

(2008) 05 KL CK 0029

In the High Court Of Kerala

Case No : WP (C) . No. 1604 of 2007 (N)

M. Radhakrishnan, Asst. Manager, P.V. Aboobacker, C.P.
Sudhir, Asst. Manager and K.V. Subramannian

APPELLANT

Vs

Chief General Manager and Dy. General Manager

RESPONDENT

Date of Decision : 02-05-2008

Acts Referred:

Citation : (2008) 05 KL CK 0029

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : B.S. Krishnan, for the Appellant; George Thomas, SC, for the Respondent

Final Decision : Dismissed

Judgement

V. Giri, J.—The petitioners are officers of the State Bank of India. They were promoted from the Clerical cadre to Junior Manager Grade I on 1.8.2000. They aspired for promotion to the post of Middle Management Grade II. By Ext.P1 circular dated 24.9.2003, the bank introduced a new system for promotion which consists of two channels of promotions to all the grades upto SMGS-V viz. fast track channel and normal channel. Details are contained in Ext.P1 circular. The fast track channel was introduced "to identify officers having excellent track record and potential at an early stage of their career and groom them for assuming leadership in future". Separate eligibility criteria were laid down in relation to the fast track channel.

2. It is the case of the petitioners that in so far as the promotion to the Middle Management Grade II is concerned under the fast tract channel one should have a minimum of 70 marks in the written test, 20 marks for promotion appraisal form and 10 marks for interview. The written test and interview forms part of the selection.

3. Notification under the fast track channel for the year 2004 was issued on

23.4.2004. The petitioners responded to the notification. According to them, they were called for the written test and the written test was conducted on 3.7.2004. They were not later intimated of the date of interview. Since they have secured less than 70 marks for the written test, they were not called for interview. But long thereafter they came to know that the cut off marks prescribed under Ext.P1 circular was reduced to 52%. According to the petitioners, if the reduced cut off mark of 52% was made applicable to the petitioners, they were also entitled to be considered further for promotion under the fast track channel. They were denied such an opportunity. They referred to the cases of Mr. P.K.Rajendran, Branch Manager, State Bank of India, Adoor, Sri.Sivasankar, Deputy Manager, State Bank of India, Valiyamala Branch, and Vijayakumar, Branch Manager, State Bank of India, Kottukal and certain others to illustrate that the abovementioned persons were considered after reduction of the cut off marks from 70% to 52% and such persons were promoted as well. 32 persons, were considered in the course of the promotional exercise undertaken during 2005- 2006 and all those 32 persons are juniors to the petitioners. The writ petition has been filed seeking a direction to the respondents to consider the petitioners against the promotional exercise of the year 2004 at par with those who had obtained lesser marks than the petitioners and promote them with effect from 2004 onwards.

4. A detailed counter affidavit was filed by the respondents. It is pointed out that the minimum qualifying marks stipulated for promotion in the fast track channel in the written examination is 70%. As adequate number of officers did not secure the minimum qualifying marks stipulated by the bank, the bank reduced the minimum qualifying marks in the written examination for the year 2003-2004 for promotion to MMGS-II under the fast track channel from 70% to 50% as per Ext.R1(a) circular. The reduction in the cut off marks by itself or obtaining as such 70% or 50% marks as the case may will not by itself ensure the selection of the incumbent. The aggregate marks obtained by various candidates in the promotion appraisal form, the written test and interview would be taken into consideration for inclusion of the candidates in the select list. The written examination as part of the selection undertaken under the fast track channel for the year 2003-2004 was held on 7.12.2003. The petitioners 1 and 2 were absent in the said examination. Third petitioner appeared and secured 36% marks. The 4th petitioner K.V.Subramanian secured 54% marks. Taking note of the reduction in the cut off marks in the written test he was called for the interview but his aggregate mark was below the cut off marks visa-a-vis the vacancies that were available and therefore the 4th petitioner could not be selected against the vacancies for the year 2003-2004. The reduction of the minimum qualifying marks in the written examination from 70% to 50% was an exception for the year 2003-04. This was under Ext.R1 (a) circular dated 16.1.2004. The petitioners appeared for the second examination conducted on 3.7.2004. But they secured less than minimum 70% marks and therefore they were not called for the interview. The scaling down of marks from 70% to 50% was an exercise

undertaken only in the year 2003-2004 and not for any previous or subsequent years. As regards the promotion obtained by P.K.Rajendran and others, following is the explanation given in the counter affidavit filed by the respondents.

