
(2013) 09 GAU CK 0005
In the Gauhati High Court
Case No : Writ Petition (C) No. 742 of 2005

Paresh Chandra Sarma

APPELLANT

Vs

Pragjyotish Gaonlia Bank and Others

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Citation : (2014) 1 GLT 262 : (2014) LabIC 357

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : A. Dutta, U.K. Nair and Ms. B. Sarma, for the Appellant; S. Dutta, for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J.—These two writ petitions, namely WP(C) No. 742/2005 and 743/2005 are based on similar set of facts and raises identical question of law. Hence, both the cases were heard together and are being disposed of by this common judgment and order. Issue involved is promotion from the rank of Officer Scale-II to Officer Scale-III in the Pragjyotish Gaonlia Bank. By impugned order dated 08.12.2004 issued by the Chairman of the Pragjyotish Gaonlia Bank, respondents 3 to 11 in both the cases have been so promoted ignoring the case of the petitioners who were admittedly senior to the said respondents in the feeder cadre of Officer Scale-II.

2. Relevant facts necessary for adjudication of the two cases are briefly noted hereunder.

3. Pragjyotish Gaonlia Bank (Bank) is a Regional Rural Bank established u/s 3 of the Regional Rural Bank Act, 1976, having its Head Office at Nalbari, United Bank of India is the sponsoring bank. Matters relating to appointment and promotion of officers and staff of Regional Rural Banks are governed by a set of rules called Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998. Rule 5 provides for determination of the number of

vacancies in each category of posts to be filled up by the Board of Directors (Board) in consultation with the sponsoring bank. As per Rule 6, all vacancies determined under Rule 5 shall be filled up by promotion or by direct recruitment in accordance with the provisions contained in the Rules and the third schedule to the Rules. According to the third schedule, recruitment to the post of Officer Scale-III, which is a group-A post, shall be 100% by way of promotion. Promotion shall be made on the basis of the criteria "seniority-cum-merit". The eligibility criteria prescribed for such promotion is that the candidate should have 7 years service on regular basis in Officer Scale-II. However, the Board has been empowered with prior approval of the sponsoring bank to relax the qualifying service for a period not exceeding 2 years if eligible officers are not available. Mode of selection prescribed is that selection shall be made by the Departmental Promotion Committee (DPC) on the basis of interview and assessment of performance appraisal report for the proceeding five years as a Scale-II Officer.

4. In the seniority list of Officer Scale-II of the Bank as on 01-04-2004, position of petitioner in WP(C) No. 742/2005 (Shri Paresh Ch. Sarma) was at Serial No. 1 whereas position of the petitioner in WP(C) No. 743/2005 (Shri Bhumidhar Lahkar) was at Serial No. 9. Respondents 3 to 11 were at Serial Nos. 3, 4, 10, 11, 12, 20, 24, 26 and 27 respectively. Thus, Shri Paresh Ch. Sarma was the senior most officer in Scale-II whereas only respondent Nos. 3 and 4 were senior to Shri Bhumidhar Lahkar, the remaining respondents being junior to him.

5. A promotion exercise from Scale-II to Scale-III was carried out in the year 2002. Number of vacancies determined was 18. There were only 13 officers in the feeder cadre of Scale-II who had the qualifying service of 7 years. Both the petitioners did not have the eligibility by one year. Even though the third schedule provides for relaxation of qualifying service for a period not exceeding 2 years if eligible officers are not available, no such relaxation was granted even though number of eligible officers were much less, being 13 as against the notified vacancies of 18. All the 13 eligible persons in order of seniority were promoted.

6. An office circular dated 02.11.2004 was issued by the Chairman of the Board declaring that a selection exercise would be conducted for promotion from Officer Scale-II to Officer Scale-III on 22-11-2004 and laying down the criteria for selection. Though it was stated that promotion shall be made on the basis of "seniority-cum-merit", the selection shall be on the basis of performance in the interview and performance appraisal report for preceding five years. It was stated that interview would be for 25 marks, and for performance appraisal report, there would be 75 marks, total marks thus being 100. Minimum qualifying marks in the interview was fixed at 50% Selection was for 9 posts in Scale-III.

7. Pursuant to the interview held on 22-11-2004, respondent Nos. 3 to 11 were promoted to the post of Officer Scale-III w.e.f. 06-12-2004 vide office circular dated 08-12-2004 issued by the Chairman of the Bank. Promotions were made

effective w.e.f. 06-12-2004 as the approval was given by the Board on that day. Though Shri Paresh Ch. Sarma was senior to respondents 3 to 11 and Shri Bhumidhar Lahkar was senior to respondents 5 to 11, they were not promoted and were superseded by their juniors.

8. Aggrieved, Shri Paresh Ch. Sarma and Shri Bhumidhar Lahkar have preferred the present two writ petitions challenging such promotion.

9. Basic contention of the petitioners is that though the criteria fixed for promotion was "seniority-cum-merit", Bank and its authorities completely ignored seniority and confined the selection only to merit. As respondents 3 to 11 had secured relatively more marks than the two petitioners, they were selected and promoted, though they were junior to the petitioners. As such, it was a selection based on merit, which was not contemplated under the Rules.

10. Respondents 1 and 2 have filed identical affidavits in both the cases. Stand taken is that consideration for promotion is always subject to eligibility and fitness. Service records of the petitioners were not good. "Seniority-cum-merit" does not mean that promotion should be made solely on the basis on seniority ignoring merit. Even though greater emphasis is laid on seniority, it is not the determinative factor. For promotion based on such criteria, the candidate must possess minimum standard of merit. It is contended that the two petitioners were not entitled to be selected for promotion to the post of Officer Scale-III as they had committed irregularities and illegalities in the discharge of their official duties.

