
(2013) 11 P&H CK 0170
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 16872 of 1992

Pushkar Datt and Others

APPELLANT

Vs

National Bank for Agriculture and Rural Development and
Others

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0170

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : D.S. Patwalia, for the Appellant; L.M. Suri and Mr. Neeraj Khanna,
for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The writ petition addresses the issue of settling the seniority list and the entitlement for consideration of the petitioners to the posts of Assistant Development Officers, which according to the petitioners had been wrongly afforded to the respondents No. 3, 12 to 33 giving them the benefit of reservation and to respondents No. 4 to 11 who were juniors to the petitioners No. 1 and 2. Petitioners No. 1 and 2 claimed that they had been appointed as Stenographers in the month of June, 1982 and August, 1982 in the Reserve Bank of India and later transferred on their option to NABARD that was constituted in July, 1982. The petitioner No. 3 had been appointed as a Clerk Grade II on 16.04.1984 as a direct recruit and petitioner No. 4 had been directly recruited in the month of April, 1984 at Jaipur and later transferred to Chandigarh.

2. The petitioners were referred to the NABARD Staff Rules, 1982 as the basis for appointment to the posts of Grade A through three different modes; (i) direct recruitment, (ii) departmental test and (iii) merit test. In any vacancy in the cadre of officers in Grade A, the vacancy would be filled up by direct recruitment upto 40% on the basis of All India Competitive Test and interview by the Selection Board of NABARD. Marginal relaxation in eligibility condition in regard

to age could be given in respect of staff candidates, who had completed one year of service as on the date of notification for the purpose. That in regard to departmental test, 40% vacancies in the cadre of officers would be filled up by promotion of the confirmed employees of Grade B on the basis of departmental written test, assessment of the confidential reports and service records as relevant factors. The further requirement was that candidates must have a minimum of 7 years qualifying service as Clerk Grade II or Clerk Grade I or both, who would be eligible for taking departmental test. Remaining 20% of the vacancies would be filled up on merit based selection on the basis of competitive test followed by interview out of confirmed employees, who had completed minimum four years of service. If the vacancies under the merit channel remained unfilled even after three promotional merit test for three consecutive panel years, it shall lapse and the same will be filled up by direct recruitment.

3. In the month of September/October 1992, the Bank had appointed 100 Assistant Development Officers in Group A against quota of 40% of the direct recruits. If the criteria in the Rules were to be adopted, the same number of seats must also be taken as available for persons to be selected after departmental test and 50 persons were to be taken on merit test thereby making available 150 more seats to be set apart in the latter two categories. On 26.04.1982, a departmental examination had been conducted for enlisting 40% of vacancies to be filled up by holding departmental test but the Bank did not declare any result in regard to the successful candidates. The petitioners would contend that they had taken the departmental test and they had also been successful in the test. A list had been prepared on 20.11.1992 for posting against the Assistant Development Officers Group A and in the select list that had been made, 86 names had been published. The persons against Sr. No. 1 to 74 have been taken against 40% of the vacancies filled up by holding departmental test and candidates shown as Sr. Nos. 75 to 86 which came to 12 in number had been filled up against 20% of vacancies under the category of merit test. The petitioners would claim that they had attempted to secure the details of the vacancies that had been created and the respective seats which had been filled up from the two different categories and that they had come to learn that 99 vacancies had been recognized as existing and 66 vacancies could be filled up against 40% quota for departmental examination and remaining 33 vacancies had to be filled up against 20% quota of merit test. If that information were to be taken as correct, the list published by the respondent which was filed in the Court as Annexure P-1 showed that vacancies against Sr. No. 1 to 74 had to be taken up after holding departmental test and vacancies against Sr. Nos. 75 to 80 were taken up as filled up after holding merit test. As per the information collected, it was made to appear that 8 persons under the purview of merit itself had been transferred to the quota of 40% relating to departmental test to give the benefit to the candidates belonged to reserved category. The grouse of the petitioner Nos. 3 and 4 is that the vacancies for persons in the merit test quota could not be transferred to the quota of vacancies to be filled up by holding

departmental test without assigning any reason. The petitioners No. 3 and 4 would contend that as Clerks in the Bank, they had taken merit test to fill up the 20% of the vacancies and they secured more than 60% of the marks in the test and that they had also called for the interview. The Bank had disclosed no criteria for assessment at the interview and instead of filling 100 posts against the 40% quota for departmental test, the Bank had filled up only 70 seats and against the merit test quota only 12 candidates had been empanelled. Therefore, apart from the failure of the Bank to fill up all the available vacancies, the respondents had actually promoted respondents No. 3, 12 to 33 giving them the benefit of reservation at the time of promoting them which could not be done.

