
(2001) 06 PAT CK 0025

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5886 of 1987, 26 of 1988 and 5927 of 1990

Kumud Ranjan and Another, etc. etc.

APPELLANT

Vs

Munger Kshetriya Gramin Bank and Others

RESPONDENT

Date of Decision : 20-06-2001

Acts Referred:

Citation : (2001) 06 PAT CK 0025

Final Decision : Allowed

Judgement

Sachchidanad Jha, J.—The dispute in these three writ petitions relates to promotion in the Munger Kshetriya Gramin Bank and involves the interpretation of the "seniority-cum merit" rule in the context of the circulars and rules governing such promotion.

2. There are two petitioners in CWJC No 5886/87 and one each in CWJC No. 26/88 and CWJC No 5927/90. The petitioners in CWJC Nos. 5886/87 and 5927/90 are Field Supervisors in the Munger Kshetriya Gramin Bank (hereinafter referred to as "the Bank") They are aggrieved by their supersession by respondents 4 to 11 in the matter of promotion in the Officer's cadre i.e. the post of Branch Manager. The petitioner in CWJC No. 26/88 is Clerk-cum-Cashier. He was denied promotion to the post of Field Supervisor while as many as 30 persons were promoted to the post. Those 30 persons were initially impleaded as respondents 4 to 33 but their names were deleted at the time of admission on 20-1-88 because the petitioner did not seek cancellation of their promotion. The petitioners" in all these cases in effect and substance seek direction to promote them to the posts of Officer/Field Supervisor, respectively, from the dates their juniors were promoted. It is relevant to mention here that petitioners of CWJC No 5886/87 and CWJC No 26/88 have since been promoted to the respective posts during pendency of the case. Their claim thus now is confined to seniority with those who were promoted earlier. It is not known if petitioner of CWJC No 5927/90 has also been promoted in the meantime.

3. The case of the petitioners of CWJC No 5886/87 is somewhat different from that of the other petitioners. It is, therefore, appropriate to separately state their case. According to them, in terms of Clause 13 of the Staff Service Regulations, 1980 seniority in a particular grade or scale is reckoned with reference to the date of appointment in that grade or scale. Thus having been appointed and also confirmed earlier than the respondents they were to be treated as senior to them. They in fact were shown above the respondents in the seniority list of Field Supervisors. By virtue of their seniority they were entitled to promotion to the post of Officer in terms of the Ad Hoc Promotion Policy of the Bank contained in its circular dated 30-11-84 which envisaged promotion to eligible employees on the basis of seniority; however on 10-2-87 the Bank issued fresh guidelines as per which promotion was to be made on the basis of seniority-cum-merit. The case of the petitioners is that this was done without previous sanction of the Government of India and without consulting the Sponsor Bank viz. United Commercial Bank and the Reserve Bank of India. The petitioners contend that there were as many as 24 vacancies - in the post of Officer and had the criterion not been changed, they would have been promoted by virtue of their seniority and eligibility but in view of the guidelines, which was given retrospective effect from 31-12-84, promotion was denied to them while respondents 4 to 11, admittedly junior to them, were promoted. It is contended that the promotion rules cannot be amended with a retrospective effect. The grievance of these petitioners as made out in the writ petition is devoid of any substance.

4. Before considering the case of the petitioners it seems appropriate to make few introductory remarks about Regional Rural (Kshetriya Gramin) Banks, These banks have been established under the provisions of the Regional Rural Banks Act, 1976 (hereinafter referred to as "the Act"), enacted with a view to develop the rural economy by providing credit and other facilities for the development of agriculture, trade, commerce, industry and other productive activities. Section 3 of the Act empowers the Central Government to establish by notification one or more regional rural banks in a State or Union Territory having area of operation within the specified local limits. Section 8 of the Act provides that superintendence, direction and management of the affairs and business of the Regional Rural Banks shall vest in the Board of Directors. Section 17 provides that the Bank may 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 determine the terms and conditions of their appointment and service. Section 24 lays down that in the discharge of its functions the Regional Rural Bank shall be guided by such directions in regard to matters of policy involving public interest as the Central Government may after consultation with the National Bank for Agricultural and Rural Development (NABARD) give. u/s 29 of Act the Central Government has been empowered to make Rules after consultation with the NABARD and Sponsor Bank, for carrying out the provisions of the Act. Clause (ba) of Sub-section (2) of Section 29, which

was inserted by the Regional Rural Banks (Amendment) Act, 1987, relates to the manner in which officers and other employees of the Regional Rural Banks shall be appointed. Under Section. 30 the Board of Directors of the Regional Rural Bank also has been empowered to make regulation not consistent with the Act or the Rules made thereunder, after consultation with the Sponsor Bank and NABARD and with previous sanction of the Central Government, for giving effect to the provisions of the Act.