Sri.P.K.Rajendran, Sivasankaran P, Vijayakumar E, Jobi Jose and Indu Parvathy are officers who got promoted to Junior Management Scale I (JMGS 1) w.e.f. 1.8.2000. They were confirmed as officers w.e.f. 1.8.2002. These officers were not considered for promotion to MMGS II for the promotion year 2003-04 as their training started from 11.3.2002 only and they were confirmed on 11.3.2004 with retrospective effect from 1.8.2002. Hence these officers were not considered for promotion to MMGS II under the Fast Track Channel during the year 2003-04, for want of two years of confirmed service as on the cut off date, the cut off date being 1.1.2003. However, in the new promotion policy, it is stipulated that these officers would be considered for backdated promotion with next year's promotion exercise, if otherwise eligible. It is only because of this, the said officers were considered for promotion for the year 2004- 2005.

5. Thus the promotion given to the above mentioned persons, according to the respondents, were pursuant to they being considered for promotion in the year 2004-2005. The said 5 officers, according to the bank, had scored marks between 50% to 70% in the written examination held on 3.7.2004 when they first became eligible after their confirmation, that took place only on 11.3.2004. But according to the respondents, the said officers were considered for promotion to MMGS-II with effect from the previous date as per the bank's instruction contained in Ext.R1(b) letter dated 16.4.2004. Though the petitioners had secured marks between 50% and 70% in the examination held on 3.7.2004, they were not considered for promotion because according to the bank, scaling down of the minimum qualifying marks was made applicable only for the year 2003-2004 and was not made applicable to the examination held on 3.7.2004, which going by the counter affidavit seems to be examination that was held as part of the promotional exercise under the fast track channel for the year 2004-2005.

6. But nevertheless the abovementioned 5 officers specifically referred to by the petitioners in the writ petition were actually promoted against the vacancies for the year 2003-2004, even according to the bank, which justified it in the following manner:

7. The said 5 officers scored marks between 50% to 70% in the written examination held on 3.7.2004, when they first became eligible after their confirmation. Only those officers in the Junior Management Grade Scale-I who were promoted to that grade with effect from 1.8.2001 and who had completed two years of service in that grade by 1.8.2003 were considered for the back dated promotion. But this batch of officers, according to the bank, who got promoted to JMGS-I with effect from 1.8.2001 were not considered in the promotion year 2003-2004 as they were not eligible on the cut off date for promotion in the year 2003-2004 viz. 1.10.2003. The respondents therefore

contend that the said batch of officers were considered for promotion in the year 2005-2006 for back dated promotion and those who had got 50% marks in the written test (the scaled down minimum qualifying marks stipulated for 2003-2004) were called for interview and promoted subject to the aggregate marks obtained by them. Certain persons who got promoted in the course of this exercise are no doubt juniors to the petitioners. According to the respondents, this was only a facility which necessarily had to be shown to certain 2001 promotees, who were not able to attend the written examination as part of the promotional exercise in the year 2003-2004 held on 7.12.2003.

