(1999) 09 DEL CK 0050

In the Delhi High Court

Case No : CWP. No. 3994 of 1999

Kulvinder Singh Sethi APPELLANT

Vs

Punjab and Sind Bank RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Citation : (1999) 6 AD 407 : (1999) 82 DLT 617 : (1999) 51 DRJ 406

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. Rajiv Nayyar, Mr. C. Mukund, Anees Ahmed and N. Qureshi, for the Appellant; Mr. P.P. Rao , Mr. Jagat Arora and Mr. Rajat Arora, for the Respondent

Judgement

A.K. Sikri, J.—Punjab and Sind Bank, respondent No. 1 in this case, is a statutory banking Corporation created under the Banking Companies (Acquisition and Transfer of undertakings) Act, 1980 (hereinafter referred to as the Act, for short). Under the provisions of Section 12 read with Section 19 the Act, service regulations are framed for its officers, namely "Punjab and Sind Bank Officers Services Regulation, 1982". Regulation 17 of these Regulations empowers the bank to frame promotion policy and accordingly, the respondent bank had framed promotion policy for its officers. This promotion policy was framed having regard to the guidelines of the government.

2. In this case, we are concerned with promotion of officers from Middle Management Grade Scale II (hereinafter referred to as Scale II, for short) to Middle Management Grade Scale III (hereinafter referred to as Scale III, for short). As per this policy, the selection was on the basis of the following criteria : confidential report - 60% and written test - 40%. Various officers associations/ unions of the bank wanted certain changes in the aforesaid criteria for further promotions and accordingly they gave their suggestions to the respondent-bank. Suggestions were also given by the Union of the petitioner, namely, "All India Punjab and Sind Bank Officers Union (Registered)" (hereinafter referred to as

"the Union, for short) of which petitioner is the General Secretary. There is another union called the "All India Punjab and Sind Bank Officers Federation" (hereinafter referred to as the Federation, for short) which is admittedly a federation of majority of the officers employees in the respondent-bank. It also gave its suggestions. Discussions were held on the suggestions given by these unions. Ultimately it culminated into settlement arrived at between the respondent Bank and the Federation in the meeting held on 21st April, 1999. Minutes of the meeting held on 21st April, 1999 are enclosed by respondentbank Along with its counter affidavit and a perusal thereof shows that various caluses of the existing promotion policy were discussed and the changes which could be made in the promotion policy were " agreed between the parties". All these changes are mentioned in the Minutes of the meeting held on 21st April, 1999. One of the changes, which was agreed upon, and which is subject matter of challenge in the instant petition relates to awarding of marks for job responsibility''. As mentioned above, in the then existing promotion policy the selection was on the basis of marks awarded under the heads:

Confidential Report - 60% and Written Test - 40%

3. In this meeting between the respondent-bank and the Federation it was agreed to modify the criterion by awarding the marks under three heads:-

Confidential Report - 50% marks Job Responsibility - 10% marks Written Test - 40% marks

4. Marks for job responsibility were agreed to be given in the following manner as is reflected in the Minutes dated 21st April, 1999:-

"Subject to maximum of 10 marks One mark will be given for each year of service as Branch in charge in Scale II, and half mark will be given to all other Scale II officers for working in branches, controlling officers, and H.O, in Scale II. It any major penalty is awarded for any misconduct as Branch Manager, then no mark will be awarded for full tenure in that Branch as Branch Manager or 3 years whichever is less. No mark for suspension period will be given unless treated on duty by Disciplinary Authority or for unauthorised leave. One mark will also be given where service exceeds 6 months but less than one year".

5. After the aforesaid agreement having reached between the respondentbank and the officers Federation, the respondent-bank framed new promotion policy incorporating the changes agreed upon between the respondent-bank and the officers Federation and circulated this new promotion policy vide Staff Circulated No. 2550 dated 14th June, 1999 which came into force w.e.f. 2nd June, 1999. This new promotion policy is annexed by the petitioner as Annexure P-1 to the writ petition. Para 6.4 of this policy deals with marks for job responsibility which is essentially based on agreement between the respondent-bank and the officers Federation recorded in its Minutes dated 21st April, 1999. Para 6.4. reads as under :

6.4 - MARKS FOR JOB RESPONSIBILITY

Subject to maximum of 10 marks, one mark will be given for each year of service as Branch in charge in Scale II or III as the case may be, and half mark will be given to all other Scale II and III officers for working in branches (other than as Branch Manager), controlling offices and HO in Scale II or III.