5. Now adverting to the case of the petitioners (in CWJC No 5886/87) it is apt to mention that the Staff Service Regulations, 1980 framed u/s 30 of the Act, did not contain any guideline for promotion. Clause 14 merely stated that "all appointments and promotions shall be made at the discretion of the Bank and no officer or employee shall have a right to be appointed or promoted to any particular post or grade". Pending issuance of the Guidelines regarding promotion policy in the Regional Rural Banks by the Government of India, an ad hoc promotion policy was framed for promotion of Field Assistant/Supervisor and Clerk-cum-Cashier/Typist of the Bank vide circular dated 30-11-84 stating as under:

It may please be noted that the policy so framed by the Board is purely temporary and shall continue to be in operation till any further alteration/addition is made in the same or withdrawn by the Bank or a regular policy is formulated by the Government of India and adopted by the Bank in this regard.

The said circular laid down qualifications/eligibility for promotion of Field Assistant/ Field Supervisor to the Officer's grade and stipulated:

(a) Taking into account the assessed vacancy and eligibility of staff for promotion to the Officer and Field Supervisor cadre three times the number of vacancies persons from the seniority list will be considered and the panel prepared by the Committee constituted by the Board for the purpose be placed before the Board of Directors for approval.

(b) The minimum qualifying, marks for being considered and inclusion in the panel for promotion would be 50% of the full marks for assessment/appraisal by the Chairman.

It appears that soon after issuance of the said circular by the Bank, which apparently was pursuant to the directives of the NABARD, a circular was issued by the NABARD on 31-12-84 stating as under:

With a view to streamlining the procedures for filling up the vacancies in the Regional Rural Banks and to bring about uniformity in the same, the Government of India in consultation with the National Bank for Agriculture and Rural Development has approved a set of guidelines to be followed in the recruitment of staff on the posts of Junior Clerk-cum-Cashier, Senior Clerk-cum-Cashier, Field Supervisor and Officer. A copy of the detailed guidelines is herewith enclosed for information.

As you are aware these guidelines will have to be given the shape of service regulation. Draft regulations based on these are being framed and will be circulated for adoption by the Board of Directors of the individual Banks. In the meantime, to facilitate the work relating to filling up of these vacancies which exist in large number in most of the banks, these guidelines are being issued to enable the banks to make them the basis for necessary advance action.

By letter dated 22-2-85 the NABARD informed the Chairmen of all Regional Rural Banks that with the issuance of circular dated 31-12-84 (Supra) all Ad Hoc Promotion Policies prevailing in different Regional Rural Banks stand superseded with effect from the date of issuance of the guidelines contained in that circular and, therefore, they were required to strictly adhere to these guidelines for effecting any promotion in the concerned banks. Consequential circular was issued by the respondent Bank on 20-5-85 giving reference to the above circular of the NABARD dated 31-12-84, to the effect "Our Circular No. HO/Cir/31/84 dated 30-11-84 will no longer be operative and stands superseded" By another letter dated 8-5-85 issued in the meantime the NABARD advised the Chairmen of all Regional Rural Banks to follow the guidelines as contained in circular dated 31-12-84 for the purpose of recruitment and promotion of staffs. Similar directive was issued again on 7-4-86. On 20-11-86 the NABARD advised the Chairmen of different Regional Rural Banks, after consulting the Government of India, that the guidelines contained in circular dated 31-12-84 should be formally adopted by the Board of Directors of the Regional Rural Banks in a legally convened meeting immediately. The Board of Directors of the respondent Bank accordingly in the 60th meeting of the Board held on 30-1-87 adopted the guidelines stating that "the same will be considered to be in operation since that date". The said guidelines were thereafter formally circulated by the respondent Bank on 10-2-87 as Circular No. HO/Cir/03/87 dated 10-2-87 impugned in this case.

6. It is thus not correct to say that circular dated 10-2-87 has been given retrospective effect. As noticed above, the Ad Hoc Promotion Policy was framed as a temporary measure "to continue to be in operation till any further alteration/addition is made in the same by the Bank or a regular policy is formulated by the Government of India". Within a month of the issuance of the said Ad Hoc Promotion Policy the NABARD issued revised guidelines on 31-12-84 with a direction to the Regional Rural Banks to strictly adhere to those guidelines clarifying that all ad hoc promotion policies prevailing in different Regional Rural Banks stand superseded with effect from the date of issuance of the guidelines . What, the Board of Directors of the respondent Bank did on 30-1-87 was to formally adopt the said guidelines pursuant to the advice/directive of the NABARD contained in letter dated 20-11-86. The circular dated 10-2-87 was mere communication of the said decision of the Board of Directors. Those guidelines had come into existence on 31-12-84 itself; the Board of Directors of the respondent Bank simply observed the formality of adopting them. The grievance that the guidelines have been given retrospective effect from an earlier

date viz. 31-12-84, therefore, does not have any substance.

