
(2003) 04 AHC CK 0178
In the Allahabad High Court
Case No : C.M.W.P. No. 30824 of 2001

N.K. Agrawal and Others

APPELLANT

Vs

Kashi Gramin Bank and Others

RESPONDENT

Date of Decision : 18-04-2003

Acts Referred:

Citation : (2003) 3 AWC 2280 : (2003) 2 UPLBEC 1333

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : R.C. Yadav, Anupam Kumar and Nitin Yasharth, for the Appellant;
S.K. Srivastava, V. Singh and C.B. Yadav, for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for quashing the result of the interview held on 3/4.12.1997 and for quashing the result and select list dated 22.6.2001, Annexure-1 to the petition for promotion of the petitioners from the post of officer scale-1 to the post of officer scale-II in the service of respondent No. 1 Kashi Gramin Bank, Varanasi. The petitioners also prayed for mandamus directing the respondents to promote them from 3.12.1997 that is the date from which their juniors were promoted.

2. Heard learned counsel for the parties.

3. The petitioners were appointed as officers in Kashi Gramin Bank, Varanasi by order of the Chairman of the Bank. A true copy of the seniority list issued by the Bank is Annexure-2 to the writ petition. The petitioners' names are at serial Nos. 26, 27, 28, 31, 32, 40, 41 and 42 in the select list.

4. In paragraph 4 of the petition it is alleged that in the meeting of the Board of Directors of the Bank held on 30.6.1997 it was decided to promote the officers grade-I in accordance with the present seniority list. True copy of the minutes of the meeting dated 30.6.1997, in this connection is Annexure-3 to the petition. A copy of the letter of NABARD dated 16.7.1988 which lays guidelines for

promotions is Annexure-4 to the writ petition and it is alleged in paragraph 5 of the petition that this was not taken into consideration by the respondents for granting promotions. The NABARD circulars dated 1.12.1987 and 10.2.1988 are Annexures-5 and 6. It is alleged that these clearly indicates that posts are to be filled up by 100% promotion by only one source and the rule of seniority-cum-merit has to be applied. The NABARD further clarified by its letter dated 7.10.1996, that the guidelines issued by the Government of India on 28.8.1988 are to be strictly applied for promotion. A true copy of the notification dated 28.9.1988 along with the NABARD letter dated 7.10.1996 are Annexure-7 to the petition.

5. It is alleged in paragraph 8 of the writ petition that the respondents against the above guidelines gave respondent Nos. 2 to 18 promotions and without following the procedure laid down by the Board and NABARD. The persons who were earlier reprimanded by the Board have been given promotion thus ignoring the guidelines of the NABARD, Government of India notification, and other relevant circulars and letters. It is alleged in paragraph 9 of the petition that the Chairman and four Directors of the Board had observed that the guidelines laid down were not followed by the Board at the time of giving promotion. It is further alleged that the Chairman has even recommended for cancellation of the promotion through interview held on 3/4.12.1997. True copy of the letter of the Chairman, along with other Directors of the Board's recommendation are annexed as Annexure-8 to the writ petition. It is alleged in paragraph 10 of the petition that the new guideline, which was utilized in the interview held on 3/4.12.1997 was not informed to the Board of Directors. The President, Officers Association, Kashi Gramin Bank, Varanasi, sent a letter to the Chairman of the Bank on 14.1.1998, asking as to what guidelines have been sent for promotion. True copy of the said letter is Annexure-9 to the petition. It is alleged in paragraph 11 of the petition that the Chairman through letter dated 16.1.1998, informed the President that the new guideline had been adopted for promotion in the interview held on 3/4.12.1997. It is alleged in paragraph 12 of the petition that no such guideline or guidelines was issued by the Government of India or NABARD. Neither the Chairman nor the Board informed about the new guideline before the Interview, and the new guideline was not approved by the Board of Directors. The petitioners filed an application requesting to be informed about the new guideline vide letter dated 7.7.2001. True copy of the reply dated 13.7.2001, is annexed as Annexure-11 to the petition.