Marks for job responsibility for total tenure at the controlling offices shall be up to a maximum of ''4'' only.

Provided that if any major penalty is awarded for any misconduct as Branch Manager, then no mark will be awarded for full tenure in that Branch as Branch Manager or 3 years whichever is less.

Provided further, no mark for suspension period will be given unless treated on duty by Disciplinary Authority and/or for unauthorised leave.

One or half mark, as the case may be, will be given where service exceeds 6 months but less than one year.

For promotion from MMGS-II to MMGS-III the services rendered in MMGS-II and for promotion from MMGS-III to MMGS-IV, the services rendered in MMGS-III only will be counted for promotion to MMGS-III and MMGS-IV respectively.

6. Petitioner has filed this petition challenging aforesaid clause 6.4 of the new promotion policy as arbitrary and unconstitutional, being vocative of articles 14, 15, 19 and 21 of the Constitution of India with the prayer that respondent-bank should be directed not to hold any departmental examination under the impugned clause 6.4 of the new promotion policy.

7. Let me now state in brief the grounds on which clause 6.4 of the new promotion policy is challenged. As noticed above, petitioner is the General Secretary of the Union. It is not a party to the deliberations between respondent-bank and the officers Federation which culminated into aforesaid settlement and the changes in the promotion policy agreed between the parties which formed the basis of new promotion policy. It is stated by the petitioner in the petition that clause 6.4 would put these officers in undue disadvantage who have not worked as branch in charge and for reasons totally beyond their control have worked in:-

a. branches as not branch incharge; or

b. controlling offices or head office.

8. It is submitted that an officer has no control whatsoever to choose his office or place of posting which is prerogative of the management. The bank may post blue eyed boys to branches as branch in charge to give them advantage to getting one mark against others who are posted in the branches but not as in charge or in controlling offices or head office and the persons belonging to latter category, only half mark for each year of service. It would bring inequitable

results inasmuch as branch in charge with same number of years of service would be able to get five marks more than other officers of the same bank with equal number of years of service. This clause 6.4 of the new promotion policy gives undue weightage to officers who have worked as branch in charge and is thus discriminatory. It is stated that it creates two classes of persons and this classification is unreasonable which has not direct nexus with the objective sought to be achieved.

9. Mr. Rajiv Nayyar, Senior counsel appearing on behalf of the petitioner dilated on the aforesaid foundation in the writ petition by submitting that in the respondent-bank there are about 800 branches which are classified, as small branches, medium branches, large branches, very large branches, etc. depending on the (deposits and advances) of a particular branch. These branches are headed by different level of officers e.g. while officer in the category of Scale I is the branch in charge of small branch, officer in the category of Scale II is the branch in charge of medium branch, Scale III officer is branch in charge of large branch, Scale IV officer is the branch in charge of very large branch and so on. Thus scale II officers may be put as branch in charge in a medium branch, he may also be posted in another branch which is large branch and of which branch incharge. is a scale III officer or above and in such a branch he would not be a branch incharge. Similarly, he can also be posted to Zonal Office or head office. However, posting of an officer in a particular branch is in managerial function and whether he is posted as branch in charge or given other posting is not within his control. However, his posting as branch in charge entitles him to get one mark for each year of service as branch in charge whereas any other posting yields him 1/2 mark for each year of service, when he is to be considered for promotion to Scale III. This according to the petitioner is totally inequitable and creates discrimination inter se Scale II officers irrespective of their seniority. It was also pointed out that promotions from one scale to another are to be made as per government guidelines issued from time to time and the government guidelines clearly stipulate that no weightage is to be given for length of service. To support this submission petitioner referred to relevant government guidelines in Staff Circular. Volume IV:-

Promotions:-

Promotions from one Scale to another including from Scale-I to Scale-II and Scale-II to Scale-III shall be as per the Government guidelines issued from time to time and the promotion policies continue to be from amongst eligible officers as per Government guidelines without any weightage for length of service. The Banks providing for such weightage now shall suitably modify the promotion policies accordingly.

10. On the basis of the aforesaid factual premise, Mr. Rajiv Nayyar, senior counsel for the petitioner formulated following legal proposition to impugn clause 6.4 of the new promotion policy:

1. Seniority cannot be the guidelines for promotion as per aforesaid government guidelines which respondent-bank is bound to follow. However, para 6.4, by stipulating that one mark or half mark, as the case may be, for each completed year of service to be given to the officers awards the marks on the basis of seniority and Therefore such a provisions is clearly invalid being contrary to government guidelines.

