
(2004) 03 AP CK 0071

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3304 of 2000

Lesley Jacob

APPELLANT

Vs

Indian Council for Cultural Relations (ICCR) and Others

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Council for Cultural Relations, Cadre, Seniority and Promotion Rules — Rule 4(3)

Citation : (2004) 3 ALD 262 : (2004) 4 ALT 148

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : S. Sethna Baria, for C.V. Mohan Reddy, for the Appellant; C.V. Rajeeva Reddy, for K. Subrahmanya Reddy, for the Respondent

Final Decision : Allowed

Judgement

Goda Raghuram, J.—Heard Ms. S. Sethna Baria, Advocate instructing Mr. C.V. Mohan Reddy, learned Counsel for the petitioner and Mr. Rajiv Reddy, Advocate instructing Mr. K. Subrahmanya Reddy, learned Senior Counsel, for the 1st respondent. None appears for Respondent Nos. 2 to 9.

2. The petitioner is aggrieved by having been superseded to the post of Programme Officer in the 1st respondent establishment and seeks invalidation of the order dated 14-2-2000 whereby the Respondent Nos. 2 to 9, her juniors, were promoted as Programme Officers ignoring her case for such promotion. That the 1st respondent is a State within the meaning of Article 12 of the Constitution of India is not in dispute; that Respondent Nos. 2 to 9 are juniors to the petitioner in the category of Assistant Programme Officers or equivalent categories is also not in dispute; that the petitioner and Respondent Nos. 2 to 9 are qualified for consideration for promotion to the post of Programme Officers is also not in dispute. While the petitioner claims to have been superseded contrary to the legal architecture governing promotions to the post of Programme Officer, the 1st respondent seeks to justify the petitioner's supersession on the ground that "merit" has primacy in the matter of promotion

to the category of Programme Officer and the petitioner was not found comparatively meritorious to the Respondent Nos. 2 to 9 by the Departmental Promotions Committee (for short "DPC").

3. In Paragraph Nos. 5 to 7 of the affidavit filed in support of the writ petition, the petitioner has set out facts in support of her claim to an outstanding record of service and would invite this Court to consider whether in view of her asserted record of service, she ought to have been considered preferentially vis-a-vis the Respondent Nos. 2 to 9 for promotion to the post of Programme Officer. As this Court in exercise of its jurisdiction under Article 226 of the Constitution of India does not sit in appeal over the selection process, this invitation of the petitioner ought to be and is accordingly declined.

4. In view of the issues involved in this lis, the question that falls for consideration is as to what are the applicable legal principles having regard to the regulations that govern promotions to the post of Programme Officer in the 1st respondent establishment?

5. It is the synoptic case of the parties that the Indian Council for Cultural Relations Recruitment, Cadre, Seniority and Promotion Rules (for short "the ICCR Rules") incorporate the legal environment in conformity with which promotions are to be made for the post of Programme Officer from the post of Assistant Programme Officer and equivalent posts. The post of a Programme Officer is enumerated in Grade-II Category (c) vide the First Schedule to the ICCR Rules. The post of Assistant Programme Officer is in Category (a) of Grade-in of the First Schedule. Rule 4 in Chapter-III of the ICCR Rules set out the procedure for recruitment to various posts. Sub-rule (iii) of Rule 4 incorporates the procedure for recruitment to Grade-II (c) Cadre posts, which is the area with which we are concerned in this lis. Rule 4(iii) of the ICCR Rules enjoins that recruitment to Grade-III (c) Cadre posts shall be filled on selection basis (seniority-cum-merit) by promotion of the permanent Officer of Grade-III (a) of the Cadre on the ratio of 50:50 (promotion/direct recruitment) basis. This rule also enjoins that no person shall be eligible for promotion to Grade-II (c) post unless he rendered 5/8 years (five years for Graduate and eight years for under-graduate) of approved service in a respective Grade subject to availability of vacancy.

