

(2004) 08 CAL CK 0065
In the Calcutta High Court
Case No : Writ Petition No. 4151 of 2001

Prabhat Kumar Banoopadhyay	Vs	APPELLANT
Bardhaman Gramin Bank		RESPONDENT

Date of Decision : 17-08-2004

Acts Referred:

Citation : (2004) 2 ILR (Cal) 254

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : K.K. Moitra, Rajashi Haider, Moumita Bhattacharjee, for the Appellant; Ajoy Gupta, Amal Mitra and Soumobha Bhattacharya, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—Two persons have joined together in this writ petition. Their common grievance is regarding the selection process through which Respondents 6 to 21 were promoted.

2. On November 24, 1999 Bardhaman Gramin Bank (the first Respondent) initiated a selection process for promotion to sixteen vacancies in the grade, of scale-11 officer. It was to be governed by the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998. The selection was to be made on seniority-cum-merit basis. Before initiating the process no qualifying marks (by way of benchmark) had been fixed by the bank. It rather proceeded with the process for making selection on the basis of marks to be obtained by the candidates in the 100 marks selection test, which comprised a written test (60 marks), interview (20 marks) and performance appraisal reports (20 marks). In the written test in all eighteen candidates (including the two Petitioners) qualified. All the eighteen candidates were interviewed on June 19, 2000. The selection committee was constituted by four members, and three of them were also members of the board of directors-of the bank. After seeking and obtaining advice from NABARD, the bank in its board meeting held on December 15, 2000 fixed the benchmark for the purpose of making the selection. It was

fixed at 50. In merit position the two Petitioners were fifth and sixth amongst the eighteen interviewed candidates. Because of the benchmark fixed at 50 the two Petitioners did not get the promotion, as the other sixteen candidates, all of whom scored 50 or above in the test, were senior to them. Feeling aggrieved they took out the present writ petition.

3. While admitting the writ petition order was passed to the effect that promotions given in terms of the selection process would abide by the final decision in it.

4. By placing reliance on the decision reported at *Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another*, learned Counsel for the Petitioners has contended that the selection process and the promotions given to Respondents 6 to 21 are liable to be quashed, because before initiating the selection process the bank had not fixed the benchmark, when, admittedly, under the rules, the selection was to be made on the basis of seniority-cum-merit.

5. Learned Counsel for the bank has tried to justify the action of the bank by submitting that though the benchmark was fixed subsequently, it was fixed at a reasonable stage, and by such subsequent decision regarding benchmark the Petitioners did not suffer any actual prejudice. He has submitted that before initiating the selection process the bank was in a confusion regarding the procedure to be followed, and the confusion was resolved only when the bank received advice from NABARD regarding the requirement of benchmark.

6. In spite of service of notice Respondents 6 to 21 have chosen not to enter appearance and contest the writ petition.

7. After hearing learned Counsel for the Petitioners and the bank, I am of the view that the selection process in question should be quashed,

8. The admitted position is that though under the rules the selection was to be made on seniority-cum-merit basis, the bank initially proceeded to make the selection on the basis of merit alone. No valid justification has been shown by it for initiating the selection process without first resolving the confusion, if it was suffering from one, as submitted by its learned Counsel.

9. The benchmark was fixed after the test was over and the marks secured by the eighteen qualified candidates were known to as many as three members of the board of directors of the bank, The three members after participating in the selection process, as members of the selection committee, participated in the board meeting for fixing the benchmark.

10. Instead of making speculation whether any favour was shown to any particular candidate, on the admitted facts it can rather be safely concluded that there was strong likelihood of favouritism and nepotism, and the procedure followed by the bank did not satisfy the basic principle of fairness in administrative action.

11. The bank acted illegally by initiating the selection process without first fixing the benchmark and publishing it. There is absolutely no reason to accept the plea that the illegality should be ignored, since the Petitioners have not pleaded how they suffered any actual prejudice. The decision relied on lends full support to the Petitioners' contention.

12. For the foregoing reasons the writ petition is allowed. The selection process initiated by the bank by issuing circular dated November 24, 1999 is hereby quashed ; and the promotions given to Respondents 6 to 21 are set aside.

13. The bank is hereby directed to take steps forthwith for initiating a fresh selection process for promoting the selected persons against the sixteen vacancies for which the selection process was initiated by circular dated November 24, 1999. Till the fresh selection is made, it shall be at liberty to take necessary steps for giving ad hoc promotions in the sixteen vacancies so that its day-to-day business and affairs are not affected in any manner whatsoever. The Petitioners and Respondents 6. to 21 shall be permitted to participate in the fresh selection process along with all other persons who had participated previously. The entire selection process shall be completed within a period of eight weeks from date.

14. In the facts and circumstances of the case, I am not inclined to make any order for costs in favour of the Petitioners. Hence there will be no order for costs in the writ petition.

15. Urgent certified xerox copy of this judgment and order shall be supplied to the parties, if applied for.