

(2001) 07 AHC CK 0147

In the Allahabad High Court

Case No : C.M.W.P. No's. 3151 and 12218 of 1997

Rajendra Kumar Srivastava

APPELLANT

Vs

Samyut Kshetriya Gramin Bank and others

RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:

Regional Rural Banks Act, 1976 — Section 17, 29
Regional Rural Banks Rules — Rule 10(5)
Regional Rural Banks Act, 1976 — Section 17, 29
Regional Rural Banks Rules — Rule 10(5)
Regional Rural Banks Act, 1976 — Section 17, 29
Regional Rural Banks Rules — Rule 10(5)

Citation : (2001) 3 AWC 2129 : (2001) 2 LLJ 1491 : (2001) 3 UPLBEC 2236

Hon'ble Judges : R.B. Misra, J;M. Katju, J

Bench : Division Bench

Advocate : Ashok Khare, for the Appellant; Vineet Saran, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed praying for a writ of certiorari for quashing the impugned order dated 20.12.1996 Annexure-14 to the writ petition passed by the Chairman. Samyut Kshetriya Gramin Bank. Azamgarh and for quashing the entire proceeding undertaken by the respondent Bank for grant of promotion from among the officers Scale-I to officers Scale-11 and for a mandamus directing the respondents to make fresh promotion to the post of officers Scale-II strictly in accordance with law.

2. We have heard the learned counsel for the parties and have perused the affidavits.

3. The respondent Bank was established as a Regional Rural Bank under the provisions of the Regional Rural Bank Act. 1976. The bank has been sponsored by the Union Bank of India and its management is vested in the Board of Directors comprising of Directors nominated by the Central Government, State

Government and the Sponsoring Bank. Under the Act. power is conferred on the Central Government to Issue directions as also to frame rules Regulation-making power has been conferred on the Board of Directors of the Regional Rural Bank to be exercised in consultation with the Reserve Bank of India and with previous sanction of the Central Government.

4. The petitioners are officers Scale-I in the respondent bank and posted in various branches in the State. The dates of appointment are from 1979 to 1982 on various dates as mentioned in paragraph 6 to the writ petition. On 22.2.1991 an award was given by the National Industrial Tribunal under which the pay scale and categorisation of officers of the Regional Rural Banks was brought at par with the pay scale of the sponsoring bank w.e.f. 1.9.1987. As a consequence of this award, the petitioners were granted designation of officers Scale-1 in the pay scale of Rs. 2100-4020 w.e.f. 1.9.1987. Above this designation is the grade of officers Scale-11 carrying the pay scale of Rs. 3060-4390.

5. It is alleged in paragraph 11 of the writ petition that the work and conduct of the petitioners have been satisfactory and there is no adverse entry and they have received appreciation letters vide Annexures-1 to 4 to the writ petition. A seniority list of the officers was published by the Chairman by order dated 4.12.1996 vide Annexure-6 to the writ petition. In this seniority list, the petitioner Nos. 1 to 7 are at serial Nos. 18, 39, 56, 10, 29 and 91 respectively. The Regulations were framed in 1980 by the respondent bank with the previous approval of the Central Government but these regulations do not provide for promotion criteria. The Central Government issued a notification dated 28.9.1998 in exercise of powers u/s 17 read with Section 29 of the Act notifying a set of rules, true copy of which is Annexure-6 to the writ petition. In pursuance of this notification, a circular letter was issued on 2.1.1989 by the Chairman vide Annexure-7 to the writ petition. The consequential letter dated 10.4.1989 is Annexure-8 to the writ petition. On 5.11.1996 a circular letter was issued by the Chairman notifying the procedure of sealed cover regarding the persons against whom the proceedings were pending. True copy of the same is Annexure-9 to the writ petition. On 17.9.1994 a seniority list was issued by the National Bank for Agriculture and Rural Development addressed to all the sponsoring Banks and Regional Rural Banks notifying the recruitment and promotion policy vide Annexure-10 to the writ petition. An earlier circular letter dated 1.12.1987 specifying the meaning to be given to the criteria seniority cum merit is Annexure-11 to the writ petition.