2. More senior candidate can be by passed for the reasons that he has lesser experience as branch incharge. In support of this argument, petitioner submitted that a person with eight years service in Scale II without working as branch in charge would get four marks in terms of clause 6.4 of the new promotion policy (half mark for each year of service) on the other hand, another officer who has put in five years of service as branch in charge would get five marks as per clause 6.4 of the new promotion policy. It was submitted that this is discriminatory and such a situation is made only in respect of Scale II officers and not the officers in other scales.

3. There is inter se discrimination between two officers who belong to same class.

4. The classification of the officers as branch incharges and other officers who are not posted as branch incharges is based on no intelligible differentia having any nexus with the objective which is sought to be achieved. In fact the two officers belong to same class and an artificial distinction is created which is arbitrary and offends equity clause enshrined in Article 14 of the Constitution.

5. In any case, clause 6.4 is bad in law as it was enforced without any reasonable notice or advance warning about incorporating such a clause.

6. Mr. Rajiv Nayyar further submitted that even if clause 6.4 is to be saved and marks are to be given for performance, to save it from unconstitutionality it should be read down by making a provision that one mark is to be given to every scale II officer for each completed year of service irrespective of the fact as to whether he is posted as branch in charge or not.

11. In support of his submission, Mr. Rajiv Nayyar relied upon the judgment of Supreme Court in the case of Sant Ram Sharma Vs. State of Rajasthan and Another, :-

"The principle is that when the claim of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is Therefore available."

12. Learned senior counsel for the petitioner also relied upon the case of State of Mysore Vs. M.H. Krishna Murthy and Others, which reads as under :-

"The Mysore High Court had very rightly observed that neither a fortuitous artificial division in the past nor the unConsitutional practice of makings an unjustifiable discrimination in promotional chances of Government servants belonging to what was really a single category, without any reference either to merit or seniority, or educational qualifications, could justify the differences in promotional chances."

13. Reliance was also placed on another judgment of Supreme Court in the case of Sunita Sharma and Others Vs. State of H.P. and Others, and in particular para 7 thereof which reads as under :-

"In fact, there could exist no separate seniority lists of the headmasters and the school lecturers as such, once, they were promoted to the Class II posts of Principal/DEO/Asstt. Director of Education. There could only be a common seniority list of the said class II employees and of the Deputy Directors who could be promoted from the seniority list of Class II officers on the basis of the Recruitment Rules of 1976."

14. Mr. Rajiv Nayyar also relied upon the judgment of the Supreme Court in the case of Dr Ram Raj Ram Vs. State of Bihar and Others, which reads as under :-

"Rule 14 specifically says that seniority in the Service shall be determined by the date of the officer''s substantive appointment to the Service irrespective of the pay drawn by him. When the Government''s stand initially, in the High Court has been, as also here, that Special Service was nothing but a species of the regular service and special only in the sense to indicate a selection grade, it cannot for a moment than be swallowed that the latter of the two: i.e. the Special, was the basic cadre, to be put at the pedestal of superiority."

x x x x x x

"The argument conveniently forgets that the Service is one and the artificiality created by the Special Service is of no consequence, more so when both the versions of the bureaucracy of the State do not maintain the distinction, even though later a basic cadre was carved for the Special Service. The demarcation again was given a floating lesson for the future. It the Service is one then the date of entry into the Service in substantive capacity is the determining factor for seniority irrespective of scale of pay, as envisaged by Rule 14. But if there are two services as has been taken and hit by the High Court, the creation of the Special Service to plug in Dr. Ram at an advantageous position was a measure of naked manipulation, an unfair act, utterly unreasonable, in abuse of power, without resort to law and in the teeth of the Rules.

15. Before dealing with the aforesaid submissions of the petitioner it would be appropriate to notice, at this state, the stand of respondent-bank as stated in the counter affidavit and the submission of Mr. P.P. Rao, learned senior counsel appearing for the respondent-bank. A perusal of the counter affidavit filed by the respondent-bank, which was extensively referred to by Mr. P.P. Rao during his arguments reveals that as per respondent bank clause 6.4 of the promotion policy has been framed for efficient working of the bank. It is intended to give incentive to officer who share higher responsibility, and take part in the development of alround banking. New promotion policy has been framed by the