7. The question as to the nature and effect of the circular/guidelines issued by the NABARD came up for consideration by a Division Bench of this Court in the case of Radhey Shyam Lal v. Vaishali Kshetriya Gramin Bank (CWJC No. 933/88 and analogous). The Court held that the Central Government, the Sponsor Bank and the NABARD have definite role to play in the affairs of the Regional Rural Banks and they are empowered to issue direction to the Banks from time to time which are binding to them. The decision was upheld by the Supreme Court in SLP (Civil) No 15040-41 of 1994. Reference may also be made to the case of Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others, .

8. Even if the plea of retrospectivity urged by the petitioners had any substance, on the date the Selection Committee considered their cases for promotion along with the respondents viz. on 3-12-87, the Board of Directors of the respondent Bank had already adopted the guidelines dated 31-12-84 pursuant to the advice/directive of the NABARD dated 20-11-86. Since the guidelines thus held the field on the day of consideration, clearly, the cases had to be considered as per the provisions contained therein.

9. It is not in dispute that no rule laying down the norms of promotion had been framed by the Central Government u/s 29 of the Act until 28-9-88 when the rules called the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988 were notified. As a matter of fact the said rules were adopted by the Board of Directors of the respondent Bank only on 30-12-89. It is well-settled that where there are no statutory rules on the particular subject, it is open to the authority to issue instructions or circulars which are equally binding as the rules. In B.N. Nagarajan and Others Vs. State of Mysore and Others, , it was observed that it was not obligatory under proviso to Article 309 of the Constitution to make rules of recruitment etc. before a service can be constituted or a post created or filled. In the well-known case of Sant Ram Sharma Vs. State of Rajasthan and Another, , the Supreme Court observed,

It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But, that does not mean that till statutory Rule are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory Rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

10. Thus it was open to the NABARD in consultation with the Government of India to lay down the norms of promotion by way of circulars. The Staff Service Regulation, 1980 framed by the Board of Directors of the respondent Bank u/s

30 of the Act did not lay down any norms or criteria for promotion. The relevant Clause that "all appointments and promotions shall be at the discretion of the Bank" meant nothing in real terms. Apparently, the provision was too wide to be acted upon as the basis of promotion. The Ad Hoc Promotion Policy, as noticed above, was a temporary measure, framed to meet the growing need of a promotion policy, which was to continue till another policy is framed by the Government of India and adopted by the Bank. But within a month of the framing of the Ad Hoc Promotion Policy came the impugned guidelines dated 31-12-84. It is true that the Board of Directors of the respondent Bank formally adopted the guidelines only on 30-1-87; nonetheless in view of the injunction contained in the directives of the NABARD, even during the interregnum the said Ad Hoc Promotion Policy could not have been acted upon. Therefore even it be assumed that vacancies existed on the post of Officer/Branch Manager during that period, no promotion could have been given on the basis of such Ad Hoc promotion policy.

11. There is another aspect of the case of these petitioners. The relevant clause of the Ad Hoc Promotion Policy has been quoted above. From bare perusal thereof it would appear-that though it did not specifically refer to consideration of merit of the persons concerned and all those who fulfilled the eligibility were to be considered on the basis of seniority, the fact that for promotion to the Officer's (Branch Officer) cadre three times the number of vacancies persons from the seniority list were to be considered and panel prepared from amongst them implies that such consideration or empanelment was not bereft of consideration of the merit. It is not that all eligible Field Supervisors were to be empanelled/promoted by virtue of their seniority, otherwise there was no question of considering persons three times the number of vacancy. Consideration of merit thus was implicit in consideration for promotion even as per that Policy.

12. Be that as it may, after the NABARD issued revised guidelines on 31-12-84 which was adopted by the Board of Directors of the respondent Bank on 30-1-87 circulated on 10-2-87, the cases for promotion had to be considered in accordance with those guidelines. The question which would thus arise for consideration is whether the impugned promotion of the respondents was in accordance with those guidelines. Though it is not the thrust of the petitioners' case, I consider it proper to consider the grievance from that angle. This question is the common question which is involved in other writ petitions too.

13. There is however one salient distinction between the other two writ petitions which I must point out. While the promotions impugned in CWJC No 26/88 were made at the time when the said guidelines dated 31.12. 84/10.2.87 were in force, by the time the promotions impugned in CWJC No 5927/90 were granted the statutory Rules viz. Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988 had come into existence. However, notwithstanding that the two sets of promotions were to be governed by different

provisions, the common feature of the guidelines and Rules is that both of them envisaged promotion on the basis of seniority-cum-merit. The common question in all these cases thus is whether the impugned promotions, made purportedly in the light of provisions of the guidelines/ Rules, was really on the basis of seniority-cum-merit as provided therein. This is the core issue involved in these cases.

