

(1997) 01 MP CK 0031
In the Madhya Pradesh High Court
Case No : M.P. No. 1937 of 1990

Mukhlal Ram and Others

APPELLANT

Vs

Rewa Sidhi Gramin Bank and Others

RESPONDENT

Date of Decision : 20-01-1997

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1998) 2 MPLJ 590

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : Umesh Trivedi, for the Appellant; R.N. Singh, for respondent Nos. 1 to 4 and V.S. Shrotri, for respondent Nos. 5 to 13, for the Respondent

Final Decision : Allowed

Judgement

C.K. Prasad, J.

In all these writ petitions common questions of law and fact arise and as such, they are being disposed of by this common order.

Facts necessary for the decision of the writ petitions are that petitioners are Branch Manager of the respondent Regional Rural Bank and they seek quashing of the order of promotion of the private respondents, as Area Manager/Senior Manager. The source of recruitment for Area Manager/Senior Manager is 100 per cent by promotion from amongst Branch Manager and the criteria for promotion is seniority-cum-merit.

It is alleged by the petitioners that the criteria adopted by the Bank was not seniority-cum-merit, but selection based on merit ignoring the seniority. The proceeding of the Departmental Promotion Committee has been produced before me which shows that while making the exercise of selection for promotion to the post of Area Manager and Senior Manager, the inter se merit of the candidates were considered and those securing higher marks have been promoted. Marks were allocated for seniority, Job responsibility, placement, posting mobility,

appraisal performance and personal interview. Marks allocated to ingredients to judge the merit is manifold than the marks allocated for seniority.

Learned counsel for the petitioners contends that the manner in which the promotion has been effected clearly shows that the respondent Bank did not follow the principle of seniority-cum-merit while considering the case for promotion. This question pointedly came up for consideration before a learned Single Judge of this Court in relation to another Rural Bank and on analysis of the various judgments pronounced by different High Courts, this Court in M. P. No. 943/93 by order dated 24-7-1996 came to the conclusion that "the Judicial precedents dealing with the very argument which have been raised in this petition are unanimous. All the High Courts have taken a consistent view. This view is that where the rules prescribed promotion by seniority-cum-merit than seniority has to be given due place. Merely because a person has a better merit, he cannot be promoted over and above the person senior to him, unless he lacks in qualification or is otherwise found to be unfit i.e. there is something against him."

The aforesaid judgment of the learned Single Judge has been challenged in L.P.A. No. 151/96 and analogous cases and a Division Bench of this Court while affirming the Judgment of the learned Single Judge held as follows :-

"Basic question before us is as to what is the criteria laid down for selection. Rules provide the criteria that the selection should be made on the basis of seniority-cum-merit. Wherever the criteria of seniority-cum-merit is laid down in the rules, then seniority is to be given due weightage and if senior person is not found suitable to be promoted, then the next person is to be considered. If senior person is found suitable and meritorious, then it need not be passed over in favour of junior person."

There is fundamental difference between the concept of making promotions on the basis of merit-cum-seniority and seniority-cum-merit. This aspect of the matter came up for consideration before the Apex Court in the case of State of Kerala and Another Vs. N.M. Thomas and Others, and the Apex Court in the said case held as follows :

"..... with regard to promotion the normal principles are either merit-cum-seniority or seniority-cum-merit. Seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though less meritorious shall have priority."

In the present case also proceeding of the D.P.C. shows that marks have been allocated and the persons getting higher marks have been chosen for promotion. This, in view of the aforesaid decision of this Court, is not permissible. As stated earlier in the present case also the respondents while considering the case of the petitioners as also other candidates looked into the inter se merit of the candidates for the purpose of effecting promotion and in view of the law laid down by the Apex Court referred to above and the Judgments of the learned

Single Judge as also the Division Bench, the same is not permissible.

The petitioners as also the other candidates are entitled to be considered for promotion in accordance with law following the principle of seniority-cum-merit. Accordingly, I direct the respondent Bank to take final decision in this regard within 90 days. Although I have held that the promotion of the private respondents are bad in law but this judgment shall remain in abeyance for 90 days. Direction for keeping the order in abeyance is given for the said period as the same would give the respondent bank an opportunity to take steps for filling up the post of Area Manager and Senior Manager within the said period so that the function of the bank may not be jeopardised. Needless to state that no benefit shall accrue to the private respondents, whose promotions have been found to be bad, while considering their case in future and it shall be strictly on the basis of seniority-cum-merit.

In the result, all the petitions are allowed, the promotion made by the respondent-bank of the private respondent as Area Manager/Senior Manager are quashed. The petitioners would be entitled to cost. It is assessed Rs.500/- in each case. Security amount if deposited be refunded to the petitioners.