respondent bank after taking suggestions from various officers unions operating in the bank including the union of the petitioner. It is further stated that the proposal to recognise branch exposure of officers i.e. experience as branch incharges, as criterion for further promotions was made by none else but the union of the petitioner itself in the purposed promotion policy submitted by this union in December, 1998. The Union suggested giving weightage of three marks and a further condition of minimum five years branch experience for eligibility to promotions from Scale II to Scale III. In fact, it was the grievance of the Union of the petitioner that officers and managers posted in branches are at disadvantageous position as compared to the officers and managers posted at Zonal Offices/Head Office inasmuch as it was very difficult to get "excellent" confidential report while working in branch offices and officers posted at Zonal Offices/Head Office were mainly getting "excellent" remark in their confidential reports. The Union represented that this anomaly should be removed and Therefore suggested giving weightage of three marks to recognise branch exposure.

16. It is further stated in the counter affidavit that the proposal mooted by the Union of the petitioner as well as of the Federation were considered. In fact, the Federation in their letter of 21st November, 1998 had suggested that twenty marks be allotted for job performance/job responsibility. Ultimately the matter was discussed in their meeting dated 21st April, 1999 with the Federation and after discussing all these proposals a formal provision which was ultimately agreed saw the light of the day in the form of clause 6.4 of the new promotion policy. It is thus contended that policy having been evolved incorporating in additional guideline proposed by the Union of the petitioner itself after the same has been agreed by the majority union, cannot be called in question by either of the two unions or other members.

17. Further justification for giving of one mark for each completed year of service as branch in charge while working as Scale II officers is to be found in para IV of the counter affidavit. Let us see what it says:-

"That the extent of weightage to be given for this additional criterion is in the domain of the Management. The Management, after considering all aspects of the proposal, finally decided to give a weightage of 10 marks as against 3 marks proposed by the Petitioner''s own Association and 20 marks suggested by the majority union i.e. All India PSB Officers Federation. These 10 marks are available to all officers whether they are working in H.O., Z.D. or Branch Office as Branch Manager or otherwise. But higher weightage is given to Branch Manager than those working in controlling offices etc. The Branch Managers are also put to disadvantageous position viz a viz with the rider "Provided that if any major penalty is awarded for any misconduct as Branch Manager, then no mark will be awarded for full tenure in that Branch as Branch Manager or 3 years whichever is less". This was also agreed by majority union. Thus, it may be seen while providing advantage in weightage in providing 10 marks for experience as

Branch Manager (Incharge), there is also the disadvantage of forfeiting the weightage up to 3 years in the event of award of major penalty for misconduct. This forfeiture clause applies only to Branch in charge and not to any other officer of Scale-II working in branches or controlling offices."

18. On the basis of aforesaid submissions made in the counter affidavit, Mr. P.P. Rao, learned senior counsel appearing on behalf of the respondentbank made the following legal submissions:-

1. The new promotion policy, and clause 6.4 thereof, is the result of agreement between the management of the respondent-bank and Officers Federation which represents majority of the officers. As per respondent-bank union of the petitioner represents only fraction of officers (not more than 28%) working in the respondent-bank. Thus the promotion policy which is the result of agreement between the management and majority union is not exposed to challenge by the petitioner, more particularly when it has been accepted by most of the officers of the respondent-bank. I may mention that although there is a dispute about the extent of membership of the Union of the petitioner, but what is not disputed is that it is the Federation which has majority membership and representative character.

2. The proposal to give higher weightage for branch exposure was given by the union of the petitioner itself. This proposal as well as proposal of the Federation was considered and ultimately the respondent-bank decided to take middle path by incorporating the extent of weightage to be given to the officers as is provided in clause 6.4 now and before this clause could be incorporated in the new promotion policy, majority union also agreed with the same. It is the domain of the management to decide what should be the extent of weightage to be given for this additional crite rion.

3. The policy is intended to give incentive to officers who can bear higher responsibility and take part in the alround development of the bank. Majority of officers are happy with the new promotion policy, including clause 6.4. There cannot be any policy which can satisfy each and every employee in an organisation. While judging the validity of a particular policy what is to be seen is as to whether it is fair, reasonable and does justice to majority of the employees and fortunes of some individuals is not the touch stone. Reliance, in support of this contention, is placed on the judgment of Supreme Court in the case of Reserve Bank of India and Others Vs. C.N. Sahasranaman and Others, and particularly the following passage:-

"Whether there has been denial of equality of the view of promotion or any constitutional right infringed or not cannot be judged where interest of large number of people are concerned, in the abstract. Vast majority, indeed the overwhelming majority of the workman are in favor of the scheme as evolved by the Bank as modified as it would be apparent All India Reserve Bank Employees Association - imp leaded as party-respondent in this appeal as well as All India

Reserve Bank Employees Federation, Hyderabad. It has to be borne in mind that in service jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees and fortunes of some individuals is not the touchstone. See in this connection the observations of this Court in Kamal Kanti Dutta Vs. Union of India".

