in *B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc.*, .

4. Mr. P.V.B. Rao, learned counsel for opposite parties 1 and 2 states that as per the policy in vogue in the impugned promotion exercise, all the employees with the requisite service seniority of 15 years were called for the written test and thereafter, employees up to one and half times the number of vacancies were called for the interview in order of merit, i.e., in order of marks secured by them in the written test. The marks in the written test and interview were added together to prepare the final merit list (in order of total marks) of successful candidates for the sanctioned number of vacancies. He further submits that while conducting the promotion exercise, the provisions of Reservation Policy for S.Cs. and S.Ts. were also taken into consideration. He further submits that since no

illegalities or irregularities have been committed by the opposite parties in granting promotion to the opposite parties 3 to 12, the writ application should not be entertained.

5. Learned counsel appearing for opposite parties 3 to 12 concurred with the argument made by the learned counsel for opposite parties 1 and 2 and stated that no illegalities having been committed in the matter of promotion to the opposite parties 3 to 12, this Court should not interfere with the same.

6. On the basis of the facts pleaded above, it is an admitted fact that the petitioners were working in Clerical Grade of the State Bank of India. They sought for promotion to the cadre of Junior Management Grade-I in consonance with the promotion policy formulated by the opposite parties. Staff Circular No. 46 of 1992 dated 14.10.1992 and Staff Circular No. 5 of 1993 dated 07.01.1993 in terms of which the policy for promotion from clerical cadre to Junior Management Grade under both the channels viz. normal as well as Trainee Officers was further modified by the Circular Special Letter No. CDO/PER & HRD/87 of 1997-98 dated 24th February, 1998 in Annexure-3. As per the policy for promotion under the normal channel, it provides inter alia for calling candidates for written test in the ratio 5 for one vacancy. In view of the limited number of vacancies and the stipulated number of chances each candidate could take, the same set of candidates is being permitted to appear for the test, year after year. The employees having minimum of service of 15 years are eligible to appear for the test for promotion to Junior Management Grade under normal channel and their promotion has to be considered on the basis of seniority-cum-merit. As per the said circular policy limiting the number of candidate to 5 for 1 vacancy along with the provisions for calling the repeaters until they exhaust all their chances consecutively (5 in case of general candidates and 6 in case of SC/ST candidates)/become over-aged would be continued for the year 1997-98. In the event of the present policy not resulting the service range for being eligible for promotion to 15 years, the bank will allow all the cadre employees putting in 15 years of total service as on the 1st August 1997 and otherwise eligible for promotion to appear for the test. In order to ensure that the ratio of the number of candidates to vacancies is not less than 5 to 1 against reserved vacancies, service requirement will be lowered for SC/ST candidates to the required extent where necessary. On the basis of such promotion policy dated 24.02.1998 in Annexure-3, the basic criteria is seniority-cum-merit. The sole contention of the petitioner is that while considering their promotion the policy of seniority-cum-merit has been given a go-bye, as a result the opposite party Nos. 3 to 12 have got promotion on the basis of mark secured in the written test as well as viva-voce test taken together on the basis of merits. It is stated by opposite parties that for promotion in the normal channel employees with requisite service seniority who have been called for the written test and number of employees for the interview is restricted to one and half times the number of vacancies as provided for in the promotion policy. The marks in the written test and interview are added together to prepare the final merit list (in order of total in arks) of

successful candidates for the sanctioned number of vacancies. The petitioners dispute the methodology adopted by the authority for granting promotion to opposite party Nos. 3 to 12 and state that the opposite parties have made out that they are to conduct a written test and thereafter the interview and the marks secured in both are added together to prepare the merit list. As such, there is no comparative merit to be determined giving a go-bye to the seniority of the petitioner under the policy of promotion. The policy clearly envisages that promotion has to be effected on the basis of seniority-cum-merit and as such, there is no merit channel promotion and therefore, seniority has got primacy over the merits of the candidates, meaning thereby that less meritorious candidates can be given promotion on the basis of their seniority. In that view of the matter promotion has been granted to opposite party Nos. 3 to 12 contrary to the circular issued on 24.02.1998. In this factual backdrop of this case, let this Court consider the meaning of "seniority-cum-merit" as has been done by the apex Court from time to time.

7. In *State of Mysore Vs. C.R. Sheshadri and Others*, in para 2, the apex Court has held that if the criterion for promotion is one of seniority-cum-merit, comparative merit has to be assessed if length of service is equal or an outstanding junior is available for promotion.

8. In *State of Kerala and Another Vs. N.M. Thomas and Others*, , the Constitution Bench comprising of seven judges of the apex Court has held that "seniority-cum-merit" means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority. Hon"ble Justice A.N. Ray, C.J. has explained the criteria of seniority-cum-merit in para 38, which states as follows:

"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."

9. In *Ved Prakash v. State of Haryana* (2002) 10 SCC 359, while considering rule 9 of Punjab Forest Subordinate (Executive Section) Rules, the apex Court has held as follows.

