

(2010) 10 MP CK 0048
In the Madhya Pradesh High Court
Case No : W. P. No. 2025 of 2008 (S)

Rajesh Kumar Mathur

APPELLANT

Vs

Chairman, Madhya Bharat Gramin Bank and Others

RESPONDENT

Date of Decision : 13-10-2010

Acts Referred:

Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955 — Rule 5(2)
Constitution of India, 1950 — Article 14, 16, 226
Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988 — Rule 6
Regional Rural Banks Act, 1976 — Section 17, 29

Citation : (2010) ILR (MP) 40 : (2010) 3 MPJR 77 : (2011) 2 MPLJ 54 : (2010) 3 MPLJ 29

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Judgement

S.K. Gangele, J.

This order shall also govern the disposal of W. P. No. 2025/08(s), W. P. No. 5105/08(s), W. P. No. 2687/08(s), W. P. No. 5478/08(s) and W.P. No. 2616/10(s).

Because all the petitions are connected and common question has been involved in all the petitions, hence the petitions have been heard together finally and decided by this common order. The facts mentioned in W. P. No. 2025/2008(S) have been taken into consideration for passing the common order.

In this petition, the Petitioner has challenged the order Annexure P-I dated 5-3-2008 by which the Respondent No. 1 promoted near about 57 officers from the post of JMGS-I to MM Scale II.

As per the Petitioner in issuing the promotion order Annexure P-I, the Respondents No. 1 and 2 have not followed the provisions of Regional Rural Bank (Appointment and Promotions of Officers and Other Employees) Rules, 1998, hence the promotions are contrary to the rules.

The Respondent No. 2-Bank is constituted under the provisions of Regional Rural Bank Act, 1976 (hereinafter called as "Act of 1976"). In exercise of powers conferred u/s 17 read with Section 29 of the Act of 1976, the Central Government framed rules in regard to appointment, promotion and discipline of the employees of the Respondent No. 2-Bank. These Rules have been named as Regional Rural Bank (Appointment and Promotions of Officers and Other Employees) Rules, 1998 (hereinafter referred to as the "Rules of 1998"). Rule 6 prescribes that the Board of Directors of the Bank shall fill up the vacancies in accordance with the provisions of IIIrd Schedule by promotion or direct recruitment, IIIrd Schedule prescribes procedure for promotion. As per IIIrd Schedule (2), the promotion of scale-II officers has been prescribed. The criteria for promotion is seniority-cum-merit. The relevant provisions of the Rules which are in Hindi are as under:

The Board of Management of Respondent No. 3 in the meeting held on 29-10-2007 fixed the requirement for promotion of an employee from JMGS-I to MM II scale and according to the aforesaid criteria an employee who has secured 40% marks in written test was called for interview and thereafter if an employee secured 70% marks in aggregate in written test interview and in annual confidence report, which was reduced to 65%, has been held eligible for promotion. The relevant pleadings in the return to this effect are as under:

The candidates who are eligible to participate in the process of promotion from JMGS I to MM II Scale were required to secure 40% marks in the written test and they are required to secure 70% marks in aggregate in written test, interview and in annual confidential reports for five years those who secure 70% marks in aggregate shall be held eligible for promotions. Since the promotion policy is seniority cum merit hence the candidates who shall secure 70% marks shall be given promotion in order of seniority. Thus, even though the junior has secured more than 70% marks in aggregate yet senior persons shall be given preference over the meritorious junior. Copy of the Board Resolution is filed as Annexure R/2. As the candidate who qualified for interview had secured less marks in written test it was anticipated that the number of candidates securing 70% out of 100 in aggregate may be less than the number of vacancies hence the Board of Directors of Respondent-Bank reduced the cut off minimum marks in aggregate from 70% to 65%. Copy of resolution passed at the Board meeting held on 5-3-2008 is filed as Annexure R/3.

Learned Counsel for the Petitioner has contended that the criteria fixed by the Board of Directors of the Bank for promotion from JMGS-I to MM II Scale is arbitrary and against the principle of seniority-cum-merit and it is also against the statutory provisions of Rules, 1998 and the IIIrd Schedule. In support of his contentions the learned Counsel has relied on the following judgments:

(i) State of Kerala and Another Vs. N.M. Thomas and Others, (ii) Harigovind Yadav Vs. Rewa Sidhi Gramin Bank and Others, . (iii) V.P. Shrivastava and Others Vs. State of M.P. and Others, (iv) B.V. Sivaiah and Others etc. Vs. K. Addankl

Babu and Others etc., . (v) AIR 2007 SCW 773 Bhagwandas Tiwari and Ors. v. Dewas Shajapur Kshetriya Gramin Bank and Ors.