Reliance is also placed on the following judgments which are to the same effect:-

(i). Kamal Kanti Dutta and Others Vs. Union of India (UOI) and Others, .

(ii). V.T. Khanzode and Others Vs. Reserve Bank of India and Another, .

(iii). All India State Bank Officers'' Federation and Others Vs. Union of India (UOI) and Others, .

4. It was also submitted that the petition suffers from nonjoinder of necessary parties inasmuch as Officers Federation which is party to the settlement paving way to new promotion policy and clause 6.4 thereof, is not imp leaded as respondent in this case and Therefore this petition may be dismissed on this ground itself.

19. The respective submission made by both the parties as noticed above would show that all the parties, namely, respondent-bank and both the unions were in agreement that some weightage should be given to the officers who are posted in branch offices and bank should recognise branch exposure of the officers while making further promotions. In fact this was the brain child of none else but Union of the petitioner and the Union even boasted about it by issuing Circular No. 7/98 dated 18th December, 1998 by which it circulated its proposed promotion policy. Para 53 of the Circular issued by the Union of the petitioner is worth quoting:-

"We would recall our crusade for rationalising the system of evaluating CRs. You would also recall how consistently we fought for rationalising the marks of CRs in the earlier existing Promotion. The theme of our Policy is removal of earlier existing monumental discrepancies as well as presentation of new ideas supported by solid arguments. The most important ideas where you need to look into out Policy are :-

* Marking of CR marks.

* Branch Exposure as a criteria for promotions.

* Concept of Option Branches as part of the Policy.

* Rationalisation of Special Category Promotions."

20. Thus it was the feeling among the officers of the bank, echoed by Union of the petitioner as well, that Managers posted in branches are at disadvantageous position as it is very difficult for them to get "excellent" confidential report while officers and Managers posted at Zonal Offices/Head Offices were mainly getting

"excellent" confidential report. 60% marks were given under the head Confidential Report (CR). Therefore, according to the Union of the petitioner itself, while considering these officers for promotions, officers and Managers posted at Zonal Offices/Head Offices with "excellent" confidential report were able to get more marks than officers posted in branches and this anomaly had to be removed. It was further felt that a branch exposure of the officers had to be recognised by awarding separate marks for branch exposure. It was, in these circumstances, respondent-bank undertook the exercise of rationalising the promotion policy and removing this anomaly. The marks to be awarded under the head Confidential Report were reduced from 60% to 50% and a new category was carved out namely, "marks for job responsibility" and 10% marks were assigned under this head. By reducing the marks under the head Confidential Report and creating new head "marks for job responsibility" and awarding mark under this head, the effect of advantageous position to which those officers and Managers who are posted at Zonal Offices/Head Offices were placed in is sought to be neutralised. This is endeavoured to achieve by giving more marks for branch exposure in clause 6.4 on the basis of "job responsibility". Such neutralisation is also sought to be achieved by limiting the maximum marks to four, under this head, for those officers and Managers posted at the controlling offices i.e. Zonal Offices/Head Offices. up to this stage there is no quarrel or dispute between the parties viz. It has to be recognised as a principle that some marks should be given to those working in branch offices. In fact argument of the petitioner that marks are sought to be given for seniority and Therefore it is impermissible militates against the petitioner''s own stand taken above. Even otherwise there is no force in this argument as marks are not for seniority butfor "job responsibility" under clause 6.4 of new promotion policy. Therefore this argument of the petitioner has to be rejected.

21. When confronted with this position, particularly the fact that petitioner''s own Union had suggested recognising branch exposure while considering an officer for further promotion, it was contended that the petitioner is agitated about the provision where only hall mark is given for each year to other Scale-II officers posted in a branch but not as branch in charge while one mark is given for each year to those posted as branch incharges. The submission of Mr. Rajiv Nayyar, learned senior counsel for the petitioner was that the proposal mooted by the union of the petitioner was to give weightage for branch exposure i.e. those who are posted in branch office irrespective of the fact as to whether they are posted as branch in charge or otherwise. It is in this contest that the submissions are made by the petitioner stating that this would create inequitable result and would be discriminatory, as per the submissions made and noticed above.