4. The relevance of the seniority obtained by virtue of the fact that under Rule 12, a combined merit list of direct recruits vis-a-vis promotees in a group should be fixed by placing the direct recruits enbloc at the appropriate place with reference to the date on which the selection had been approved by the Bank in such a way that placement of the direct recruit should be immediately below the name of junior-most officiating promoted employees. The seniority list prepared in the year 1985 showed that petitioners No. 3 and 4 were placed at Sr. No. 597 and 637 respectively and respondent Nos. 12 to 30 had been shown beneath serial number commencing from 763. In the seniority list prepared in November, 1982, the respondent Nos. 12 to 30 had been assigned seniority positions higher to the position assigned to the petitioners at Sr. Nos. 3, 92 and 426 respectively. The grounds of challenge contained in the writ petition were, therefore:-

(i) that respondent Nos. 3, 12 to 33 had been empanelled for promotion giving them the benefit of reservation which was impermissible.

(ii) the Bank could not fill seats belonging to 20% quota of merit test towards 40% of vacancies to be filled up for departmental test.

(iii) that respondent Nos. 4 to 11 had been empanelled for promotion who were juniors to the petitioners No. 1 and 2.

(iv) that respondent Nos. 12 to 33, who had been juniors to the petitioners No. 3 and 4 had been shown as seniors in the seniority list dated 01.01.1990 without giving any opportunity of hearing.

The further objection is that entire vacancies commensurate with the number of seats which were filled up through direct recruitment had not been filled up. If the candidates for promotion after departmental test were to be given the due share, 26 vacancies still existed and the petitioners would have been entitled to such consideration. Even against 20% vacancies in the merit test, only 12 seats had been filled up and still 30 seats were to be filled up and the petitioners No. 3 and 4 would have also been benefited if the quota had been properly applied. There was simply no justification for the respondents to reduce the number of vacancies to be filled up. If for any reason, the vacancies available were to be taken as 99 in the proportionate which the Rules provided, 66 seats must have been apportioned to the 40% quota to be filled up through departmental test and

33 seats must have been filled up for 20% after holding the merit test. In such a situation, the diversion of 8 seats relating to that 20% quota towards 40% quota for departmental test literally took away the benefit of consideration to persons, who were entitled to be considered for promotion from the lower cadre through departmental test.

5. The Bank has filed the reply affirming the basis of selection as governed through 1982 Rules as set forth by the petitioner. Joining the issue of how the seniority list had been prepared in January, 1990 and upsetting the seniority list that already existed in the year 1985, the Bank would explain that the tentative seniority list had been circulated and it was finalized on 01.01.1990 only after consideration of such objection that had been taken by various employees to the list. The promotion of respondents No. 3, 12 to 33 is supported on the basis that they belong to the SC/ST category while the promotion of respondents No. 4 to 11 is justified on the ground that they were empanelled through the merit list quota. Explaining the positions as to how the vacancy positions were determined and how the quota for the respective categories had been filled up, the Bank would state that as per the settlement reached between the management of the Bank and the employees association, the Bank was required to fill up vacancies arising in Group A officers, 50% by direct recruitment and 50% by promotion of eligible Group B candidates. On 22.04.1991, there were in all 141 vacancies of which backlog of direct recruitment was 130 and there was consequently an excess promotion of one candidate under the departmental test quota. By virtue of the settlement dated 23.04.1991, the norms of filling up the vacancies were revised from 50% direct recruitment, 50% promotees to 40% direct recruitment and 40% departmental test and 20% merit list. The additional vacancies that arose as on 23.04.1991 allowed for consideration of appointment to 144 Group A officers taking note of the past backlog of 130 vacancies for direct recruits. A total number of 136 posts were set apart in direct recruitment and only 5 seats fell to the promotion quota by way of departmental test. The assumption by the petitioner that when 100 persons were directly recruited in the year 1992 there was an equal number of seats available for departmental candidates to be selected through departmental test and 50 candidates were to be taken through merit list was, therefore, erroneous. However, vacancies were subsequently assessed in the year 1992 at around 152 in all. These 152 vacancies were to be filled up in the quota 40:40:20, 61 vacancies were to go for direct recruitment, 61 for departmental test and 30 to the merit quota. By adding the above additional vacancies, 66 posts were to be filled up through departmental test that included the 5 vacancies determined as falling to the departmental test candidates out of 144 posts assessed on 23.04.1991 and 197 seats inclusive of 146 backlog posts fell to the direct recruitment quota. Consequently when the departmental test of 40% was held on 26.04.1992, the Bank was required to fill up 66 vacancies and not 100 as assessed by the petitioners. The number of vacancies for the merit test was also only 33 and not 50 as assessed by the petitioners. Explaining the nature of distribution amongst reserved candidates,

the respondents would state that out of 99 seats assessed as available vacancy, 49 vacancies had to be filled up for SC/ST candidates for clearing the backlog for the previous years and only 50 vacancies were available for general candidates. However, to secure fairness to all candidates 40% of departmental quota which came to 33 and 20% of the merit quota which came to 16 had been filled up.