Contrary to this, learned Counsel for the Bank has raised preliminary objection about the maintainability of the petition. Learned Counsel submitted that all the persons, who have promoted vide order dated Annexure/P/1 have not been added as party in the petition, hence, the petition is not maintainable. It has further been submitted that the promotion order passed by the Bank is in consonance with the provisions of statutory Rules of 1998 and the criteria of seniority-cum-merit has been followed by the Bank.

The Union of India has framed the rules named as Regional Rural Bank (Appointment and Promotions of Officers and Other Employees) Rules 1998. In exercise of power conferred to it u/s 17 read with Section 29 of Regional Rural Bank Act, 1976 Schedule III under Rule 6 prescribes the procedure in regard to promotion from JMGS-I to MM Scale II and as per the aforesaid Schedule the following marks be allotted under different heads:

a)

Written Examination

60 marks

b)

Interview

20 marks

c)

A.C.R. Valuation Report

20 marks

Total

100 marks

It has further been stated in the rules that those candidates, who would secure 40% marks in written examination which shall consist of two papers, shall be called for interview and thereafter no minimum marks in interview and A.C.R. appraisal have been fixed for the purpose of promotion. The Board of Directors and the Respondent No. 2-Bank in its meeting held on 29-10-2007 fixed the criteria that those candidates who would secure 70% marks, which was reduced to 65% marks, would be entitled for promotion on the basis of seniority. It means that the Respondent No. 2-Bank called for interview to those candidates who secured 40% marks in the written examination and thereafter on the basis of total 65% aggregate marks secured by a candidate in written examination, interview and A.C.R. appraisal report promoted him to the post on the basis of

seniority.

The Hon^{ble} Supreme Court in the case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., has considered the criteria and procedure for promotion in a Regional Rural Bank fixed by the circular of the Central Government dated 10th October, 1987. The criteria for promotion was seniority-cum-merit and mode of selection was interview and assessment of performance reports in the preceding three years period was necessary for promotion. The Hon^{ble} Supreme Court has held as under:

In the matter of formulation of a policy for promotion to a higher post, the two competing principles which are taken into account are inter se seniority and comparative merit of employees who are eligible for promotion. In Sant Ram Sharma Vs. State of Rajasthan and Another, this Court has pointed out that the principle of seniority ensures absolute objectivity by requiring all promotions to be made entirely on grounds of seniority and that if a post falls vacant it is filled by the person who had served longest in the post immediately below. But the seniority system is so objective that it fails to take any account of personal merit. It is fair to every official except the best ones, an official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. The criterion of merit, on the other hand, lays stress on meritorious performance irrespective of seniority and even a person though junior but much more meritorious than his seniors is selected for promotion. The Court has expressed the view that there should be a correct balance between seniority and merit in a proper promotion policy. The criteria of "seniority-cum-merit" and "merit-cum-seniority" which take into account seniority as well as merit seek to achieve such a balance.

The principle of "merit-cum-seniority" lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal. In the context of Rule 5(2) of the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955 which prescribed that "selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority" Mathew, J. in Union of India (UOI) Vs. Mohan Lal Capoor and Others, has said:

...for inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale." (p. 801 of SCR): (at p. 99, para 37 of AIR)

Similarly, Beg J. (as the learned Chief Justice then was) has said:

Thus, we think that the correct view in conformity with the plain meaning of words used in the relevant rules, is that the "entrance" or "inclusion" test, for a

place on the select list, is competitive and comparative applied to all eligible candidates and not minimal like pass marks at an examination. The Selection Committee has an unrestricted choice of the best available talent, from amongst eligible candidates, determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority is the governing factor" (p. 817 of SCR): (at p. 96 of AIR).

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On the other hand, as between the two principles of seniority and merit, the criterion of "seniority-cum-merit" lays greater emphasis on seniority. In *State of Mysore and Another Vs. Syed Mahmood and Others*, while considering Rule 4(3) (b) of the Mysore State Civil Services General Recruitment Rules, 1957 which required promotion to be made by selection on the basis of seniority-cum-merit, this Court has observed that the rule required promotion to be made by selection on the basis of "seniority subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion". It was pointed out that where the promotion is based on seniority-cum-merit the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted.