14. At this stage the relevant provisions of the guidelines/circular dated 31-12-1984 may be noticed. Relating to the post of Field Supervisors, to which CWJC No. 26/88, the circular laid down:

Recruitment to 50% posts of Field Supervisors will be by direct recruitment in the open market, and 50% posts will be filled by the promotion from amongst the Senior Clerk-cum-Cashiers on the basis of seniority-cum-merit. Other terms and conditions will be as follows:

(a) Source of Recruitment: (i) 50% by direct recruitment from the open market.

(ii) 50% by promotion from amongst Senior Clerk-cum-Cashiers.

(b) Qualifications/Eligibility: (i) For Direct Recruitment

(ii) For Promotion:

(a) Minimum four years services as Senior Clerk-cum-Cashier.

OR

(b) Six years service as Junior Clerk-cum-Cashier in RRBs which do not have posts of Senior Clerk-cum-Cashiers.

The provisions as regards the post of Officer/Branch Manager were as follows:

50% of the vacancies of the Officers are to be filled by direct recruitment in the open market and the balance 50% by promotion from amongst Field Supervisors. Promotions will be on the principle of seniority-cum-merit. The other terms and conditions are as given below:

(a) Source of Recruitment: (i) By promotion - 50%

(ii) By direct recruitment from open market-50%

(b) Qualifications/Eligibility: (i) For Direct Recruitment:

(ii) For Promotion: Five years ser

vice as Field Supervisor.

The above condition of

minimum service is relaxable as

stated below:

...

15. The provisions of the Regional Rural Banks (Appointment and Promotion of the Officers and other Employees) Rules, 1988 may also be noticed as follows, Whereas the promotion impugned in CWJC Nos. 5886/87 and 26/88 were made when the guidelines/circular dated 31-12-89 was in vogue, by the times the promotions in CWJC No. 5927/90 were made the aforesaid Rules had come into being with effect from 28-9-88. The Board of the direction of the respondent Bank formally adopted those Rules on 6-12-89/30-12-89. The relevant provisions as regards the post of Officer/Branch Manager (which post alone is subject-matter of CWJC No. 5927/90) in the said Rules are as follows.

6. Officers

(a) Source of recruitment: (i) Fifty per cent by direct

recruitment form open

market.

(ii) Fifty per cent by pro

motion from amongst

confirmed Field Su

pervisors on the prin

ciple of seniority-cum-

merit.

(b) Qualification and eligibility: (i) For direct recruitment

(ii) For promotions

Confirmed Field

supervisor with a

minimum of five years

service as Field

Supervisor. The above condition of minimum service is relaxable as stated below:

(e) Mode of selection: (i) Written test and interview for direct recruitment.

(ii) Interview and assessment of the performance reports for preceding three years period, for promotion."

16. Before advertizing to the interpretation of the clause "seniority-cum-merit" occurring in both circular and Rules it would be appropriate to briefly notice the relevant facts of CWJC 26/88 and 5927/90. In CWJC No. 26/88 the sole petitioner was appointed on the post of Clerk-cum-Cashier on 6-6-80. On 12-6-80 he joined the post. On completion of one year's period of probation he was confirmed on 12-6-81. In the seniority list of Clerks-cum-Cashiers he was shown at serial No. 18. On 25-6-86 he along with those placed at serial No. 17 and 19 to 39 were called to appear before three-member Selection Committee on 18-9-86. On 1-10-86 persons at serial Nos. 17 and 19 to 30 were promoted. The petitioner was denied promotion. He claims to have filed representations on 5-10-86 and 23-10-86. On 19-11-97 he was again called for interview to be held on 1-12-87. Along with him those who were called earlier at serial Nos. 31 to 39 and others upto serial No. 60 were also called. On 1-12-87 a five-member Selection Committee took the interview. While the juniors were promoted, the petitioner was again denied promotion. At this stage he came to this Court in the present writ petition.

17. In CWJC No. 5927/90 the sole petitioner was appointed on the post of Field Supervisor along with respondent Nos. 4 and 5 on 1-3-82. They were confirmed in due course on completion of two years' probation. Respondent Nos. 6 to 11 who were earlier appointed on the post of Clerk-cum-Cashier during 1979-80 were promoted as Field Supervisor later during 1983-84. After the Rules i.e. Regional Rural Banks. (Appointment and Promotion of Officers and other Employees) Rules, 1988 came into effect by reason of adoption thereof by the Board of Directions of the respondent-Bank on 6-12-89, circulated on 30-12-89, the Board in its meeting on 31-1-90 constituted Selection Committee for promotion to the post of Officer/Branch Manager from amongst the Field

Supervisors. The petitioner and others were called for interview vide letter dated 11-4-90, on 1-5-90. At the end of the process on 31-8-90 while respondent Nos. 4 to 11 were promoted, the petitioner was denied promotion.