6. Under the notification dated 28.9.1988, the minimum eligibility criteria for promotion to Scale-II is having put in eight years service as officers in the concerned Regional Rural Bank with rider that the Board of Directors may grant exemption of two years with prior approval of the sponsored bank if the candidates possessing the required length of service were not available for promotion. In the circular dated 10.5.1989, the candidates with the ratio two is to one are to be called for the post of promotion. By means of circular dated

4.12.1996, the Chairman of the respondent bank notified that the Board of Directors has taken a decision for filling up 64 posts of officers Scale-11 in accordance with the notification dated 28.9.1988 and the circular dated 17.9.1994. True copy of the circular letter dated 4.9.1996 Is Annexure-12 to the writ petition. It is stated in paragraph 27 of the writ petition that by circular dated 4.12.1996, the respondent bank unauthorisedly extended the zone of consideration to Include a very large number of officers with ulterior motive to give promotion to very junior officers.

7. By means of interview letter dated 5.12.1996 Issued under the signature of the Chairman, all the eligible officers fulfilling eight years length of service as on 10.5.1995 were called for interview on different dates from 16.12.1996 to 19.12.1996. True copy of one of the letters is Annexure-13 to the writ petition.

8. In paragraph 30 of the writ petition, it is stated that a total number of 200 officers fulfilled the eligibility condition of having put in more than eight years of service on 10.5.1995 and all such officers were interviewed. It is alleged in paragraph 33 of the writ petition that the petitioners were perfunctorily interviewed for a few minutes each only and on 20.12.1996, the order has been issued by the Chairman notifying 64 persons as having been selected as officers Scale-II vide Annexure-14 to the writ petition. These 64 persons are respondent Nos. 4 to 67 in the present writ petition. In paragraph 36 of the writ petition, it is alleged that many of the officers selected are juniors to the petitioners. All such selected persons are junior to petitioner No. 4 Most of the selected persons were also junior to many of the petitioners. In paragraph 38, it is stated that the selections were made on the basis of allocation of 60 marks for performance appraisal and 40 marks for oral interview although that has not been notified earlier. It is alleged in paragraph 40 of the writ petition that by adopting the aforesaid basis, the respondent has given a total go-by to the criteria of seniority-cum-merit specified in the notification dated 28.9.1988. In paragraph 42. It is alleged that a large number of senior officers have been superseded without there being any material adverse against them. It is alleged that many persons against whom there was adverse material have been selected. Thus. In paragraph 45, it is alleged that Hari Lal who has been mentioned at serial number 35 in the order dated 20.12.1996 has been granted promotion even though he has been charge-sheeted and disciplinary proceedings were pending against him. In paragraph 46, it is alleged that many persons were promoted who have been departmentally punished on the basis of disciplinary proceedings. The details of such persons are given in paragraph 46 of the writ petition. Aggrieved, this petition has been filed in this Court.

9. A counter-affidavit has been filed on behalf of the Chairman of the respondent bank. In paragraph 5. it is stated that merely because there was no adverse entry or not starting any disciplinary proceeding against an employee does not mean that there was no deficiency in his work. It is alleged that work and conduct of the petitioners have neither been satisfactory nor they have a clean

service record. The petitioner No. I. R. K. Srivastava was issued show cause notice for gross irregularities during his tenure as Branch Manager. Kasimabad where he disbursed a large number of loans contravening the instructions/directives of the Bank. Similarly the petitioner No. 2 has not worked properly and he was issued advisory memo on 9.6.1989 with monetary recovery. There were complaints against other petitioners details of which are given in paragraph 5 of the counter-affidavit. It is alleged that the petitioners were incompetent, inefficient and found incapable of shouldering higher responsibilities and thus, not found fit for promotion in Scale-II. They resorted to rowduism. illegal confinement of Chairman. General Manager and other senior officials of the bank on 6.1.1997 with the result that the bank had to seek police intervention for security and protection. The petitioner Nos. 1 to 5 along with active support of other petitioners illegally started agitation and dharna programme soon after the publication of the result with a motive to refrain the loyal and willing staff of the bank from discharging their duties and disrupting the smooth functioning of the bank. They used abusive languages and slogans against the officers and threatened to cut off the hands of the officers and hence the bank had to seek a temporary injunction which was granted by the civil court. The bank was also forced to take police protection as the petitioners committed criminal and rowdy behaviour. In paragraph 8 of the counter-affidavit, it is alleged that rules have been made by the NABARD vide its circular dated 10.2.1988 which is in continuation to its circular dated 1.12.1987. The guidelines contained in circular dated 1.12.1987 cannot be interpreted to mean that the promotion would be automatic without any screening. The management are not precluded from making any objective assessment of the officers' potential for considering their suitability for promotion. In paragraph 10 of the counter-affidavit, it is stated that under the notification dated 28.9.1988, seniority-cum-merit is the criterion but the mode of selection will be interview and assessment of performance report for the preceding three years. In paragraph 15 of the counter-affidavit. it is stated that in view of the rider attached to the schedule of the Government notification and the NABARD notification dated 10.2.1988, the seniority-cum-merit criteria was diluted and the appraisal report of three years had to be looked into and performance of the candidate seen in the selection. In paragraph 17 of the counter-affidavit, it is stated that sufficient time was devoted to each candidate in the interview and it is not for the candidate to assess as to how much time should be devoted to them. In paragraph 19 of the counter-affidavit it is stated that seniority alone cannot be seen. In paragraph 21 of the counter-affidavit it is stated that it was decided by the selection committee that 60% marks will be kept for appraisal report and 40% marks for the interview and the promotion will be made on the basis of seniority. In paragraph 23 it is stated that the principle of seniority cum merit has not been given a total go-by and in fact those who were senior and have proper appraisal report and have qualified in the interview have been selected for promotion. In paragraph 24 of the counter-affidavit it is stated that the orders of the Central Government and NABARD have been followed and It is wrong to impute any motive to anyone. The Chairman