6. Annexure-I to the ICCR Rules sets out a table incorporating the cadre strength for each of the posts in the service, the classification of the posts, scale of pay, whether the post is a selection post or a non-selection post, prescription of age limit for direct recruits, whether age and educational qualifications prescribed for direct recruits apply in case" of promotions, the period of probation, if any and the method of recruitment whether by direct recruitment, by promotion, transfer on deputation or transfer and the percentage of vacancies to be filled by each of the methods. Insofar as the post of Programme Officer is concerned, Annexure-I sets out the various aspects enumerated above in respect of the post of Programme Officer, in Serial No. 3 of the Annexure. The position reflected in Rule 4(iii) of the ICCR Rules, adverted to supra, is reiterated in Annexure-I reiterating

that the post of "Programme Officer" is a "selection post".

7. During the early periods of organized employment the expression "selection post" was self-dispositive. Over the years and responding to the increasing complexities of employment, in particular public employment, the large number of posts that occur in public services, the intense competition for career advancement and the complex needs of a dynamic society, further refinements of the expression "selection" became necessitous. As a result, the concept of "selection" was further refined and parameters such as selection simplicitor, selection by the method of seniority-cum-merit, selection meaning merit-cum-seniority and other variations such as selection-cum-seniority and selection by merit assumed currency in administrative practice. These refinements in administering the selection process of recruitment invite debate and dispute. Interpretation and authoritative explication of the meaning of these various methods of selection became necessary. We have a large body of precedents to cater to this terminological richness in the variety of selection processes adopted in services both of public authorities and private establishments.

8. The 1st respondent establishment as already noticed, has ordained that recruitment to the post of Programme Officer from the category of Assistant Programme Officer is on selection basis as the genus and seniority-cum-merit as the species.

9. Before embarking on an analysis as to the validity of the selection process adopted by the 1st respondent in the case on hand, on which adversarial positions have been taken by the petitioner and the 1st respondent, it is necessary to consider the authoritative precedents which have defined the expression "seniority-cum-merit" in the selection process of public authorities.

10. Since *Sant Ram Sharma Vs. State of Rajasthan and Another*, , the expression "seniority-cum-merit" has fallen for consideration and explication of meaning in various decisions of the Supreme Court. There were subsequent decisions such as *State of Mysore and Another Vs. Syed Mahmood and Others*, , and *State of Mysore Vs. C.R. Sheshadri and Others*, . In all India Services, the concept of "selection" fell for consideration in a few cases. The principal of which is *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, , and *R.S. Dass Ors. Vs. Union of India (UOI) and Others*, . The concept of "seniority-cum-merit" again fell for consideration by the Supreme Court in *B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc.*, .

11. In *Sivaiah's case (supra)*, the meaning of the expression "seniority-cum-merit" directly fell for consideration by the Supreme Court. This was the criterion prescribed for promotion to the post of Area Manager/Senior Manager in the Regional Rural Banks (for short RRB) under the applicable Rules of 1988. Initially, appointment to the post of Area Manager/Senior Manager in the RRB was governed by circulars issued by the Central Government and the National Bank of which they were administrative arrangements. Thereafter, the 1988 Rules were

framed. The question whether in the context of the rules prescribing that appointments to the post of Area/Senior Managers be governed by the principle "seniority-cum-merit", the aspect of "merit" has primacy or "seniority" and what the expression "seniority-cum-merit" signifies, came to be explained by the Supreme Court. After an analysis of the extant precedents on the aspect, the Supreme Court in Sivaiah's case (supra) held (vide Paragraph No. 18 of the AIR report) as under:

"18. We thus arrive at the conclusion that the criterion of "seniority-cum-merit" in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit."