"The expression "seniority-cum-merit" cannot be construed to be equivalent to seniority alone. Where a promotion is based solely on the basis of the seniority, then there is no question of adjudging the merit of the relevant contesting candidate and promotion is bound to be given on the basis of the seniority in the feeder cadre. But when Rule 9 itself provides that the promotion is based on the criterion "seniority-cum-merit", it is difficult to comprehend how "merit" will be ignored from consideration, particularly when the selecting authority brought to the notice of the Court that the senior persons were duly considered but were adjudged unsuitable to hold the promotional post because of their performance in the feeder cadre and/or because of some proceedings pending against them."

10. In B.V. Sivaiah (supra) while considering the provisions of Regional Rural Banks (Appointment and Promotions of Officers and Other Employees) Rules (1988) Sch. 2, Para 7(c) which has been issued under the provisions of Section 29 of the Regional Rural Banks Act (21 of 1976), the Apex Court in para-18 has held as follows:

"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, 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 service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit."

11. The apex Court in Rajendra Kumar Srivastava and Others Vs. Samyut Kshetriya Gramin Bank and Others, , while making a distinction between "seniority-cum-merit" and "merit-cum-seniority", in para 11 and 12 has held as follows:

"11. It is also well settled that the principle of seniority-cum-merit, for promotion, is different from the principle of "seniority" and the principle of "merit-cum-seniority". Where promotion is on the basis of seniority alone, merit will not play any part at all. But where promotion is on the principle of seniority-cum-merit, promotion is not automatic with reference to seniority alone. Merit will also play a significant role. The standard method of seniority-cum-merit is to subject all the eligible candidates in the feeder grade (possessing the prescribed educational qualification and period of service) to a process of assessment of a specified minimum necessary merit and then promote the candidates who are found to possess the minimum necessary merit strictly in the order of seniority. The minimum merit necessary for the post may be assessed either by subjecting the candidates to a written examination or an interview or by assessment of their work performance during the previous years, or by a combination of either two or all the three of the aforesaid methods. There is no hard-and-fast rule as to how the minimum merit is to be ascertained. So long as the ultimate promotions are based on seniority, any process for ascertaining the minimum necessary merit, as a basic requirement, will not militate against the principle of seniority-cum-merit.

12. In B.V. Sivaiah (supra), a three-Judge Bench of this Court held that while the principle of seniority-cum-merit laid greater emphasis on seniority, the principle of merit-cum-seniority laid greater emphasis on merit and ability, with seniority playing a less significant role. This Court held: (SCC p. 730, para 18)

"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."

12. With regard to the meaning of "seniority-cum-merit" for consideration for promotion, the apex Court has clarified in *Rajendra Kumar Srivastava* (supra) that minimum merit necessary for the post may be assessed either by subjecting candidates to a written examination or an interview or by assessment of their work performance during previous years or by a combination of either of all the three of the aforesaid methods. There is no hard-and-fast rule as to how minimum merit is to be ascertained. So long as ultimate promotions are based on seniority, any process for ascertaining minimum necessary merit, is a basic requirement, will not militate against the principle of seniority-cum-merit. Similar view has also been taken in *B.V. Sivaiah* (supra) cited by the learned counsel for the petitioners.

13. As has been stated in the counter affidavit filed by the Bank, the employees with the requisite service seniority of 15 years are called for the written test and thereafter, employees up to one and half times the number of vacancies are called for the interview in order of merit i.e. in order of marks secured by them in the written test. The marks in the written test and interview are added together to prepare the final merit list (in order of total marks) of successful candidates for the sanctioned number of vacancies and while conducting the promotion exercise, the provisions of the Reservation Policy for SCs/STs are also taken into account. But nothing has been spelt out with regard to consideration of seniority in the counter affidavit save and except it has been indicated that employees with requisite service seniority of 15 years have been called for the written test. The circular did not prescribe the minimum qualifying marks for assessment of performance and merit on the basis of which the employees would be considered for being selected and appointed on promotion. Therefore, the selection as stated in the counter affidavit clearly speaks that same was made amongst those employees who have secured highest number of marks amongst the eligible officers pursuant to the written and interview test held by the authority. Consequently, merit has been given primacy over seniority. In that view of the matter promotion of the clerical cadre employees has been considered on the basis of merit-cum-seniority and not seniority-cum-merit as required under the policy. As such, the promotion/selection has been made contrary to the principles laid down by the authority in Annexure-3.

14. Referring to the ratio decided in C.R. Sheshadri (supra) the promotion of the employees basically is a discretionary power of the employer. Therefore, instead of setting aside the promotion of opposite party Nos. 3 to 12, it would be just and proper to issue necessary direction to opposite parties 1 and 2 to reconsider the case of the petitioners vis-?-vis opposite party Nos. 3 to 12 for promotion afresh in consonance with the promotion policy in Annexure-3 on the basis of seniority-cum-merit. I direct accordingly.

15. With the aforesaid observation and direction, the writ application stands disposed. No costs.