has no interest in any particular officer. In fact he Joined the service of the bank a few days earlier and he did not know the officers. In paragraph 26 of the counter-affidavit it is stated that so far as Hari Lal is concerned he is a scheduled caste candidate and otherwise he is senior enough. The only technical charge against him is that he did not rectify some irregularities pointed out in audit report on his branch earlier but later on he was exonerated. In paragraph 27 of the counter-affidavit it is stated that the persons at serial Nos. 23, 30, 35 and 36 were subject to disciplinary proceeding more than three years back but the appraisal report for the last three years was good. In paragraph 34 it is stated that the selection committee can determine the criteria of the interview.

10. A supplementary counter-affidavit has also been filed by the Chairman of the Bank. In paragraph 2 of the same it is stated that the directions of the Government of India and NABARD were strictly followed in the matter of promotion. In paragraph 4 it is stated that the selection was done by allotting 60% marks for performance appraisal and 40% marks for interview. The Board of Directors decided that those who will secure 78% marks and above will be declared eligible and out of them the senior most 64 persons who were found qualified were promoted.

11. A counter-affidavit has also been filed by respondent No. 44. In paragraph 5 it is alleged that the Board of Directors have full jurisdiction to fix the criteria for promotion. In paragraph 6 on the counter-affidavit it is alleged that the petitioners duly appeared in the interview and having been declared unsuccessful in the selection and they cannot now be permitted to challenge the promotion on the ground of criteria fixed by the respondent Bank. In paragraph 11 of the counter-affidavit, it is alleged that the records of none of the petitioners is free from blemishes, e.g., petitioner No. 1 Mr. Rajendra Kumar Srivastava and petitioner No. 5 Sushil Kumar Rai are facing disciplinary proceedings and O. P. Khanna has been awarded punishment in a departmental enquiry. In paragraph 16, it is alleged that as per the circular of NABARD dated 10.2.1988 it was specifically clarified that the guidelines contained in the circular dated 1.12.1987 cannot be interpreted to mean that promotion would be automatic without any screening. It is alleged that the management of the bank is not precluded from making an assessment of the persons suitable for promotion. True copy of the circular dated 10.2.1988 is Annexure-C.A. 1 to the counter-affidavit. In paragraph 22 of the counter-affidavit It is stated that the circular dated 4.12.1996 has been issued strictly in accordance with the guidelines of the NABARD as well as the Government of India notification dated 28.9.1988 as also per the decision taken by the Board of Directors at its meeting dated 29.11.1996. In paragraph 23 of the counter-affidavit it is stated that the circular of the NABARD dated 10.2.1988 clearly provides that seniority-cum-merit as defined in the circular dated 1.12.1987 stands superseded and as such the circular dated 1.12.1987 has nothing to do with promotions made after 10.2.1988 and hence it is alleged that the respondent bank has made promotions validly. In paragraph 24 of the counter-affidavit it is alleged that all