12. After enunciating the meaning of the expression "seniority-cum-merit" in Paragraph-18 supra, the Supreme Court proceeded to examine whether the criterion enunciated by it had been followed by the banks in making the promotions, which were challenged before it. This is what the Court recorded on an analysis of the procedure followed by one of the RRBs in making the promotions (vide Paragraph-26 of the AIR report), which reads as follows:

"26. Having heard the learned Counsel for the Rayalaseema Grameena Bank as well as five Branch Managers who had been promoted as Area/Senior Managers in the proceeding on December 1, 1989, we find that no case is made out for interference with the said view of the High Court. The promotion process laid down by the Rayalaseema Grameena Bank in its circular dated September 27, 1989, on the basis of which the selection for promotion had been made on December 1, 1989 sets apart 34 marks for seniority, 10 marks for qualifications, 20 marks for interview and 56 marks for performance which shows that out of a total number of 120 marks the maximum number of marks that could be awarded to seniority is 34 and that 0.75 mark was to be given for each completed month of service over and above minimum qualifying service in other words, if two persons are appointed on the same day, the same number of marks had to be awarded for seniority. Moreover, out of a total number of 120 marks more than 50% marks were set apart for interview and performance. The High Court has found that only those officers who had secured the highest number of marks were ultimately promoted. It is not a case where minimum qualifying marks are prescribed for assessment of performance and merit and those who secured the prescribed minimum qualifying marks are selected for promotion on the basis of seniority. In the circumstances, 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. Civil Appeal Nos. 3799-3803 of 1996 filed by Rayalaseema Grameena Bank as well as Civil Appeal Nos. 3811-2812 of 1996 filed by the promoted officers are, therefore, liable to be dismissed."

13. Similar conclusions were arrived at by the Supreme Court in respect of Pinakini Grameena Bank, Bastar Kshetriya Gramin Bank, and Rewa Sidhi Gramin Bank.

14. Promotions in Chindwara Seoni Kshetriya Gramin Bank were also challenged and the challenge considered by the Supreme Court in Sivaiah's case (supra). On a consideration of the relevant documents, the Supreme Court found that 50% marks out of total 100 marks were prescribed for minimum qualifying marks for interview and only those who had obtained the qualifying marks in the interview were selected for promotion on the basis of "seniority". The Supreme Court recorded that in the circumstance a minimum standard was said to have been prescribed for assessing the "merit" of the candidates and those who had fulfilled the minimum standard were selected for promotion on the basis of "seniority". The criterion of "seniority-cum-merit" was, therefore, not violated, ruled the Supreme Court. In the case of other RRBs, the Court found that primacy was awarded to "merit" and "seniority" was relegated to a subservient position all through the selection process.

15. What is, however, required to be noticed is that apropos the law declared in Sivaiah's case (supra), the expression "seniority-cum-merit" postulates that given a minimum necessary "merit" requisite for efficiency of administration, a senior even though a less meritorious vis-a-vis persons who had secured the minimum necessary merit benchmark shall have priority and is not required to compete with others on the scale of merit alone. The achievement of minimum benchmark could legitimately be assessed by the employer either by assigning marks on the basis of an appraisal of performance on the basis of service record and or by any other rational method.

16. In *K. Samantaray v. National Insurance Co., Ltd.*, (S.C.), 2003 (6) SLR 1, the expression "seniority-cum-merit" in the context of a promotion Rule again fell for consideration by the Supreme Court, though in a slightly different administrative and factual context. The earlier decision of the Supreme Court in *Shivaiah's case* (supra) was also considered along with other decisions such as *Sant Ram Sharma's case* (supra) and *State of Mysore's case* (supra). The appellant before the Supreme Court, an Administrative Officer of the National Insurance Company Limited, was superseded for promotion to the post of General Manager by his juniors in the feeder category. The Supreme Court considered the promotion policy of the Insurance Company dated 14-2-1990 which elaborately defined the facially nebulous expression "seniority-cum-merit". The promotion policy incorporated an elaborate regime of assessment while considering promotions to various categories of posts; the discretion of the assessing authority was also