8. The petitioners filed a reply affidavit pointing out that the scaling down of the minimum qualifying marks in the written examination for the year 2003-2004, was as per Ext.R1(a) circular dated 16.1.2004, going by the version given by the respondents in the counter affidavit. That this scaling down of marks according to the respondents, was not adopted for any previous or subsequent years. The examination for the year 2003-2004 was held on 7.12.2003 and that for the year 2004- 2005 was held on 3.7.2004. If the reduction in the minimum qualifying marks was therefore a one time measure adopted in the case of the promotional exercise for the year 2003-2004, then the said facility should not have been afforded in relation to those persons who had attended the examination held for the subsequent year on 3.7.2004. The petitioners therefore contend that different yardsticks have been adopted and they have been subjected to hostile discrimination.

9. An additional counter affidavit has been filed by the respondents. Essentially it is a reiteration of the stand already taken in the counter affidavit filed by the respondents. But it is also stated by the respondents that the reduction of the cut off marks pursuant to Ext.R1(a) circular was made applicable to those candidates who were eligible to appear in the written test for the year 2003-2004. But this benefit was granted to certain persons who were eligible to be considered for the promotion year 2003-2004, whenever they had appeared for the written examination for the promotion year 2003-2004, in any of the subsequent years viz. 2004-2005, 2005-2006 and 2006-2007. The reduction of cut off marks in the written examination was done on an all India basis with the approval of the executive committee of the Central Board. It is further stated in the additional counter affidavit that this facility which was given to certain persons who were otherwise eligible to be considered in the promotional exercise undertaken for the year 2003-2004 but for their non completion of 2 years of service after confirmation, was only to fill up the MMGS-II posts in the bank with adequate number of officers. It is reiterated that petitioners 1 and 2 had not participated in the written test held on 7.12.2003. Therefore they are ineligible to even claim the benefit of the scaled down minimum marks of 50%. The third petitioner had secured only 36% in the written test and therefore the benefit of the scaled down exercise obviously could not have been extended to him. The 4th petitioner was considered on the strength of the scaling down of the minimum marks but he did not secure the aggregate marks required for the

written test, performance appraisal and interview and therefore he was not promoted.

10. I heard learned Counsel for the petitioners Sri.K.Anand and learned Counsel for the respondents Sri.George Thomas.

11. Certain facts will have to be taken as either admitted or beyond the pale of controversy. That a promotional exercise under the newly introduced fast track channel undertaken for the year 2003-2004 and a written test was held on 7.12.2003. The details of this examination or even the factum of such examination held for the year 2003-2004 have not been pleaded by the petitioners in the writ petition. In fact those facts are available only from the counter affidavit. The petitioners referred to their participation in the test held on 3.7.2004 as is evident from Exs.P3,P4 and P5. But this obviously was part of the exercise for the promotional year 2004-2005.

12. The specific stand taken by the respondents is that the scaling down of the minimum marks in the written examination from 70% to 50% was a one time measure undertaken only in relation to the promotional exercise for the year 2003-2004 and petitioners 1 and 2 had not participated in the written examination held on 7.12.2003. Third petitioner had participated and secured only 36% marks. The 4th petitioner had secured only 54% marks and was called for interview. But his aggregate marks were not sufficient to see him successful for the promotional exercise of 2003-2004. It would have been better had the petitioners pleaded these facts in the writ petition. Pleadings of the writ petition are essentially related to the participation of the petitioners in the written test held on 3.7.2004, which obviously was part of the promotional exercise undertaken in the fast track channel for the year 2004-2005. There is no material placed before the court to come to a conclusion that a reduction in the minimum marks required in the written test forming part of the promotional exercise under the fast track channel (stipulated as per Ext.P1 circular) was diluted for the year 2004-2005 as well. If that be so, in view of the admitted facts that the petitioners did not obtain 70% marks in the written test held on 3.7.2004 as part of the promotional exercise for the year 2004-2005, they cannot contend that they should nevertheless have been called for an interview. Since the petitioners did not score the minimum marks required in the written test for being considered under the fast track channel, the respondents cannot be found fault with for not having considered the petitioners for promotion under the fast track channel for th year 2004-2005. The reliefs payed for by the petitioners are essentially confined to the promotional exercise for the year 2004-2005 and as observed above, since the petitioners did not obtain minimum marks required in the written test for promotion under the fast track channel, they cannot seek a direction to the respondents to nevertheless consider them for promotion under the fast track channel against the vacancies for the year 2004.