22. The aforesaid background would reveal that there is no serious objections, nor there can be any, about allocating marks for job responsibility when such a proposal was mooted by petitioner himself through his Union. The objection is for giving more weightage to the services of a Scale II officer as branch incharge. Therefore, in view of the above discussion, the point to which the controversy

boils down is as to whether bank could create two classes of class II officers i.e. those who are posted as branch incharges and those who are not posted as branch incharges and whether it could give them differential treatment. It is in this context, we have to examine as to whether this classification is reasonable or it is arbitrary and offends Article 14 of the Constitution of India. In the counter affidavit of the respondent-bank wherein it has sought to justify this aspect by stating as under:-

"The post of a Branch Manager in the bank, it is well-known to one and all, is a post carrying added responsibility. It is not considered a bed of roses. Ordinarily, no employees comes forward with a request to be posted as a Branch Manager. The Management of the Bank posts only such officers who are considered suitable as Branch Managers in different Branches, taking all relevant facts into consideration including the service record of the person concerned. It has been the experience of the Bank that number of representations are received from officers not to post them as Branch Managers of branches on one pretext of the other. The post involves a horizontal movement. It is not a promotional post. An officer working in Scale-II in the Head Office or Zonal Office is liable to be posted as Manager in the same Scale II post, as a Branch Incharge. As Branch Manager of a Branch, an officer has greater accountability and responsibility for the business transacted by that particular Branch".

23. It is further stated in the counter affidavit under para IV, which is already reproduced above, that ten marks are available to all the officer whether they are working in Head Office, Zonal Office or branch office as branch manager or otherwise. But higher weightage is given to branch manager than those working in Controlling Office or even in branch offices but not as branch incharges because branch incharges are also put to a disadvantageous position vis-a-vis others with the rider "Provided that if any major penalty is awarded for any misconduct as Branch Manager, then no mark will be awarded for full tenure in that Branch as Branch Manager or 3 years whichever is less." Thus while providing advantage in weightage by giving marks for experience as branch in charge there is also the disadvantage of forfeiting the weightage up to three years in the event of award of major penalty for misconduct. This forfeiture clause applies only to officer working as branch incharge.

24. I am of the opinion that there is considerable force in the stand taken by the respondent bank in justifying the giving of one mark for each year of service as branch in charge and thus giving more weightage to those officers working as branch incharges. It cannot be said that such a classification is arbitratry or it is not based upon intellegible differentia as there is clear nexus with the objective sought to be achieved, i.e. giving encouragement to officers who work as branch incharges to shoulder higher job responsibilities, more so, when it is the experience of the respondentbank that ordinarily officers do not come forward with a request to be posted as branch in charge and infact bank receives representations from officers not to post them as branch incharges on one

pretext or the other.

25. Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classifications, being founded on intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that the differentia must have national nexus sought to be achieved by the statute in question. It is now well settled that to pass the test of permissible classification two conditions must be fulfillled, namely: (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the Group and (ii), that the classification must have a rational relation to the object sought to be achieved by the statute in question.

26. In the case of State of West Bengal and Another Vs. Rash Behari Sarkar and Another, , Supreme Court held that even amongst the likes the Legislature or the Executive may classify on distinction which are real. So long as the classification is reasonable it cannot be struck down as arbitrary. Likes can be treated differently for good and valid reasons. While the theory of classification should not be carried too far lest it denudes the very concept of equality of its true substance, but this does not and should not mean invalidation of a paper classification assigned to achieve the objective underlying the enactment. Restating the aforesaid principles as test of a valid classification, in Mohan Kumar Singhania Vs . Union of India reported in : AIR1992SC1 , Supreme Court held that classification need not be per fact and rules of classification can be framed for securing requisite standard of efficiency in service. What is to be kept in mind is that every classification is likely in some degree to produce some inequality but that may not be a ground to invalidate or strike down such classification. Let us quote Supreme Court in its own words :-

"Article 14 declares that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The chershed principle underlying the above article is that there should be no discrimination between one person and another if as regards the subject-matter of the legislation, their position is the same. In other words, its action must not be arbitrary, but must be based on some valid principle, which in itself must not be irrational or discriminatory. That differential treatment does not per se constitute violation of Art 14 and it denies equal protection only when there is no rational or reasonable basic for the differentiation. Thus Art. 14 condemns discrimination and forbids class legislation out permits classification founded on intelli gible differentia having a rational relationship with the object sought to be achieved by the Act/Rule/Regulation in question. The government is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not scientifically be perfect or logically complete.