18. Counsel for the petitioners in CWJC Nos. 26/88 and 5927/90, inter alia, submitted that the impugned promotions were given on the basis of assessment of merit which is contrary to the Rule of "seniority-cum-merit" and, therefore, they are not in accordance with the guidelines/circulars dated 31-12-84 and/or the 1988 Rules. They relied on a decision of the Supreme Court in B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., , and three decisions of this Court in D.P. Singh v. Ranchi Kshetriya Gramin Bank 1992(1) BLJR 409 Shyam Bihari Pandey and Others Vs. Bhojpur Rohtas Gramin Bank and Others, Abdul Sattar Wahidi Vs. Bihar State Road Transport Corporation and Others, , the last one being by a Full Bench. On behalf of the respondent-Bank it was submitted that promotions were made in accordance with the circulars issued from time to time by the NABARD, which are binding on the Bank. Where there are no statutory Rules or the Rules are silent, it was submitted, it is open to the Government or other authorities, as the case may be, to issue circulars or instructions which are equally binding, as held in the case of Sant Ram Sharma Vs. State of Rajasthan and Another, . It was contended that no employee can claim a right to be promoted, he has merely right to be considered for promotion and where promotion is given on consideration of "seniority-cum-merit" he cannot claim such promotion as a matter of right by virtue of seniority alone. Reliance in support of the contention was placed on State of Mysore and Another Vs. Syed Mahmood and Others, , and State of Mysore Vs. C.R. Sheshadri and Others, . Reliance was also placed on State Bank of India and others Vs. Mohd. Mynuddin, , Chandra Gupta, I.F.S. Vs. The Secretary, Govt. of India, Ministry of Environment and Forests and others, , and finally Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others, .

19. The concept of "seniority-cum-merit" as criterion of promotion has fallen for consideration a number of times by the Supreme Court and other Courts. In Sant Ram Sharma v. State of Rajasthan (supra) the Supreme Court observed that principle of seniority ensures absolute objectivity by requiring all promotions to be "made entirely on the ground of seniority and that if a post falls vacant it is filled by the person who has served the longest in the post immediately below. But the trouble with the seniority system is that it is so objective that it fails to take any account of personal merit. It is fair to every official except the best ones; an official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. The Court expressed the view that there should be correct balance between seniority and merit in a proper promotion-policy. The criterion of "seniority-cum-merit" and "merit-cum-seniority" which takes into account seniority as well as merit seems to achieve such a balance. While the principle of "merit-cum-seniority" lays greater emphasis on merit or ability-seniority playing less significant role - to be given weight only when merit or ability are approximately equal, the criterion of

seniority-cum-merit has greater emphasis on seniority.

20. It is true that no person can claim promotion as a matter of right, and even where the promotion is guided by the principle of seniority-cum-merit, he cannot claim promotion as of right by virtue of seniority alone. As clarified in *State of Mysore v. Syed Mahmood* (supra) "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". The moot question is as to what weight is to be given to the two factors, namely, seniority and merit where promotion is made on the principle of seniority-cum-merit. The Supreme Court explained the principle in the aforesaid case to mean "seniority subject to the fitness of the candidate to discharge the duties of the post from amongst persons eligible for promotion". In *State of Kerala and Another Vs. N.M. Thomas and Others*, , the Supreme Court observed:

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 16(2).

21. Thus, where a person possesses the merit requisite for the higher post, he cannot be denied promotion on the ground that other persons junior to him possessed better merit. In other words, the principle of seniority-cum-merit does not envisage comparative assessment of merit. This really is the core point of distinction between "seniority-cum-merit" and "merit-cum-seniority. Whereas comparative assessment of merit is required to be made in applying the criterion of merit-cum-seniority, for seniority-cum-merit, no such comparative assessment is required.

22. Before proceeding further on this topic it would be proper to refer to the criteria actually followed in giving impugned promotions in CWJC No. 26/88 and 5927/90. In CWJC No. 5886/87 there are no pleadings on the point by either party. The grievance of the petitioners rests on different premise altogether which I have already dealt with above. In the absence of foundational facts regarding the fixation of criterion .i.e. allocation of marks inter se between seniority and other factors the respondent have also not stated facts in this regard. So far as CWJC No. 26/88 is concerned, on 10-9-87 the Board of Directors laid down norms by allocating marks under different heads as the criteria for promotion as under:

(1) Seniority - 40 marks @ 4 marks for each year
of completed service.

(2) Educational Qualifications - 2 marks for Graduation
2 marks for B.A.. (Hons.) in Economics,

B. Com, B.Sc. and B.Sc. (Agri)

2 marks for CAIIB-

(i) 2 marks for CAIIB

(ii) 2 marks for Post Graduation

Sub-total 10

(3) Assessment report -20

Aggregate of at least 3 years

(4) Interview -30

Grand total -100

In CWJC No. 5927/90 the allocation of marks fixed by the Board of Directors in its 79th meeting on 7-1-90 was as follows.