the petitioners had appeared in the interview without any prejudice and as such they are estopped from raising objection as to the promotion. In paragraph 26 of the counter-affidavit it is stated that all the 200 eligible candidates were screened and interviewed as per prevailing norms and guidelines. Those candidates who were found most suitable and fit for promotion were declared successful and promoted as officer Scale-II w.e.f. 20.12.1996. In paragraph 32 it is stated that the proceeding against Hari Lal have been completed and specific and correct reply can be given by the respondent bank or by Hari Lal himself. In paragraph 35 of the counter-affidavit it is stated that after the interview was over the performance appraisal of each candidate was placed before the selection committee. In paragraph 36 it is stated that the promotions have been made in accordance with Rule 10 (5) notified by Government of India by notification dated 29.9.1988 vide Annexure-C.A. 2. In paragraph 37 of the counter-affidavit it is stated that the promotion was made in accordance with law. In paragraph 39 it is stated that for promotion in Scale-II the service record and performance of the officers are relevant factors. In paragraphs 41 to 43 reply has been given regarding specific persons mentioned in the writ petition.

12. A rejoinder-affidavit has been filed and we have perused the same. We are of the opinion that the criteria for promotion was seniority subject to rejection of unfit as noted in the various notification/circular placed before us. However, as held by the Supreme Court in *B.V. Sivaiah and Others etc. Vs. K. Addanki Babu and Others etc.*, even where the criterion of promotion is seniority-cum-merit (which is the same as seniority subject to rejection of unfit), it is necessary in order to be considered for promotion to have the minimum necessary merit requisite for efficiency of administration. For assessing the merit of the candidate, minimum standard was prescribed and it was decided whether he is eligible to be considered for promotion. Such assessment of minimum merit can be made by assigning marks on the basis of appraisal of performance.

13. No doubt in *B. V. Sivaiah's* case (supra), it has been held that where selection, is to be made on the basis of seniority-cum-merit, the selection of only those officers who have secured higher number of marks will be illegal. However, in the present case that has not been done. What the selection committee has done is that those who secured 78% marks were considered for promotion. Those who secured more than 78% marks were considered as having the minimum eligibility and from among them, promotion was done on the basis of seniority as stated in paragraphs 7 and 8 of the supplementary counter-affidavit. As stated in paragraph 23 of the main counter-affidavit of the Chairman, the principle of seniority-cum-merit has not been given a total go-by. In fact those who secured the minimum requirement (78% marks) in the interview and appraisal were considered to be in the field of eligibility and from amongst them, selections were made on the basis of seniority. As stated in paragraph 23 of the counter-affidavit, the officers in Scale-II have to do a lot of administrative work and have to shoulder higher responsibility in comparison to officers in Scale-I and hence suitability has also to be seen.

14. No doubt in Sivaiah's case (supra) more than 50% marks set apart for Interview and performance but in that case, only those who secured highest marks were ultimately promoted and that was declared illegal by the Supreme Court. The present case is distinguishable. This is not a case where those who got highest marks in the interview and appraisal were promoted, rather those persons who got minimum of 78% marks were considered eligible and from them promotion was made on the basis of seniority. It is settled law even where the selection is done on the basis of seniority-cum-merit. a minimum eligibility requirement can be fixed by the authorities.

15. Moreover the petitioners and others appeared in the interview and thus were obviously aware of the fact that in the interview merit is also to be taken into consideration. Hence they should have protested at that time but they appeared in the interview without any protest. Hence as held by the Supreme Court In Union of India and Another Vs. N. Chandrasekharan and Another, , they cannot subsequently turn around and challenge the selection. In Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others, , the Supreme Court held that NABARD circular dated 7.4.1986 clarified the earlier circular dated 31.12.1984 and specifically provided that the selection of the eligible candidates should be based on performance of the respective candidates in the Bank. The Supreme Court held that the High Court fell into patent error in holding that the guidelines were not applicable to the impugned promotions. The cumulative reading of the two guidelines Issued by the NABARD clearly shows that the promotions were to be made on the basis of the comparative assessment of the performance appraisal of the officers concerned. The Supreme Court further held that it is a settled proposition of law that even while making promotion on the basis of seniority-cum-merit, the totality of the service record of the officer concerned has to be taken into consideration.

16. In Dr. G. Sarana v. University of Lucknow, AIR 1976 SC 2426, it was held by the Supreme Court that where a candidate for selection knowing fully well the relevant facts voluntarily appeared for interview without raising any objection, he cannot subsequently turn round and question the selection.

17. Thus, there is no force In this petition and it is dismissed accordingly. No order as to costs.