
(2007) 04 AHC CK 0208
In the Allahabad High Court

Rajesh Kumar Agrawal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) 3 AWC 2585

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Three petitioners before this Court are aggrieved by the selection process initiated by the respondent bank for the post of Officer Scale-I. Since, common issues have been raised in all the three writ petitions therefore, the same are being decided together. For facility and convenience, the facts in Civil Misc. Writ petition No. 6334 of 2003 Rajesh Kumar Agrawal v. Unions of India and Ors. is being taken into consideration.

2. Briefly stated the facts giving rise to the present writ petition is that u/s 29 read with Section 17 of the Regional Rural Banks Act, 1976, the Regional Rural Banks [Appointment and Promotion of the Officers and other Employees Rules 1998 were framed, published and gazetted in supersession of. the earlier Rules and circulars. These rules were adopted by the respondent bank on 17.5.2000 with the consent of the sponsored bank. Pursuant to the aforesaid Rules, the respondent bank on 14.10.2000 notified 20 vacancies to be filled up by way of promotion on the post of the Officers Scale -I. The petitioners are working as clerk-cum-cashier and, under the Rules, were eligible to be promoted on the post of Officers Scale-I. Under the Rules of 1998, 50% of the posts of the Officers Scale-I was required to be] filled up by direct recruitment through Banking Service Recruitment Board and 50% by promotion. The promotion was required to be made on the basis of seniority cum merit. The Rules further provides the selection process and for facility, the relevant rules is quoted hereunder:

(j) Selection Process for promotees : The selection shall be on the basis of performance in the written test, interview and five years Performance Appraisal Reports as per the division of marks given below:

(A) Written Test 70 marks

(B) Interview 20 marks

(C) Performance Appraisal 10 marks Reports

Total marks 100 marks (A) Written Test (70 marks) The candidates shall be required to appear for written test comprising test in English and test in Banking Law, practice and procedures including working procedures in the Regional Rural Bank concerned.

70 marks allotted to written test shall be further divided as under:

English 35 marks

Banking Law Practice and Procedures 35 marks Total marks 70 marks

A list of only those candidates who secure a minimum of 40% marks each in English, Banking Law, practice and procedures shall be prepared. The Bank, thereafter, shall prepare the list of selected candidates in the order of seniority to the extent of two hundred percent of the vacancies for promotion for the purpose of calling for interview.

(B) Interview (20 marks) There shall be no minimum qualifying marks in the interview. (C) Assessment of Performance The Performance Appraisal Reports for the preceding Appraisal Report three years of the concerned employees, shall be considered.

3. In order to evolve a process for filling up the vacancies, the respondent bank, with the consent of the sponsored bank, issued a guideline/circular/ policy dated 28.2.2001. The relevant provisions in this policy are Clause 4,10 and 11 which are quoted under:

4. BASIS OF PROMOTION

The selection will be on the basis of "Seniority-cum-Merit". The rank list of candidates securing the stipulated minimum qualifying marks will be prepared as per seniority and the select list drawn up to fill the vacancies declared. In other words, those candidates who secure the minimum qualifying marks will be short listed according to their seniority and the promotion will be made only on the basis of their seniority irrespective of their comparative merit."

10. SELECTION PROCESS:

The selection shall be on the basis of performance in the Written Test, Interview and performance appraisal Reports for preceding 5 years as per the division of marks given below:

A] WRITTEN TEST 70 Marks B] INTERVIEW 20 Marks C] PERFORMANCE APPRAISAL REPORTS 10 Marks ----- TOTAL 100 Marks -----

A. WRITTEN TEST [70 Marks] The candidates to be considered for promotion shall be required to appear for Written Test comprising of two parts:

PART- A ENGLISH 35 Marks PART-B Banking Law, Practice and procedure including working procedure in the Bank 35 Marks

A list of only those candidates who secure a minimum 40% marks that is 14 marks in each part shall be prepared. The Bank, thereafter shall prepare the list of selected candidates in the order of seniority to the extent of 200% of the vacancies for promotion for the purpose of calling for Interview. As per latest guidelines of Govt. of India where Test is the initial process of selection, a minimum qualifying marks have to be prescribed to a lesser extent of 5% in respect of SC/SD employees than what is specified for other general candidates.

Therefore, for SC/ST employees minimum qualifying marks shall be 35% i.e. 12.25 marks in each part."