structured and conditioned by dividing the assessment parameters into categories such as seniority, insurance qualification, C.R. form, traits in C.R., performance, growth potential and interview. Having regard to the fact that in the legal environment of the National Insurance Company's promotion policy the expression "seniority-cum-merit" was conditioned by an explicit instrument of instructions in the policy instrument itself, which explicated the meaning of the expression "seniority-cum-merit" by an elaborate process of assessment of the criterion, the Supreme Court in Paragraph-10 characterized the National Insurance Company's promotion" policy as a "hybrid mode of promotion", somewhat akin to the mode of promotion considered in an earlier case by the Supreme Court viz., *Syndicate Bank Scheduled Castes and Scheduled Tribes Employees Association (Regd.) through its Syndicate Bank Scheduled Castes and Scheduled Tribes Employees Association (Regd.), through its General Secretary, K.S. Badlia and Others Vs. Union of India (UOI), through its Additional Secretary, Ministry of Finance (Deptt. of Economic Affairs) Banking Division and Others, .* This mode was distinct from the two principal species of the selection genus viz., "seniority-cum-merit" and "merit-cum-seniority" modes, ruled the Supreme Court. In this hybrid mode of promotion, held the Supreme Court, "seniority" is duly respected and "merit" appropriately recognized. After having concluded that National Insurance Company's promotional policy was more appropriately akin to the hybrid mode of promotion, the Supreme Court held that "it is always open to the employer to specify the area and parameters of weightage to be given in respect of "merit" and "seniority" separately. In view of the fact that there was internal evidence available and the expression "seniority-cum-merit" in the Insurance Company promotion policy, came appended with it an algorithm of meaning, the Supreme Court distinguished the decision in *Sivaiah's case (supra)* on the insular facts and the promotion policy of the Insurance Company. The Supreme Court also noticed that there were no statutory rules operating and that the entire area of promotion was governed by the promotion policy which required to be read as a whole. This was not a case where the area is governed partly by statutory rules and partly by administrative instructions. The Supreme Court clearly recorded (vide Paragraph -12 of the SLR report) "Reading of the whole policy reveals that stress was not on seniority alone and weightage was sought to be imposed on merit and other relevant aspects also."

17. Sri Subrahmanya Reddy, learned Senior Counsel appearing for the 1st respondent has urged that there are extant administrative instructions, which govern the procedure followed by the DPC constituted by the 1st respondent establishment for effecting promotions to the category of Programme Officers. A portion of these administrative instructions has been filed as Annexure-R/II, appended to the counter-affidavit of the 1st respondent. These instructions cover situations where promotions are made following the method of "selection-cum-seniority" and "selection by merit" apart from the non-selection method including the "seniority-cum-fitness" method. These instructions require the determination of a benchmark which for the category of posts we are concerned

with i.e., Programme Officers is stated to be "good". Among the candidates who secure the "good" benchmark, the DPC is required to further rank them as "outstanding", "very good", "good", "average" and "unfit". In the preparation of the select list, officers graded as "outstanding" should be included in the first instance in the select list followed by "very good" and thereafter "good", in the order of inter se seniority upto the number of vacancies (vide Paragraph No. 7 of the instrument of instructions). As this methodology of selection has admittedly been followed by the respondents, it is apparent that candidates falling within the zone of consideration and eligible for consideration for promotion as Programme Officer, would not merely have to achieve the benchmark "good", but would be further classified thereafter as "outstanding", "very good", "good", "average" and "unfit". Among the officers so further classified, they would be graded in the select list in accordance with their inter se seniority in such refined categorization after crossing the benchmark.

18. A critical analysis of the procedure followed by the 1st respondent leads to the irresistible conclusion that it is selection pure and simple on a comparative assessment of merit and seniority relegated to the remotest consideration in the promotion assessment. The procedure, therefore, clearly negates the statutory prescription that promotion to the post of Programme Officer be by selection (seniority-cum-merit). The mandate of the statutory prescription vide Paragraph 4(iii) of the ICCR Rules is non-negotiable and is obligated on the respondent. The instrument of instructions for structuring the discretion of the DPC (Annexure-R/II) is an administrative instrument that should be in conformity to the rules. It can neither supplant nor over reach or supersede Rule 4(3) of the ICCR Rules. It can only operate in the interstices, if any, of Rule 4(3) of the ICCR Rules. Administrative instructions that subvert the purposes of Rule 4(3) of the ICCR Rules, including the instructions in Paragraph No. 7 are pro-tanto unenforceable. The DPC is found by Rule 4(3) of the ICCR Rules and cannot act on the basis of any administrative instructions that subvert the purposes of the ICCR Rules.