6. It is stated in paragraph 14 of the petition that no disciplinary action was taken against the petitioners nor any disciplinary proceeding is pending against them. The petitioners filed an appeal/representation on 1.7.2001, which was rejected by the Board of Directors. True copy of the appeal and, the order thereon are annexed as Annexures-13 and 14 to the writ petition.

7. In paragraph 16 of the petition it is alleged that the impugned order/select list dated 22.6.2001 by which respondent Nos. 2 to 18 have been promoted is liable

to be set aside, firstly on the ground that the guideline adopted by the selection committee were not informed to the Board of Directors nor was it accepted by them as is evident from their letters. Moreover, it is alleged that there is deviation from the procedure laid down by the NABARD and Government notification regarding promotions. It is alleged in paragraph 18 of the petition that the selection committee has illegally applied the marking system, although it was kept in abeyance by the apex body (NABARD).

8. In paragraph 20 of the petition it is alleged that two persons, namely, Satish Chandra Srivastava and M.P. Singh have been reprimanded by letter dated 10.1.1992, by the management and they were Juniors to the petitioners but they have been given promotion, while promotions have been denied to the petitioners.

9. A counter-affidavit has been filed by the respondent No. 1.

10. In paragraph 4 of the same it is mentioned that the selection committee had taken the interview for seventeen posts of officers of Scale-I for promotion to Scale-II from serial Nos. 26 to 90 from the seniority list. These persons appeared in the interview held on 3/4.12.1997. The selection proceedings were kept in a sealed cover in view of the interim order dated 17.12.1996, passed in the Writ Petition No. 40419 of 1996, Shishir Chandra Srivastava v. Chairman, Kashi Gramin Bank. In that order it was mentioned that till the next date of hearing no promotion shall be made on the basis of the impugned seniority list. If any promotion is made the same will be subject to the further order of the Court. The said Interim order was served on 18.12.1996 on the respondent Bank after promotion of eleven officers from scale-I to II and these promotions were done prior to the interim order of the Court. During continuance of the interim order dated 17.12.1996, 17 posts of class-II fell vacant for which selection proceedings were initiated on 26.7.1997. A Contempt of Court petition was filed in this Court on which notices were issued on 26.11.1997. Thereafter the Board held in its meeting on 5.12.1997 and approved the report of the Interview Committee. The details of the various events, which took place in meeting of the Board, are mentioned in paragraph 4 of the counter-affidavit. In paragraph 7 of the counter-affidavit it is stated that the position was clarified in the circular of NABARD dated 10.2.1988, that the seniority should not be taken to be the sole basis for promotion of officers from scale-I to scale-II, and each Officer has to be assessed regarding his suitability so that only competent staff are promoted. True copy of the circular dated 1.12.1987 and 10.2.1988 are annexed as Annexures-C.A.-2 and C.A.-3 to the affidavit.

11. In paragraph 8 of the counter-affidavit, it is alleged that the criteria for promotion from scale-I to scale-II is seniority-cum-merit. In paragraph 10 of the counter-affidavit it is stated that the selection committee had selected the respondents in accordance with the Promotion Rule, 1988 and in accordance with the directions of NABARD. It is stated that the selection was made appropriately. As regards the reprimands given to the respondent Nos. 2 and 8 they were not

given within a reasonable time. Annexure-8 to the writ petition is not the decision of the Board. In paragraph 12 of the counter-affidavit it is stated that till the interview dated 3/4.12.1997, the Board had not approved any new criteria for promotion and the rule for promotion was seniority-cum-merit in accordance with the guidelines given by the NABARD by letters dated 18.7.1988 and 10.2.1988. In paragraph 13 of the counter-affidavit it is stated that when the sealed cover was opened on 22.6.2001 five documents were found in it including bio-data of sixty one candidates, and the result was prepared by the selection committee and kept in safe custody. In paragraph 18 of the same it is stated that by resolution dated 22.6.2001 of the Board the sealed envelope was opened and the result was declared in the year 1988. The matter was taken by circulation of the letter of the four member of the Board but the Board has decided not to open the sealed cover till the decision of the High Court. In paragraph 21 of the same it is stated that the selection committee decided not to recommend the petitioners for promotion as the selection committee has assessed the performance of the candidates. In paragraph 24 of the same it is stated that those who were selected have been already given promotion in scale-II.