11. MINIMUM QUALIFYING MARKS:

For the purpose of selection, keeping in view a minimum necessary merit requisite for efficiency of administration and shouldering onerous responsibility of the higher post an overall minimum qualifying marks of 50 out of 100 marks are fixed. The select list will be prepared as per seniority from amongst the candidates securing minimum qualifying marks of 50.

4. Pursuant to the vacancies being advertised, the petitioners applied for the post of Officer Scale-I and appeared in the written test. All the petitioners qualified in the written test and thereafter, was called for the interview. However, the final select list which was published did not contain the names of the petitioners. It is alleged that the petitioners made various representations to the competent authority as well as filed an appeal before the appellate authority. In so far as the petitioner Rajesh Kumar Agrawal is concerned, it is alleged that no action was taken on his representation and consequently, he filed the present writ petition. In so far as the other petitioners are concerned, their appeals were rejected and consequently, they filed the writ petitions challenging the selection process.

5. Heard Sri I.M. Tripathi, the learned Counsel for the petitioner, Sri S.K. Singh, the learned Counsel appearing for the petitioner in other two writ , petitions and Sri Yashwant Verma assisted by Ms. Roma Hamid for respondent Nos. 2 and 3.

6. Sri I.M. Tripathi, the learned Counsel for the petitioner submitted that the Rules of 1998 were not complied by the respondents bank and that the circular/ policy dated 28.2.2001 was in violation of the Rules of 1998. It was contended that the candidates, who did not qualify in the written test had been selected and that the juniors had been promoted when, infact, the promotion was required to be made on the basis of the seniority-cum-merit. It was further contended that

the persons, who were caught using unfair means in the examination were eventually selected and promoted.

7. Sri S.K. Singh, the learned Counsel for the remaining petitioners contended that Clause 11 of the circular/policy dated 28.2.2001 was in violation of the Rules of 1998 and that this Clause-11 required an over all 50% minimum qualifying marks for being considered in the final select list which was arbitrary and violative of the Rules of 1998 because by this Clause 11 of the policy, the seniority-cum-merit took a back seat and that the criteria of merit cum-seniority took a precedence. In support of his submissions, the. learned Counsel placed reliance on a decision of the Supreme Court in Bhagwandas Tiwari and Others Vs. Dewas Shajapur Kshetriya Gramin Bank and Others,

8. On the other hand, Sri Yashwant Verma, the learned Counsel appearing for the respondent bank submitted that the policy/circular of 2001 was not in derogation of the Rules of 1998 and that Clause-11 of the Scheme was in consonance with the judgment of the Supreme Court and that the bank could prescribe the minimum qualifying marks in its policy. The learned Counsel submitted that even though, the petitioners secured 40% marks in the written test and thereafter, qualified in the interview but two of the petitioners could not secure the over all 50% marks under all the parameters prescribed under the Rules, namely, the written test, interview and the performance aggregate and therefore, could not qualify for promotion. The learned Counsel for the respondent submitted that the selection was made strictly in accordance with the Rules and as per the norms laid out in the policy and that there was no violation of any provision of the Rules. The learned Counsel further submitted that none of the petitioners have challenged the policy of 2001 and therefore, cannot be permitted to argue this point at the hearing stage. The learned Counsel further submitted that the petitioners having participated in the selection process knowing fully well the terms and conditions laid down in the Rules and the guidelines framed by the bank applied for promotion and after failing in their attempt to be promoted could not turn around and challenge the selection process. The learned Counsel further submitted that the petitioners having participated in the selection process had acquiesced in the matter and were estopped from challenging the selection process. In support of his submission, the learned Counsel has placed reliance on various judgments which will be dealt with at the appropriate stage

9. Before proceeding further, the respondent bank has conceded that in the case of Rajesh Kumar Agrawal, the said petitioner had obtained the overall minimum qualifying marks and was eligible for promotion to the post of Officer Grade-I and would be promoted as and when the interim orders passed in the writ petition are vacated. The contention of the bank was that on account of the interim orders of the Court directing the bank to keep a post vacant, the promotion of the petitioner Rajesh Kumar Agrawal could not be made.

10. In view of the concession made by the bank in its Supplementary Counter Affidavit, the submission raised by the learned Counsel for the petitioner of

Rajesh Kumar Agrawal loses its force and the various grounds raised is therefore not required to be dealt with. It is sufficient for this Court to hold that in view of the admission made by the respondent bank in relation to the case of Rajesh Kumar Agrawal, the petitioner having qualified and obtained the minimum overall qualifying marks, was eligible for promotion.