27. It may also be apt to refer to the judgment of Supreme Court in the case of

State of U.P. and Others Vs. J.P. Chaurasia and Others, wherein Supreme Court upheld the classification based on experience as reasonable classification.

Jagannatha Shetty, J. speaking for the Court observed :-

"Article 14 permits reasonable classification founded on different bases. It is now well established that the classification can be based on some qualities or characteristics of persons grouped together and not in others who are left out. Those qualities or characteristics must, of course, have a reasonable relation to the object sought to be achieved. In service matters, merit or experience could be the proper basis for classification to promote efficiency in administration. He or she learns also by experience as much as by other means. It cannot be denied that the quality of work performed by persons of longer experience is superior than the work of new comers. Even in Randhir Singh case, this principle has been recognised. O. Chinnappa Reddy, J. observed that the classification of officers into two grades with different scales of pay based either on academic qualification or experience or length of service is sustainable. Apart from that, higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is very common in career service. There is selection grade for District Judges. There is senior time scale in Indian Administrative Service. There is super time scale in other like services. The entitlement to these higher pay scales depends upon seniority - cum - merit or merit-cum-seniority. The differentiation so made in the same cadre will not amount to discrimination. The classification based on experience is a reasonable classification. It has a rational nexus with the object thereof. To hold otherwise, it would be detrimental to the interest of the service itself.

28. This judgment was relied upon by Supreme Court in the case of Chandra Mohan Tiwari and another Vs. State of Madhya Pradesh, upholding classification in the same cadre based on experience. It was a case where compositors in Government of India Presses were classified into Grade I, "highly skilled" and Grade II "skilled" with 20:80 ratio. Classification was held to be not arbitrary, unreasonable or discriminatory.

29. Therefore, I do not find anything wrong in clause 6.4 of the new promotion policy giving more weightage for job responsibility to those posted as branch incharges than those who are not posted as branch incharges. The argument of the petitioner that it is not within the control of the officers to get their posting in a particular place also cannot be a ground to invalidate such a provision. It is explained in the counter affidavit that management of the bank posts only such officers who are considered suitable as Branch Managers in different branches taking all facts into consideration including service record of the person concerned. Therefore stand of the Bank that while making such postings the Bank would be guided by aforesaid factors cannot be doubted. More so, when it is only an apprehension in the mind of the petitioner at this stage that bank may discriminate in offering postings to their favorites, as branch ncharges, that too without any supporting material. Such apprehension cannot be the basis to

invalidate a provision of promotion policies as discriminatory. It has also to be kept in mind that as per the experience of the respondentbank, bank does not get enthusiastic officers willing to be posted as branch incharges and rather requests are received from officers not to post them as branch in charge on one pretext or the other. Thus this apprehension at this stage may be imaginery. Moreover, it is policy matter of common knowledge that a particular officer does not remain posted in one branch/office for all times to come and these officers are generally transferred out from a particular place after three years. Therefore these officers while working as Scale II may get, particular posting for some time as branch incharges and for some time in branches but not as branch incharges or in Zonal Office/Head Office. The argument of the petitioner proceeds on the basis as if a Scale II Officer who gets the posting as branch in charge would remain in that position for all times to come during the period he is working as Scale II Officer. Further, if the exercise of power in a particular case showing favouritism comes to light, it is that exercise of power which can be challenged in appropriate proceedings and merely because there may be possibility of abuse of power would not itself become the basis of challenging the particular provision as arbitrary.

30. It is also to be borne in mind that officers Federation representing majority of officers has accepted this provision which is intended to give incentive to officers who shoulder higher responsibility and take part in alround development of the bank. If majority of the officers are happy with this provision of promotion policy and once rationale is found in such provision, challenge to the same by the petitioner, representing minority unions, has to fail. As noticed above, petitioners own Union had mooted the idea of giving marks for job responsibility. It is not necessary that the provision suggested by this union has to be accepted as it is. Infact, taking into consideration the proposal of petitioner''s Union as well as majority union, ultimately necessary changes were made in this proposal in order to arrive at a particular policy which suits best the interest of the bank as well as its officers, with the result that majority of the officers are satisfied with the same. However this is stated only as an additional ground to dislodge the challenge. The judgment cited by the respondent and noticed above become handy in support of this proposition. It is held in these cases that in service jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees and fortunes of some individuals is not the touchstone.