(1) Experience/seniority - 50 marks & 4 marks for each completed year of service or one mark for completed quarter of year

(2) Higher qualification -Maximum 5

Intermediate -2

Graduation -2

Post Graduation/LLB -1

Sub total -5

(3) Performance Appraisal (Max -15)

Excellent -5 marks per year

Very good - 3 marks per year

Good -1 marks per year

(4) Interview -30

Grand total -100

It is on the basis of evaluation in the above said manner that the petitioners were awarded less marks than the respondents and denied promotion. It is to be considered whether the inter se allocation of marks I.e. criteria/norms for consideration of the cases of the petitioners and others was in accordance with the principle of seniority-cum-merit.

23. In the cases of D.P. Singh v. Ranchi Kshetriya Gramin Bank 1992(1) BLJR 409 Shyam Bihari Pandey v. Bhojpur Rohtas Gramin Bank 1997(1) PLJR 93, and

Abdul Sattar Wahidi Vs. Bihar State Road Transport Corporation and Others, , promotions had been made on the basis of more or less similar criteria and inter se allocation of marks which were not approved by this Court. In the case of D.P. Singh the allocation of marks was as follows:

- (1) Seniority -40 marks
- (2) Educational Qualifications - 6 marks
- (3) Assessment of performance - 24 marks
(of less 3 years)
- (4) Interview - 30 marks

Total -100 marks

In the case of Shyam Bihari Pandey the allocation was as follows:

- (1) Service records - 30 marks
- (2) Performance - 30 marks
- (3) Interview - 40 marks

The Full Bench decision Abdul Sattar Wahidi Vs. Bihar State Road Transport Corporation and Others, , arose from the decisions of the learned Single Judge in DP. Singh's case. That was a case of promotion to the post of Area Manager/ Senior Manager, the provisions in respect of which are contained in para 7 of the Second Schedule to the 1988 Rules and similar to those with respect to the post of Officer/Branch Manager contained in para 6 quoted above. The impugned decision of the Selection Committee was held to be based on the comparative assessment of merit and not in accordance with the principle of seniority-cum-merit i.e. in accordance with the guidelines/circulars dated 31-12-84. The Full Bench observed:

It is, therefore, evident that para 7(c) of the second schedule to the rules does not, in my opinion, lend support to the contention that criterion of Seniority-cum-merit envisaged by the rule making authority involves assessment to comparative merit for the purpose of promotion. The word "selection" has been used in the sense of selecting an officer for promotion on the basis of criterion of seniority-cum-merit. The requirement that such selection shall be made on the basis of interview and assessment of performance reports for the preceding three years is consistent with the criterion of seniority-cum-merit. The said mode enables an assessment to be made for the minimum necessary merit requisite for efficiency of administration and it cannot be construed as importing assessment of comparative merit of the officers eligible for promotion. It is well-settled that service rule should provide reasonable promotional opportunity in every wing of public service to generate efficiency in service. I am, therefore, of the view that in the case of promotion on the basis of seniority-cum-merit, obtaining minimum percentage of marks in viva voce test cannot be a decisive factor for

selection and such provision is arbitrary.

24. The decision of the Supreme Court in B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., , in fact, in my opinion, settles the issue. The said decision was rendered on a group of appeals relating to different Regional Rural Banks, namely, Rayalaseema Grameen Bank, Pinakini Gramin Bank, Bastar Kshetriya Gramin Bank, Rewa Sidhi Gramin Bank and Chhindwara-Seohi Kshetriya Gramin Bank. The allocation of marks in the case of Rayalaseema Grameen Bank was as under:

(a) Seniority - 34 marks (0.72 mark for each completed month of service over and above the minimum qualifying service)

(b) Qualifications -10 marks (minimum qualification applicable to the cadre shall not be reckoned)

Post-graduation - 3 marks

Double graduation (like BL, L.L.B.B. Ed.) - 1 mark

Any Diploma/s - 2 marks

CAIIB Part I

2 marks

CAIIB Part II - 2 marks

(c) Interview - 20 marks

(d) Performance

56 marks

Total

130 marks

The allocation of marks in the case of Pinakini Grameen Bank was as follows:

"(a) Seniority Officers (Managers) who have completed 8 years of service as per SSR of the Bank 55 marks

(b) For passing CAIIB Part I - 2 marks

CAIIB Part II 3 marks

(c) Performance - 25 marks

(d) Interview - 15 marks

Total 100 marks

The allocation of marks in the case of Rewa Sidhi Bank was as under:

"(a) Seniority 15 marks

- (b) Job responsibility 12 marks
- (c) Placement/ Posting mobility 8 marks
- (d) Performance 40 marks
- (e) Interview 25 marks

25. The Supreme Court held that the criterion of selection in all the cases was not in accordance with the principles of seniority-cum-merit. Dealing with different cases separately the Court observed:

It is not a case where minimum qualifying marks are prescribed for assessment of performance and merit and those who secure the prescribed minimum qualifying marks are selected for promotion on the basis of seniority. In the circumstance, it must be held that the High Court has rightly come to the conclusion that the mode of selection that was in fact employed was contrary to the principle of "seniority-cum-merit" laid down in the Rules.