11. In so far as the other two petitioners are concerned, this Court is of the opinion, that they are not entitled for any relief. The basic contention raised by the learned Counsel for the petitioner is that Clause 11 of the policy/guidelines was in derogation of the Rules of 1998 which provided promotion on the basis of seniority-cum-merit. The question which is required to be considered is, whether Clause-11 of the guidelines/policy makes the procedure merit-cum seniority instead of seniority cum- merit and, therefore, makes Clause 11 violative of the Rules of 1998.

12. There is a plethora of decisions of the Supreme Court as well as of this Court explaining the difference in seniority-cum-merit and merit-cum-seniority. It is sufficient for this Court to refer to a decision of a seven Judges Bench of the Supreme Court in the case of State of Kerala and Another Vs. N.M. Thomas and Others, wherein the Supreme Court had observed:

seniority-cum- merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority. This will not violate Article 14, 16[1] and 16[2].

13. In B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., the Supreme Court held that:

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

During the course of hearing of the appeal, the learned Counsel for the respondent Bank has placed before us the relevant documents relating to the impugned selection and promotion. On a perusal of the said documents, we find that 50 marks out of the total of 100 marks were prescribed as the minimum qualifying marks for interview and only those who had obtained the qualifying marks in interview were selected for promotion on the basis of seniority. It was, therefore, a case where a minimum standard was prescribed for assessing the merit of the candidates and those who fulfilled the said minimum standard were

selected for promotion on the basis of seniority. In the circumstances, it cannot be said that the selection has not been made in accordance with the principle of "seniority-cum-merit." We are, therefore, unable to uphold the impugned judgement of the High Court. The appeal has too be allowed and the impugned judgement of the High Court dated 7.2.1997 passed by the learned Single Judge of the High Court has to be set aside and the promotion of the appellant on the post of Area/Senior Manager under the order dated 8.4.1993 has too be affirmed.

14. The Supreme Court noted that the minimum marks prescribed for assessing the merit does not depart from the seniority-cum- merit principle and that it was permissible for the employer to prescribe a minimum standard for assessing the merit of the candidate.

15. In *Vinod Kumar Verma and Ors. v. Union of India and Ors.* 2004 [1] ESC 19, the promotion was made strictly on the basis of the seniority-cum-merit and the candidates, who had secured the minimum qualifying marks of 50% were prompted strictly on the basis of seniority. As per the amended rules, in that case, 60% marks had been allocated for the written test, 20 marks for performance appraisal and 20 marks for the interview. The candidates who had secured a minimum 40% marks in each paper were called for the interview, and they were awarded marks on the basis of appraisal reports and in the interview. Only those candidates, who had secured a minimum aggregate of 55% marks in the total were treated as eligible for promotion. The aggrieved candidates, who could not qualify had filed the writ petition before this Hon"ble Court challenging the clause 11 relating to obtaining a minimum aggregate of 50% in total as being violative of the Rules. A Division Bench of this Court rejected the contention of the petitioner and, while dismissing the writ petition held that-

In our opinion, it is always open to the authorities to fix a minimum requirement, which a candidate must have before he can be considered for promotion on the basis of seniority-cum-merit. Hence it is not correct to say that only those who have some adverse entries or other adverse material in their service record can be eliminated while considering promotions on the basis of seniority-cum-merit.

No doubt one standard which the authorities can adopt for determining unfitness is the existence of adverse material in the service record of the candidate, but that is not the only way in which the authorities can declare a person unfit for being considered for promotion. The authorities can fix any objective criterion for this purpose, and this Court cannot sit in appeal over this minimum merit criterion fixed by the authorities. The authorities must be given wide latitude in the manner and mode of fixing this minimum merit.

16. In my opinion, the issue raised and decided in the aforesaid writ petition squarely covers the present issue involved in the present writ petition.