12. A counter-affidavit has also been filed on behalf of respondent Nos. 2 to 18.

13. In paragraph 4 of the same it is stated that the selection committee had taken the interview for selection for promotion of seventeen officers to scale-II. The selection proceedings and its result were kept in a sealed cover. This was in pursuance of the order dated 2.5.2001 in Writ Petition No. 6383 of 2001 which directed that promotion may be made subject to the decision of the writ petition. The sealed cover was opened and promotions made. In paragraph 7 of the same it is stated that as per the circular of NABARD, dated 10.2.1988 seniority is not the sole basis for promotion and there has to be assessment of ability and competence of the candidates vide circular dated 1.12.1987 and 10.2.1999. In paragraph 10 of the same it is stated that respondent Nos. 2 to 18 were selected in accordance with the directions of NABARD. In paragraph 13 it is stated that till the interview dated 4.12.1997, the Board had not approved any new guideline for promotion, and the rule for promotion was seniority-cum-merit in accordance with the NABARD guidelines vide letter dated 18.7.1988 and 10.2.1988.

14. In paragraph 18 of the same it is stated that the petitioner No. 2 was charge-sheeted in the year 1996, the petitioner No. 4 was suspended in the year 1995, the petitioner No. 5 was suspended in the year 1998, and a vigilance inquiry is pending against the petitioner No. 8.

15. In paragraph 20 of the counter-affidavit, it is stated that in the resolution dated 22.6.2001 on the unanimous decision of the Board the sealed envelope was opened and the resolution was declared which had been kept in the sealed cover. In paragraph 21 of the counter-affidavit it is stated that only three years past conduct were examined from the year 1997 by the selection committee. In paragraph 26 of the same it is stated that the respondents were selected by the selection committee and the results were declared on 22.7.2001 and they had

already been given promotion to scale-II and are working on this post.

16. We have also perused the rejoinder-affidavits.

17. The petitioners are at serial Nos. 26, 27, 29, 31, 32, 40, 41 and 42 of the seniority list while the private respondents are at serial Nos. 28, 30, 33, 37, 38, 39, 43 to 47, 51, 52, 55, 57, 58 and 60 respectively. The criterion for promotion is seniority-cum-merit, which means seniority subject to rejection of unfit. This means that seniority is the prime consideration subject to the rejection of unfit.

18. The petitioners have alleged that they have got unblemished record of service, as they have never been punished till date and no disciplinary proceeding is pending or contemplated against them. There is nothing adverse against them, rather they have been appreciated for their good work. The averment in paragraph 17 of the writ petition has not been denied in paragraph 16 of the counter-affidavit of respondent No. 1. However, in paragraph 18 of the counter-affidavit of the respondent Nos. 2 to 18 it has been stated that petitioner No. 2 was charge-sheeted in the year 1996, the petitioner No. 4 was suspended in the year 1995 and the petitioner No. 5 was suspended in the year 1998 and a vigilance enquiry is pending against the petitioner No. 8.

19. The petitioners have relied on the decision of the Supreme Court in B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., and Bal Kishan Vs. Delhi Administration and Another, . In Sivaiah's case, it was held that seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior even though less meritorious, shall have priority. The difference between the criterion of merit-cum-seniority and seniority-cum-merit is that in the first criterion, emphasis is given to merit and seniority has less scope, while in the latter, greater emphasis is given to seniority. However, even in the case of the latter, a person cannot claim promotion as a matter of right by virtue of seniority alone. If he found unfit for the higher post, he may be superseded. In Bal Kishan's case (supra). It was held that confirming a Junior without considering the case of his senior is impermissible when promotion is to be done on the basis of seniority-cum-merit.

20. The respondents have relied on the Division Bench decision of this Court in Civil Misc. Writ Petition No. 3151 of 1997, Rajendra Kumar Srivastava v. Samyukt Kshetriya Gramin Bank and Anr. decided on 4.7.2001. That decision related to a Kshetriya Gramin Bank and it has dealt with all the relevant decisions including Sivaiahs case (supra).