31. One should not lose sight of the principle that such a decision as to show what criteria is to be adopted in evaluating an officer for promotion and how many marks are to be given under a particular head is the managerial function and a policy decision of the respondent-bank. The aforesaid provision has been made by the respondent-bank having regard to its experience and respondent-bank knows its job better in formulating such a policy. Courts are ill equipped for this purpose and such policy matters of the management are normally not to be

interfered with by the courts unless there are arbitrary or mala fide. This principle of law does not need much discussion or emphasis as the same is stated and restated number of times by apex court over a period of time. Still, to make the record straight, it may be useful to refer to some of these decisions. In Union of India and others Vs. S.L. Dutta and another, , Supreme Court observed that the court should rarely interfere where the question of validity of a particular policy is in question and all the more so where considerable material in the fixing of policy are of a highly technical or scientific nature. In that case, the change in policy in the matter of promotion of Air Vice Marshall to the post of Air Marshall in the Air Force reduced the promotional changes of officers in the Navigation Stream in their Flying Branch qua the other branches. This policy was challenged. Repelling the challenge the Court went on to observe as under :-

"A consideration of a policy followed in the Indian Air Force regarding the promotional chances of officers in the Navigation Stream of the Flying Branch in the Air Force qua the other branches would necessarily involve scrutiny of the desirability of such a change which would require considerable knowledge of modern aircraft, scientific and technical equipment available in such aircraft to quide in navigating the same, tactics to be followed by the Indian Air Force and so on. These are matters regarding which Judges and the lawyers of courts can hardly be expected to have much knowledge by reason of their training and experience."

32. It is very pertinent to quote the observations of Supreme Court in the case of G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, :-

"The Courts are kept out of the lush field of administrative policy, except when policy is inconsistent with the express or implied provisions of a statute which creates the power to which the policy relates or when a decision made in purported exercise of a power is such that a repository of the power, acting r easonably and in good faith, could not have made it. In the latter case, something overwhelming must appear before the Court will intervene. That is, and ought to be a difficult onus for an applicant to discharge. The Courts are not per, found at formulating of evaluating policy. Sometimes when the Courts have intervened on policy, grounds, the Court''s view of the range of policies open under the statute or of what is unreasonably policy has not won public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism. In the world of politics, the Court''s opinions on policy are naturally less likely to reflect the popular view than the policies of a democratically elected Government or of expert administrators......."

"The considerations by reference to which the reasonableness of a policy, may be determined are rarely judicially manageable......."

33. I am also not impressed with the argument forwarded by the petitioner that the impugned clause 6.4 of the new promotion policy is bad in law as it was enforced without giving any reasonable notice/advance notice. It was within the

knowledge of all the parties that new promotion policy is being worked out and suggestions were made by the unions as well. The petitioner must be aware of the Minutes dated 21st April, 1999 although he was not party to the said meeting. Be as it may, there is no legal requirement for giving any advance notice or reasonable notice before enforcing of the new promotion policy.

34. As I am upholding the validity of clause 6.4 of the new promotion policy I need not go into the preliminary submission made by the respondent-bank regarding non-joinder of necessary party. It may however be observed that this objection has not been taken in the counter affidavit.

35. In view of my foregoing discussion, judgment relied upon by the petitioner are not applicable to the facts and circumstances of this case. As far as the case of Sant Ram Sharma (supra) and Sunita Sharma (supra) are concerned they relate to the issue of seniority while considering persons for promotion and as already held above, this argument has no force or applicability in the instant case. Insofar as the case of M.H. Krishana Murthy (supra) is concerned, Supreme Court in that case found that in the matter of promotion the concerned officers were discriminated against simply because they had worked in the PWD union, which had ceased to exist. In that case, the mandate Rules provided promotion on the basis of seniority-cum-merit however amendment to those Rules reduced the number of promotional posts of one of the two unions comparatively to very low figure. This was held to be discriminatory on the facts of that case. Similarly, in Dr. Ram Raj Ram (supra) the Court was examining the declaration of a noncadre service as basic cadre de hors the statutory rules. As per the Rules 14 of the relevant Rules, the Service was one but Special Service was artifically created which was treated as invalid. This case also has no application when applied to the facts of the present case.

36. My aforesaid discussion leads to the conclusion that clause 6.4 of the new promotion policy it is valid and it neither suffers from vice of arbitrariness nor it is discriminatory. Thus, I do not find any merit in the instant petition. Accordingly, the writ petition is dismissed.

37. There shall be no order as to costs.

38. dusty to both the parties.

