
(2001) 11 OHC CK 0032

In the Orissa High Court

Case No : Original Jurisdiction Case No. 574 of 1995

Prakash Kumar Rout

APPELLANT

Vs

Dhenkanal Gramya Bank and Others

RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:

Citation : (2002) 93 FLR 745 : (2002) 1 OLR 493

Hon'ble Judges : P.K. Mohanty, J

Bench : Single Bench

Advocate : N.K. Mishra and B. Das Mohapatra in O.J.C. No. 574 and 844 of 1995, S. Sahoo, B. Parida, S.N. Biswal and B. Sarangi in O.J.C. No. 1488 of 1995, for the Appellant; G.A.R. Dora (O.P. 1), B.P. Mohanty, N. Paikray, R.P. Kar, A.N. Ray, M.K. Badu, A. Das, B. Routray, A.K. Mohanty, A.K. Baral and B. Sarangi (O.P. 5) in O.J.C. No. 574 of 1995 and N.K. Agarwal in O.J.C. No. 844 of 1995, for the Respondent

Judgement

P.K. Mohanty, J.

1-6. The writ petitioners in all the three writ applications who were promoted and working as Field Supervisors, having been reverted to the post of Senior Clerk-cum-Cashier, have challenged the order of reversion passed by the Chairman, Dhenkanal Gramya Bank (opp. party No.I) dated 14.1.1995.

After discussing the facts and circumstances, the Hon"ble Court held :

7. In view of the pleadings of the parties and the submissions made at the Bar the main question that needs consideration is as to whether the petitioners who are promoted to the post of Field Supervisors in view of the selection made on the basis of seniority-cum-merit, copy of which has been annexed to the writ application as Annexure-3 forwarded by letter under Annexure-2 dated 25.10.1990, the petitioners could have been reverted to their former post of Senior Clerk-cum-Cashier in terms of the judgment of this Court in O.J. C. No. 1477 of 1991 and Ors.. This Court in O.J.C. No. 1477 of 1991 which was followed

in the other two writ applications while repelling the contentions of the Bank that the principle of seniority-cum-merit for promotion, the NABARD guidelines have been given a go-by in view of the statutory Rules in terms of the finding that the order specifically indicates that the promotion to the post of Field Supervisor is on the basis of seniority-cum-merit. It was found that the statutory Rules nowhere indicate that the mode for promotion would be the basis of merit alone. Normally when a promotion is made applying the principle of seniority-cum-merit, seniority plays a vital role and unless and until the senior employee is found unsuitable while judging his merit there was no justification for ignoring his case for promotion. On going through the provisions contained in the Rule as well as the order, the Court held that the petitioners therein have been kept out of promotion by assigning them the place lower than their juniors after adjudging them suitable for promotion. Having so held the Court quashed the position that had been assigned to the petitioners in the list of persons found suitable for promotion and directed that the petitioners therein should be promoted to the post of Field Supervisors from the date, their juniors have been promoted. The relevant portion of the judgment at paragraph-4 may be quoted hereunder for clarity :

"In course of hearing of the writ application

xx xx xx xx

But unfortunately, there is no such statutory provision and, therefore, on going through the provisions contained in the promotion rules as well as the order which unequivocally indicates that the promotion should be made on the basis of seniority-cum-merit, we have no hesitation to come to the conclusion that the petitioner has been kept out of promotion by assigning him the post lower than his juniors after adjudging him suitable for promotion. In this view of the matter, we have no other option than to quash the position that has been assigned to the petitioner in the list of people found suitable for promotion and direct that the petitioner would be promoted to the post of Field Supervisor from the date of his juniors have been promoted."

8. The undisputed fact that emerges from the pleadings of the parties and submissions made is that the criteria for promotion to the post of Officers/Field Supervisors are on the basis of seniority-cum-merit and the petitioners were found suitable for promotion to the post of Field Supervisors and their selection was approved by the Board of Directors of the Bank in its meeting held on 12.9.1995, which was communicated to the petitioners vide Chairman's Circular dated 25.10.1995. The petitioner was promoted to the post of Field Supervisors on Probation with effect from 2.2.1991. Four of the selected candidates, who were assigned lower position in the select list, but were seniors to the other candidates in the next below grade, the Senior Clerk- cum-Cashier cadre filed four writ applications in this Court challenging their placement in the select list. This Court in the aforesaid writ petitions quashed the position that had been assigned to those petitioners in the list of people found suitable for promotion