The said circular did not prescribe minimum qualifying marks for assessment of performance and merit on the basis of which an officer would be considered for being selected and, as pointed out by the High Court, the selection was made of only those officers who secured the highest number of marks amongst the eligible officers. In the circumstances, the High Court, in our view, has rightly held that this method of selection was contrary to the principle of "seniority-cum-merit" and it virtually amounts to the application of the principle of "merit-cum-seniority".

The criterion of the promotion policy cannot be regarded as being in consonance with the principle of "seniority-cum-merit" as prescribed under the Rules."

However, the promotion in the case of Chhindwara-Seoni Kshetriya Gramin Bank was upheld on the ground that those who secured the minimum qualifying marks were selected on the basis of merit-cum-seniority, the Court observed:

"On a perusal of the said documents, we find that 50 marks out of the total of 100 marks were prescribed as the minimum qualifying marks for interview and only those who had obtained the qualifying marks in interview were selected for promotion on the basis of seniority. It was, therefore, a case where a minimum standard was prescribed for assessing the merit of the candidates and those who fulfilled the said minimum standard were selected for promotion on the basis of seniority. In the circumstances, it cannot be said that the selection has not been made in accordance with the principle of "seniority-cum-merit".

26. As a matter of fact, the scope of seniority-cum-merit rule was explained by the NABARD vide letter No. IDD/RRB No. C-78/316 (Gen)/86-88 dated 1-12-87 and the impugned promotions do not seem to be in accordance with the NABARD understanding of the rule. It Would be useful to quote the relevant part of the letter as under:

Please refer to our circular letter IDD. RRB. No. C-62/316 (Gen)/84-85 dated 31 December, 1984 regarding appointments to the posts of Area Managers and Senior Managers. The matter has been examined by us in consultation with Government of India and have to advise that the posts of Area Managers/Senior Managers are promotional posts to be filled up by 100% promotion from only source and non-selection rule of seniority-cum-merit has to be applied. This rule envisages promotion by seniority with due considerations to minimum merit/fitness prescribed. Fitness implies that there is nothing against an officer; no disciplinary action is pending against him and none is contemplated. The officer has neither been reprimanded nor any adverse remarks have been conveyed to him in the reasonable recent past. The promotions are meant to be made on the abovementioned considerations only. In other words, if a Manager satisfies the qualifications and eligibility criteria and there is nothing adverse against him, his due promotion should not be denied to him. Similar procedure may be followed in the case of promotions to Supervisor's and Manager's posts.

27. The decision in the case of Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others, , relied upon by the Counsel for the respondent-Bank at the first instance seems to support the case of the bank. However, from the facts stated in the judgment it appears that the respondents had been promoted on appraisal of their performance on the basis of marks awarded in the interview. The performance of appraisal comprised of dimension of work, general intelligence, job knowledge, initiative and resourcefulness etc. The service record of the officers who assailed the promotion before the High Court was admittedly adverse. The High Court had set aside the promotion holding that the service records of the recent past should have been taken into consideration and in case there was nothing against the officer he should not be denied promotion on the ground that some other person junior to him was more meritorious. Reversing the judgment of the High Court the Supreme Court referred to the circular of the NABARD dated 7-4-86 which provided that "selection of the eligible candidates should be based on performance of the respective candidates in the bank". The decision in the above case was noticed by the Supreme Court in the case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., , the Court observed:

This judgment, in our opinion, does not make a departure from the law laid down by this Court in the earlier judgments explaining the criterion of "seniority-cum-merit" because in this case, the selection had been made by-taking into account the seniority as well as performance and performance was appraised by assigning marks on the basis of performance appraisal and interview. Those who secured 85 marks out of 150 marks were short-listed for promotion, which shows that securing 85 marks out of 150 marks was treated as the minimum standard of merit for purposes of promotion and those who satisfied the said minimum standard were selected for promotion on the basis of seniority.

28. The other decision relied on by Counsel for the respondents viz,,, State of

Mysore v. C.R. Seshadri 1974 Supreme Court 460, was also noticed in B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., . In that case a two-Judge Bench of the Supreme Court had observed:

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.