19. It is the admitted position that the 1st respondent establishment has followed the benchmark, grading and preparation of the select list methodology as set out in Paragraph No.7 of the administrative instructions (annexure R/II) a methodology that is inconsistent with the promotion rule viz., Rule 4(3) of the ICCR Rules and contrary to selection by the method of "seniority-cum-merit" the meaning of which has been laid down in Paragraph No. 18 in Shivaiah's case (supra). If the DPC had placed all eligible candidates who had acquired the benchmark ranking "good" in the select list in the inter se order of their seniority, the selection procedure followed would have been impeccable and in accordance with the law declared in Sivaiah's case (supra) and Rule 4(3) of the ICCR Rules. However, the 1st respondent establishment has followed a pure selection process through and through and the prescription of benchmark was but a device for refined or focused assessment by restricting the overall zone of consideration, so as to pursue further selection from among those candidates who had secured the benchmark. Even after securing the benchmark "good"

there was further assessment of inter se merit for categorization as "outstanding", "very good", "good" etc. This further categorization of even those candidates who secured benchmark ranking "good" is clearly inconsistent with the principle of selection by the method of "seniority-cum-merit" as pronounced in Shivaiah's case (supra).

20. The petitioner is the senior most in the category of Assistant Programmer and her claim to seniority over Respondent Nos. 2 to 9 is not disputed. This position is also admitted in Paragraph-16 of the counter. Paragraph-14 of the counter-affidavit filed by the Director General of the 1st respondent admits though equivocally that the procedure for promotion followed is a benchmark "good", followed by further rating by DPC into "outstanding", "very good", "good", "average" and "unfit".

21. It requires to be noticed that though the petitioner was not considered for promotion vis-a-vis Respondent Nos. 2 to 9 in the selection held late in the year 1999 where Respondent Nos. 2 to 9 were promoted by the impugned order dated 14-2-2000, in the next selection, the petitioner was selected and promoted as "Programme Officer" by proceedings dated 5-7-2001. The grievance in this writ petition is, therefore, limited to her supersession for promotion vis-a-vis Respondent Nos. 2 to 9 in the 1999 selection.

22. In the facts and circumstances of the case and on the analysis above, the promotions of Respondent Nos. 2 to 9 while rejecting the case of the petitioner for promotion to the category of Programme Officer on the basis of an assessment by DPC and by the procedure adverted to supra in this judgment is unsustainable and inconsistent with Rule 4(3) of the ICCR Rules.

23. In the circumstances, the 1st respondent is directed to forthwith review the promotions considered by the DPC in the years 1999-2000 which resulted in the impugned order dated 14-2-2000 insofar as the category of Programme Officer is concerned. The DPC, which shall be constituted to make review, shall consider the case of the petitioner and of Respondent Nos. 2 to 9 according to the principle and meaning of the expression "seniority-cum-merit" as laid down by the Supreme Court in Paragraph 18 of the Shivaiah's case (supra), eschewing the instructions in Paragraph-7 of the administrative instructions set out in Annexure R/II to the counter-affidavit of the 1st respondent or any other administrative instructions which are inconsistent with Rule 4(3) of the ICCR Rules. On such review, if the petitioner is found deserving of promotion as Programme Officer, she shall be entitled to all consequential and incidental benefits as to seniority over Respondent Nos. 2 to 9, salary emoluments, arrears and all other benefits as though she has been promoted on par with Respondent Nos. 2 to 9

24. The writ petition is allowed as above. No costs.