21. It may be mentioned that the selection committee had taken interview for promotion from scale-I to scale-II on 17 posts of officers scale-II. The person from serial Nos. 26 to 62 In the seniority list were called for interview and they were interviewed on 3/4.12.1997, but the result was kept in a sealed cover in view of the interim order of this Court. Subsequently, the result was declared in pursuance of another interim order dated 2.5.2001 in Writ Petition No. 6383 of 2001, S. C. Srivastava v. Chairman Kashi Gramin Bank. The persons selected

were granted promotion. The Writ Petition No. 6383 of 2001 was finally disposed of by a short order of this Court dated 3.8.2001, which, however, does not deal with the merit of the case.

22. It is evident from a perusal of Annexure-2 of the counter-affidavit of respondent No. 1 that the criterion for promotion is seniority-cum-merit and not merit-cum-seniority. This is also evident from the notification dated 28.9.1988 Annexure-C.A.-4 to the counter-affidavit, which is a copy of the relevant rules. In paragraph 6 of the writ petition also, it is mentioned that the criterion for promotion is seniority-cum-merit, and reference therein has been made to the relevant circulars issued by NABARD.

23. When the criterion for promotion is seniority-cum-merit (which is the same thing as seniority subject to rejection of unfit), the usual procedure adopted is that promotions are made on the basis of seniority, but those who have adverse entries against them or have been given punishments in the recent past or there is some other adverse material against them, are superseded. Hence, only the service record or other adverse material is considered, but there is no selection by a selection committee.

24. However, this is not the invariable rule in giving promotions on the basis of seniority-cum-merit. An alternative procedure can be resorted to by the authorities, and that is that they can fix a minimum objective eligibility requirement, and only those candidates who possess the same are then promoted on the basis of seniority. For considering this minimum eligibility requirement, there can be a selection by a selection committee ; vide *Stvaiah's* case (supra).

25. It appears to us in this case that the principle of seniority-cum-merit has not been properly applied. No doubt even when the criterion for promotion is seniority-cum-merit, the authorities can fix a minimum necessary merit requisite for efficiency of administration, but in this case there is no averment in the counter-affidavit that any such minimum requisite merit had been fixed by the respondents. The decision in *Rajendra Kumar Srivastava's* case (supra) is, therefore, distinguishable because in that case the authorities had fixed the minimum requirements of 78 marks in the interview and appraisal for being eligible, for consideration. Those who had 78 marks and above were then prompted strictly in accordance with seniority.

26. In the present case, no minimum eligibility requirement has been fixed, and hence the decision in *Sivaiah's* case will squarely apply. From a perusal of paragraphs 4, 17 and 19 of the counter-affidavit of respondent No. 1 it appears that the selection was done by the selection committee but no minimum eligibility requirements had been fixed by the selection committee. No doubt it has been stated in paragraph 17 of the counter-affidavit of the respondent No. 1 that the selection committee can judge the job performance of an employee, but it has not been stated therein that there was any minimum eligibility requirement.

27. In a case where promotion is to be done on the basis of seniority-cum-merit, the selection committee can only see whether the candidate has the minimum eligibility requirement, and for this purpose, the selection committee can fix some objective criterion for the purpose of determining this minimum eligibility, but if no such minimum eligibility criterion is fixed and yet a selection of merit is held it will not be a case of promotion by seniority-cum-merit but by merit-cum-seniority. In a case of seniority-cum-merit, seniority must be given greater weight and the selection committee has only a narrow scope, namely, to see whether the candidate has the minimum eligibility requirement. In the counter-affidavit it has not been mentioned that the selection committee had fixed some minimum eligibility requirements.

28. Hence, in our opinion, the decision of the Supreme Court in Sivaiah's case has been totally violated, as the principle of seniority-cum-merit has not been followed. The writ petition is therefore, allowed.

29. The result of the interview held on 3/4.12.1997 and the select list dated 22.6.2001 are quashed. The respondents are directed to hold fresh promotion in accordance with the observations made above.