A larger Bench of three-Judges in the case of B.V. Sivaiah v. K. Addanki Babu (supra), did not approve these observations. It stated:

In the observations on which reliance has been placed by the learned Counsel for the rural banks and the promoted officers, the distinction between "seniority-cum-merit" and "merit-cum-seniority" has been obliterated and both the criteria have been equated. Since comparative assessment of merit is required to be made while applying the criterion of "merit-cum-seniority: and for "seniority-cum-merit" no such comparative assessment is required, the aforementioned observations in the case of C.R. Sheshadri on which reliance has been placed cannot be regarded as correctly reflecting as to what is meant by the criterion of "seniority-cum-merit.

The decision in State of Mysore v. C.R. Seshadri (supra) also, therefore is of no help to the respondents.

29. The facts of State Bank of India and others Vs. Mohd. Mynuddin, another case relied upon by the Counsel for the respondents, were different. That was a case of promotion to Middle Management Grade III in the State Bank of India. The promotion depended not merely upon the eligibility but on merit and the impugned promotion was accorded only after a proper evaluation of the service records, performance appraisal and the potentiality of the officer concerned to assume higher responsibilities.

30. In the above premises, the denial of promotion to the petitioners based as it was on comparative assessment of the merit of the persons concerned, cannot be said to be in accordance with law. The posts of Field Supervisor and Officer/Branch Manager being "non-selection posts", selection was meant for a limited purpose-to find out if the person possessed minimum merit, the purpose was not to make a comparative evaluation of merit and in that process pass over the senior on the ground that his junior possessed more merit even though the senior possessed the minimum merit. It is clear from the pleadings of the respondents in CWJC Nos. 26/ 88 and 5927/90 that the selection/non-selection was on the basis of the total marks secured by the candidates that is to say, on the basis of comparative assessment of the merit. In CWJC No. 5886/87, though there are no specific pleadings, this much is clear that in that case too, selection or non-selection was on the basis of total marks. What the respondent-bank was supposed to do was to identify the eligible candidates by prescribing the minimum qualifying marks and to consider only those who got the qualifying marks, on the basis of seniority as was done, for example, in the case of B.V.

Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., . The non-promotion being on the basis of merit, seniority taking the back seat, I have no hesitation in holding that the decisions were not in accordance with law.

31. It was submitted on behalf of the Bank that the petitioners having subjected themselves to the process cannot challenge the validity of the criteria. Reliance was placed on an unreported judgment of the Supreme Court in the case of Dr. Abdul Samadv. ShriKant Prasad Shrivastava(Civil Appeal Nos. 2529-2530 of 1998). The principle is well-known but has no application in the present case. Where the person participates in the selection process with knowledge of the ground of invalidity he cannot subsequently turn around and challenge it. In the cited case, as found by the Supreme Court, the writ petitioners had knowledge about the illegal constitution of the Selection Committee but took chance of selection. The Court accordingly held that the writ petition should not have been entertained by the High Court. In the present case, there is nothing to suggest that criterion was notified or the petitioners had otherwise come to know about it. The principle, therefore, has no application in these cases. The plea is thus rejected.

32. However, the impugned promotions were given more than a decade ago and meanwhile at least in two cases, viz., CW.J.C. Nos. 5886/87 and 26/88 the petitioners have been promoted in the meantime. In the circumstances, it would not be proper to interfere with the promotions already granted. In fact, as noted at the outset, in CWJC No. 26/88 the names of the persons concerned have been deleted as the petitioners had not sought its cancellation. Though it cannot be said with definiteness that the petitioners would have been selected for promotion along with the respondents and others in the same transaction but considering that at least in two cases they have been promoted (it is not known whether the petitioner in the third case too has been promoted in the meantime) it seems appropriate to direct the respondents to consider as to whether the petitioners are entitled to restoration of seniority. If on correct application of the principle of "seniority-cum-merit" in the light of what has been stated above, the petitioners were fit for promotion in the same transaction, there can be no justification not to restore their seniority from the due dates.

33. The case of Chandra Gupta, I.F.S. Vs. The Secretary, Govt. of India, Ministry of Environment and Forests and others, , relied upon by the Counsel for the respondent-Bank, on the point of restoration of seniority, was completely different. The point for consideration in that case, inter alia, was where the basis of promotion is "merit-cum-seniority" and the adverse remark on account of which the person was refused promotion earlier is subsequently expunged and he is granted promotion, whether he is entitled to restoration of seniority. The point was answered in the negative. The Supreme Court observed that the promotion could date back only if there are materials to show that after expunction of the remarks the service of the officer concerned was more meritorious than that of the officers superseding him.

34. In the result, these writ petitions are allowed. The respondent-bank is directed to consider the cases of the petitioners for promotion to the post of Field Officer and Officer/Branch Manager, as the case may be, from the due dates in accordance with law and in the light of this judgment. There will be no order as to costs.

Indu Prabha Singh, J.

35. I agree.