17. In *N.K.Agrawal and Ors. v. Kashi Gramin Bank, Varanasi and Ors.* 2003 [3] ESC 1478 another Division Bench of this Court held-

However, this not the invariable rule in giving promotions on the basis of seniority-cum-merit. An alternative procedure can be resorted to by the authorities, and that is that they can fix a minimum objective eligibility requirement and only those candidates who possess the same are then promoted on the basis of seniority. For considering this minimum eligibility requirement there can be a selection by a Selection Committee, vide Sivaiah's case [supra]

18. The judgment cited by the learned Counsel for the petitioner in the case of Bhagwan Das Tiwari [supra] is totally distinguishable and is not applicable to the present facts and circumstances of the case. In the said case, the standard - of selection was on the performance of work, period of service and interview. The marks awarded for each category was 30,35 and 40 marks respectively. The candidate was required to obtain a minimum of 45 marks. The respondent bank adopted the policy of merit -cum -seniority by fixing a criteria that only those employees, who had secured 45 marks out of 60 in respect of the criteria of performance of work and interview would be selected for promotion, thereby giving a go bye to the third category, namely, the period of service for which 40 "marks was allocated. In that light, the Supreme Court held that the minimum prescribed for making a candidate eligible for promotion was based on merit-cum-seniority rather than seniority-cum-merit. In the present case, there is no such departure. The respondent bank had followed the procedure of selection as per the Rules. The guidelines are not in derogation of the Rules of 1998. Clause 11 only prescribes a minimum overall limit for assessing the merit and, this Clause 11 does not depart from the seniority-cum-merit principle. Consequently, in the opinion of the Court, Clause 11 is not in derogation of the Rules of 1998 nor is violative of the principles of seniority-cum-merit and it is always open to the authorities to fix a minimum requirement for a candidate for being promoted. Clause 11 is neither offensive nor opposed to the Rules of 1998. There is nothing wrong in the bank policy in selecting those candidates, who had secured a minimum aggregate 50% marks in total. The said clause, in my opinion, is in consonance with the principles enunciated in Sivaiah's case [supra] as illustrated in paragraph 37 of the judgment.

19. There is another aspect of the matter, the petitioner cannot be permitted " to agitate this issue merely because they could not succeed in the selection process. The petitioners had participated in the selection process with open eyes knowing the terms and conditions of the selection process as well as the terms "and conditions existing under the Rules of 1998 and the policy/guidelines framed by the respondent bank. The petitioners applied and appeared in the written examination, qualified and appeared in the interview. Since, their names were not found in the select list, they cannot turn around and urge that the selection process was illegal, since, it only considered the policy which was against the norms laid down under the Rules of 1998.

20. In Union of India and Another Vs. N. Chandrasekharan and Another, , the Supreme Court observed-

It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found that they were not selected, by challenging that procedure.

21. In *Ramesh Rai v. Chairman, S.K.G. Bank, Azamgarh and Ors.* (2005)3 1594, a Division Bench of this Court held

The petitioner did not raise the issue at the time of selection and in view of the settled legal proposition, as explained above, he cannot be permitted to agitate the issue merely because he could not succeed in the selection process.

22. Similarly, in *Rajendra Kumar Srivastava and Ors. v. Samyut Kshetriya Gramin Bank and Ors.* (2001)3 ESC 1257 a Division Bench of this Court held

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 officer 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.

23. In *Dr. G. Sarana v. University of Lucknow* AIR 1976 2428, the Supreme Court held 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.

24. In view of the aforesaid, the Writ Petition No. 6334 of 2003, *Rajesh Agrawal v. Union of India and Ors.* is allowed. A writ of mandamus to the respondent bank to pass an order of promotion of the petitioner on the post of Officer Scale-1 within four weeks from the date of the production issued of the certified copy of this order.

25. The contention of the respondent bank that they could not promote the

petitioner Rajesh Kumar Agrawal on account of the interim order issued by the Court is patently erroneous. The results were declared in July 2001, whereas the interim order reserving a post was passed in February 2003. Consequently, I do not find any justification on the part of the respondent bank in not declaring the result of the petitioner Rajesh Kumar Agrawal and in not promoting him to the post of Officer Grade 1. Consequently, while allowing the writ petition this Court also imposes a cost of Rs. 5000/- which shall be paid by the respondents bank to the petitioner Rajesh Kumar Agrawal within the same period of four weeks. In so far as the remaining two petitions are concerned this Court does not find any merit in their writ petitions being Civil Misc. Writ Petition No. 22450 of 2002 and Writ Petition No. 20529 of 2002 and are dismissed. In the circumstances of the case, the aforesaid two petitioners shall bear their own costs.