11. Petitioners have filed separate reply affidavits disputing the contention of respondents 1 and 2. In his reply affidavit, Shri Paresh Ch. Sarma has enclosed compilation sheet of the marks secured by the candidates in the interview held on 22-11-2004, "seniority-cum-merit" list of the candidates and the select list of candidates. The above documents were obtained by the said petitioner pursuant to submission of application under the Right to Information Act, 2005. From the said documents, it is evident that though the two petitioners had secured the minimum qualification marks of 50% in the interview, they were not selected. On the other hand, respondents 3 to 11 were selected and subsequently promoted on the ground that they had secured better marks than the petitioners in the selection. Thus, it is apparent that selection was carried out on the basis of merit only and not by applying the criteria of "seniority-cum-merit" as provided under the Rules.

12. No affidavit has been filed by respondents 3 to 11 though they were served.

13. Heard Mr. A. Dutta, learned counsel for the petitioner in WP(C) No. 742/2005 and Mr. U.K. Nair, learned counsel assisted by Ms. B. Sarma, learned counsel for the petitioner in WP(C) No. 743/2005. Also heard Mr. S. Dutta, learned counsel for respondent Nos. 1 and 2. However, there is no representation on behalf of respondent Nos. 3 to 11.

14. Both Mr. Dutta and Mr. Nair, learned counsel for the two petitioners, in their separate but identical arguments have contended that the bank authorities had gone wrong in applying the criteria of "seniority-cum-merit" as it would be evident from the documents placed on record that selection made was purely on the basis of merit. When the criteria of "seniority-cum-merit" is applied, seniority is the determinative factor once the minimum qualifying merit is achieved. Both the petitioners had secured minimum qualifying marks of 50% in the interview, Shri Paresh Ch. Sarma having secured 14.25 marks and Shri Bhumidhar Lahkar having secured 12.75 marks out of 25, which were more than 50%. Mr. Dutta additionally points out that there was a mistake in calculation of total marks as instead of 67, Shri Paresh Ch. Sarma was awarded 57 marks. Mr. Dutta further submits that his client retired from service on attaining the age of superannuation on 06-11-2011 and he was given promotion to Officer Scale-III before retirement. Mr. Nair also submits that his client had retired on attaining superannuation on 30-04-2013 but no such promotion was given to him. Learned counsel for the petitioners, therefore, contend that since petitioners were wrongly denied promotion along with respondents 3 to 11, review DPC should be convened and petitioners should be promoted w.e.f. the date when their juniors were promoted i.e. w.e.f. 08-12-2004 and all consequential benefits should be provided to them.

15. Mr. S. Dutta, learned counsel for the respondents 1 and 2 does not dispute the fact that petitioners had secured minimum qualifying marks in the interview. He fairly submits that on a correct application of the principle of "merit-cum-seniority", cases of the petitioners should have been considered for promotion. In the circumstances, he submits that without disturbing the promotion of respondents 3 to 11, case of the petitioners may be considered for notional promotion and seniority. He also placed before the Court the original papers of selection.

16. Submissions made have been considered.

17. It is not in dispute that the criteria under the Rules for promotion from the grade of Officer Scale-II to Officer Scale-III in "seniority-cum-merit" provided the officer has the requisite eligibility. Since petitioners and respondents 3 to 11 had the requisite eligibility, the same is not an issue in the present proceeding. It is also not in dispute that both the petitioners had secured more than 50% of the marks earmarked for the interview segment which was the minimum qualification. However, since respondents 3 to 11 secured more marks than the petitioners, they were placed above the petitioners in the selection though junior in the feeder grade and consequently promoted.

18. At this stage, the true ambit and scope of the expression "seniority-cum-merit" may be considered. The above criteria applied in matters of promotion would mean that seniority should be given precedence once the minimum necessary merit is achieved even though the senior may have lesser comparative merit. In B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., a

three Judge Bench of the Hon"ble Supreme Court examined the expression "seniority-cum-merit" as appearing in the Rules and held that the said criteria lays greater emphasis on seniority. The expression "seniority-cum-merit" would mean that given the minimum necessary merit requisite for efficiency of administration, the senior though less meritorious shall have priority. It was held as under:--

18. We thus arrive at the conclusion that the criterion of "seniority-cum-merit" in the matter of promotion postulates 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.

19. Having noticed the meaning of the above expression, it may also be pointed out that the principle of "seniority-cum-merit" is fundamentally and conceptually different from the principle "merit-cum-seniority" as in the later, merit is the determinative factor.

20. Applying the above test to the facts of the present case, it is clear that both the petitioners had achieved minimum qualifying marks in the interview. That being the position, they were entitled for promotion to the rank of Officer Scale-III as they were admittedly senior to the respondents 3 to 11 in the feeder cadre of Officer Scale-II though the said respondents had secured relatively more marks than the petitioners in the selection. This position has been fairly conceded by learned Counsel for respondents 1 and 2.

21. Having regard to the above and in the circumstances of the case, I am of the considered opinion that it would meet the ends of justice if without interfering with the promotion of respondents 3 to 11 to the rank of Officer Scale-III, both the petitioners are so promoted w.e.f. the date respondents 3 to 11 were promoted. Since petitioners did not render service in the higher post w.e.f. 08.12.2004 when respondents 3 to 11 were promoted as Officer Scale-III, they would not be entitled to salary of Officer Scale-III w.e.f. 08-12-2004 but they shall be entitled to notional fixation of pay with seniority from the said date (08-12-2004) to enable them to receive their retirement dues as Officer Scale III w.e.f. 08-12-2004. The above exercise shall be carried out within a period of three months from the date of receipt of a certified copy of this order. Writ petition is allowed to the extent indicated above. However, there shall be no order as to cost.