13. But the petitioners have a further case that certain persons who are juniors

to them and who had received marks between 50% to 70% like the petitioners were considered, interviewed and promoted. The case put forward by the petitioners in this regard is on the premise that such persons had participated in the written test held in the year 2005 and even 2006 and they were promoted inspite of the fact that they did not obtain 70% marks in the written test. In fact a reading of Exts.P7,P8, P9 and P10 would suggest that the petitioners have referred to the fact that the officers who scored 50% marks were included in the selection and called for interview. They have therefore asked for similar treatment.

14. The stand taken by the respondents in relation to this aspect, as discernible from the counter affidavit is that certain persons who were eligible to be considered as part of the promotional exercise in the fast track channel for the year 2003- 2004 could not participate in the examination held on 7.12.2003 because they had not completed two years of service after confirmation, on the date of examination. That when they participated in the examination, held as part of the promotional exercise under the fast track channel for the subsequent years, they were considered against the vacancies for the year 2003- 2004. According to the bank, otherwise such persons would have been discriminated against. Admittedly certain persons who did not secure a minimum of 70% marks in the written test which they had participated in, as part of their aspiration for promotion under the fast track channel were also permitted to participate in the interview and then ultimately promoted under the fast track channel itself.

The explanation given by the respondents in this regard is that such persons were considered in the course of the promotional exercise undertaken during 2004-2005 and even 2005-06 but in relation to the vacancies that had to be filled up as part of the promotional exercise under the fast track channel for the year 2003-2004. The stand taken by the bank suggests that certain vacancies which had to be filled up under the fast track channel during the year 2003-2004 were apparently kept unfilled and that those vacancies were made available to certain persons who participated in the promotional exercise for the subsequent years but who according to the bank, were otherwise eligible to participate in the promotional exercise under the fast track channel for the year 2003-2004 itself. From a reading of Ext.R1(a) circular, I am not able to discern any liberty reserved by the Bank unto itself to indulge in such an exercise. No doubt it is open to the bank to devise its own policy for effecting promotion.

The bank's power in this regard is obviously not under challenge in this writ petition. But from a reading of Ext.P1 circular it is understood that the promotional exercise laid down therein seems to have been implemented with effect from the promotion year 2003-2004. The circular does not contemplate setting apart certain vacancies which had to be filled up in the year 2003-2004, to absorb the claims of such persons who do not participate in the promotional exercise for the year 2003-2004 but participated in such promotional exercise for

the subsequent years.

The reduction in the minimum qualifying marks from 70% to 50% also does not seem to be authorised by Ext.P1 circular. But obviously the same is not the subject matter of challenge in the writ petition and therefore legality of the same is not a matter in issue. But the exercise undertaken by the respondents by which persons who did not participate in the written test held as part of the promotion exercise for the year 2003-2004 were nevertheless considered for promotion against the vacancies which had to be filled up as part of the promotional exercise for the year 2003- 2004 in the fast track channel, on the basis of their participation in the written test held for the subsequent years 2004-2005 and 2005-2006 does not seem to be clearly provided for by Ext.P1 circular. But I do not find any reason not to accept the stand taken by the respondents that this was a measure adopted on all India basis. I also find force in the submission of Sri. George Thomas that the subsequent exercise undertaken by the bank as such is not the subject matter of the challenge in the writ petition. Further the beneficiaries of such exercise are not made parties to this writ petition. I find no reason not to accept the stand taken by the bank that the scaling down of the marks from 70% to 50% in the written test as part of the promotional exercise under the fast track channel was a one time measure made applicable only to the written test held on 7.12.2003 and not for the subsequent years.

In these circumstances, I do not find any grounds to issue any direction as sought for by the petitioners. Hence the writ petition is bereft of merit and it is accordingly dismissed.