and directed that the petitioners therein would be promoted to the post of Field Supervisor from the date their juniors have been promoted. By letter dated 14.1.1995 addressed to the petitioners, they were reverted to their earlier clerical post with immediate effect to accommodate the writ petitioners in O.J.C. Nos. 1477, 3144, 4514 and 3969 of 1991. The contention of Sri Dora, learned Senior Advocate for the opp. party-Bank is that the select list having been quashed in the aforesaid writ application and the Court having directed to promote the petitioners therein, in order to accommodate the said petitioners, who are opp. parties herein, the present petitioners were to be reverted to their former post of Senior Clerk-cum-Cashier. The contention is thoroughly misconceived. This Court in O.J.C. No. 1477 of 1991 by order dated 31.1.1994 quashed the position of the petitioners in the select list and not the select list itself and, therefore, the petitioners therein were to be assigned their due position and given a higher place in the select list. Consequently, they were to be promoted in accordance with the vacancy position. However, it is stated in the counter affidavit that since there were only ten posts of Field Supervisors and in accordance with the re-arranged/revised list, the petitioners' name could not come within the ten available vacancies and as such, they had to be reverted to their former posts. This Court in the earlier writ petition in clear terms held that since the criteria for promotion to the post of Officer/Field Supervisor was seniority-cum-merit, if a person is found suitable and fit for promotion, then he is to retain his inter se seniority between the selected candidates and as such, those petitioners being seniors to the present petitioners in the grade Senior Clerk-cum-Cashier, they have to be placed above.

9. In such view of the matter, the select list containing the names of 15 candidates for promotion to the post of Field Supervisors approved by the Board of Directors of the opp. party- Bank remains valid for all practical purposes except revision of the relative position/placement of persons in accordance with their inter se seniority in the grade below in terms of the direction of this Court in the earlier writ petition. The petitioners have not assailed their relevant merit position in the gradation list of Senior Clerk-cum-Cashiers published by the opp. party-Bank and as such, they cannot have any grievance if on being found suitable for promotion to the post of Field Supervisors, their seniority in the promotional post is to be maintained according to their position in the grade below, the criteria of promotion being seniority-cum-merit. The opp. party-Bank in its counter has categorically stated that the candidates at SI. Nos. 1 to 8 and 11 in the seniority list of Senior Clerk-cum-Cashier are general candidates, who are found suitable for promotion and their names are included in the promotion/select list. The candidate at SI.No. 14 in the seniority list belonging to the Scheduled Caste category was also promoted as against 15% of the reserved quota. The vacancies being ten. the petitioners who were at SI. Nos. 12, 13 and 31 respectively in the seniority list of Senior Clerk-cum-Cashier, their names had to be placed below their seniors. The vacancies in the promotional post of Field Supervisor being ten, if ten persons as above have been promoted to the said

post, having been found to be fit for promotion, taking their seniority in the grade below in accordance with the direction of the Court no exception can be taken nor the action of the Bank can be faulted.

10. In view of my finding that the select list containing the names of 15 candidates including that of the petitioners for promotion to the posts of Field Supervisors, approved by the Board of Directors and communicated vide Chairman's Circular dated 25.10.1990, has not been quashed by this Court in its entirety, but only the relative position assigned to different candidates have only been quashed, the authorities of the Bank were required to re-assign the position of the selected candidates in accordance with their inter se seniority in the cadre of Senior Clerk-cum-Accountant, the selection of the petitioners for promotion stands untouched and, therefore, they were entitled to be promoted to the post of Field Supervisors/ Officers in accordance with their re-assigned seniority, according to the vacancies available.

11. The opp. party Bank, in its additional affidavit has stated, that at the present the vacancy position is seven in the cadre of Field Supervisors, which is in the meantime upgraded to the cadre of Officers. In such view of the matter since there are existing vacancies in the promotional post and the petitioners and some other persons are already in the select list for promotion to such cadre, they should have been considered for promotion and given promotion in accordance with their merit position and the available vacancies. This has perhaps not been done on the misconception that in the earlier writ petition, this Court had quashed the entire select list. The petitioners having been found eligible and fit for promotion, having been selected and borne in the select list and once earlier promoted, but their reversion being on the ground that in view of the limited vacancy as per revised select list, they could not be accommodated within those vacancies available for promotion, they are certainly entitled for promotion when the vacancy arises.

12. In that view of the matter, the opp. party-Dhenkanal Gramya Bank is directed to consider the case of the petitioners for promotion to the grade of Officers/ Field Supervisors in accordance with their respective position in the revised/re-assigned select list and promote them to the available posts of Officers in accordance with law within a period of two months from the date of communication of this order. It is clarified that the available vacancies shall be filled up from amongst the persons in the select list in accordance with their inter se seniority.

In view of what has been held earlier, it is not necessary to advert to the other contentions raised by the learned counsel for the petitioners.

The writ petitions are allowed to the extent indicated, but in the circumstances, there shall be no order as to cost.