6. In the manner of determination of vacancies and filling up quota, the distribution could follow a pre-determined quota only if the vacancies were filled up across the Board at some definite time. Learned counsel for the petitioners would point out that the Bank cannot simply fill up enbloc all the vacancies arising as going towards the backlog of vacancies for direct recruits. Referring to apportionment of vacancies amongst promotees and direct recruits, the counsel would refer me to the Rule 3(a) regarding recruitment and promotion to officers in Grade A that reads as follows:-

Vacancies in the cadre of officers in Grade A available during a calendar year shall be filled up as follows

The emphasis, according to him, was a vacancy arising during the calendar year and therefore, if a vacancy in a particular test is not filled up in any one of the categories in that very year, it cannot be carried to the next year and taken as a backlog. Referring to the rejection of candidature of petitioners No. 3 and 4 in the merit test, the counsel would point out that the petitioners' contention that they had secured more than 50% and that they had called for interview had not been denied. If there was an objection that they had not performed well at the interview and hence not selected, there must be a justification and proof for how the assessment had been made at the interview especially when there was a direct challenge contained in the writ petition about the selection process. I would find both these objections as brought out by the counsel to be potent that would require a favourable consideration in favour of the petitioners. Both as regards the filling up of alleged backlog vacancies as well as the rejection of candidature of petitioners No. 2 and 4, the Bank cannot justify its stand at all. It has also not been properly elicited by the Bank as to how even if the vacancy positions were to be assessed at 99 in the year 1992 after discussion with the representatives of the employees it could have become possible for the Bank to shift the merit list candidates against the quota for departmental test candidates. It directly has a bearing to the right of consideration for petitioners No. 1 and 2 who were vying for the consideration to the post against departmental test quota. In the same way, the rejection of consideration of petitioners No. 3 and 4 could not have been made without an appropriate justification as to how they were assessed and what criteria prevailed for such rejection. The extent of interference in the manner of appraisal of interview by a Court would be exceedingly limited but if there was a challenge to the selection process and a contention is made that there was no criteria spelt out for the appraisal made at the interview and how the petitioners No. 3 and 4 had been rejected, at least the Bank was required to state the criteria and make a disclosure of the marks that

had been secured at the interview. No information is available either in the reply or through any of the Annexures filed along with the reply. It must be noticed that there is admission that all the petitioners had secured above the cut off marks in the written test. It would have been perfectly justified for the Bank to reject them at the interview but that cannot be done without bringing any proof relating to the grading adopted and without disclosure of the marks that they had obtained. All that is stated in the reply is that the petitioners No. 3 and 4 had appeared at the interview but the selection board did not select them.

7. Even the appointment of the respondents No. 3 to 33 as obtaining towards filling up the reserved quota, it is not clearly spelt out from the reply as to how the quota was fixed at the promotion posts and how the roster was applied. A sweeping statement that the respondents No. 3 to 33 belonged to the reserved category while the petitioners were of the general category and therefore, they could not challenge the promotion accorded to them does not answer the challenge that is contained in the writ petition.

8. The explanation given by the respondents for preparation of the seniority list that there had been no objection to the tentative seniority list which was proposed does not address the objection taken specifically in the writ petition that it had not been circulated and that they had no knowledge about the tentative seniority list. There must again be a proof that the publication was got noted from the petitioners. At least it could have been attempted at the time of filing of counter as to how the petitioners No. 3 and 4, who had been placed above the private respondents No. 3 to 33 in the seniority list as prepared in the year 1985 fell below their seniority positions in the year 1992 when they were placed respectively at Sr. No. 392 and 426.

9. The petitioners' challenge for rejection of the candidature for promotion and to the seniority list as wrongly drawn will have to be, therefore, upheld and the respondents No. 1 and 2 shall be directed to take the petitioners as eligible for consideration for promotion to the post as Grade A officers. From the date of institution of the writ petition till date, two decades have passed and it is likely that the candidates have also retired or if they are in service, they have come by promotions on their own turn. However, the direction allowing for consideration the petitioners shall be worked out notionally and they shall be treated as having been promoted on the date when the promotion was accorded to respondent Nos. 3 to 33. This follows the finding that a backlog of vacancy for direct recruits could not have been considered as available for subsequent calendar year and the apportionment of 136 vacancies as going towards the direct recruits could not be put out against the petitioners to their disadvantage. Same way, the petitioners No. 3 and 4 could not have been rejected out of consideration without any detail about how they were appraised at the interview when admittedly they had secured above the cut off marks at the merit test. The selection of respondent Nos. 3 to 33 on the plea that they were all taken against reserved quota cannot also be sustained against the petitioners without disclosure or

justification about how the quota was fixed at the promotion post and the respective roster points which were available to which they could have been fixed. Consequently, the writ petition is allowed with costs assessed at Rs. 10,000/- and the petitioners shall be given the benefit of promotion from the date when the respondent No. 3 to 33 were appointed and given all the consequential benefits with regard to the seniority, arrears of pay etc. The appropriate orders refixing seniority positions to the extent to which it is relevant for placing them in the promotion post and for releasing to them the monetary benefits shall be taken within a period of 12 weeks from the date of receipt of copy of this order and communicated to the petitioners.