In *State of Kerala and Another Vs. N.M. Thomas and Others*, A.N. Ray, C.J. has thus explained the criterion of seniority-cum-merit:

With regard to promotion the normal principles are either merit-cum-seniority or seniority-cum-merit. Seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority (p. 930 of SCR): (at p. 500 para 38 of AIR).

The learned Counsel for the Regional Rural Banks and the promoted officers have, however, placed reliance on para 7(c) of the Second Schedule to the Rules which prescribes that the mode of selection for promotion would be interview and assessment of performance reports for the preceding three years" period and have submitted that under the criterion of "seniority-cum-merit" as prescribed under the Rules, comparative merit has to be assessed for the purpose of promotion. Reliance has been placed on the following observations in *State of Mysore Vs. C.R. Sheshadri and Others*,

However, if the criterion for promotion is one of seniority-cum-merit, comparative merit has to be assessed if length of service is equal or an outstanding junior is available for promotion (p. 89 of SCR): (at p. 461 of AIR).

The learned Counsel for the Regional Rural Banks and the promoted officers have also placed reliance on the decision of this Court in *Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others*,

Para 7(c) of the Second Schedule to the Rules does not in our opinion, lend

support to the contention that the criterion of seniority-cum-merit envisaged by the Rule making authority involves assessment of comparative merit for the purpose of promotion. The word "selection" has been used in the sense of selecting an officer for promotion on the basis of the criterion of seniority-cum-merit. The requirement that such selection shall be made on the basis of interview and assessment of performance reports for the preceding three years in consistent with the criterion of seniority-cum-merit as explained in the State of Kerala and Another Vs. N.M. Thomas and Others, that "given the necessary merit requisite for efficiency of administration" the senior though the less . meritorious shall have priority. The said mode enables an assessment to be made about the minimum necessary merit requisite for efficiency of administration and it cannot be construed as importing assessment of comparative merit of the officers eligible for promotion.

In State of Mysore Vs. C.R. Sheshadri and Others, the Court was considering the question whether the High Court could have given a direction to the State to give to the Respondent therein notional promotion to the post of Deputy Secretary with effect from the date on which his junior secured such promotion. This Court said that such a direction could not be given by the High Court because promotion of a Government servant was basically in Government's discretionary power and that in the absence of positive proof of the relevant service rules it was hazardous to assume that by efflux of time the Respondent would have spiralled up to Deputy Secretaryship and that the proper direction could only be that Government would reconsider the case of the Respondent afresh for purpose of notional promotion. In that context, this Court pointed out that if the rule of promotion is one of "sheet seniority" it may well be that promotion is a matter of course and that if seniority-cum-merit is the rule, promotion is problematical. Since the relevant rule governing promotion to the post of Deputy Secretary had not been placed before it, the Court was not required to define the criterion of "seniority-cum-merit" and to delineate the fine distinction between the criterion of "seniority-cum-merit" and the criterion of "merit-cum-seniority" in the matter of promotion. In the observations on which reliance has been placed by the learned Counsel for the Rural Banks and the promoted officers the distinction between "seniority-cum-merit" and "merit-cum-seniority" has been obliterated and both the criteria have been equated. Since comparative assessment of merit is required to be made while applying the criterion of "merit-cum-seniority" and for "seniority-cum-merit" no such comparative assessment is required, the aforementioned observations in the case of State of Mysore Vs. C.R. Sheshadri and Others, on which reliance has been placed cannot be regarded as correctly reflecting as to what is meant by the criterion of "seniority-cum-merit".

In Jagathigowda, C. N. AIR 1996 SCW 3421 (supra) this Court was dealing with promotion made to the post of Senior Manager in a Rural Bank which promotion was made prior to the Rules and was governed by circulars of the National Bank dated December 31, 1984 and April 7, 1986. Circular dated December 31, 1984 provided that promotion to the post of Area Manager/Senior Manager should be

on the basis of seniority-cum-merit. By circular dated April 7, 1986 it was prescribed that selection of the eligible candidates should be based on performance of respective candidates in the bank to be assessed by a Staff Selection Committee after interviewing the candidates. The selection was made by the Selection Committee after calling the eligible officers for interview in accordance with their seniority and in the interview the marks were awarded according to the performance appraisal forms. The officers who obtained 85 marks out of 150 were shortlisted for promotion. The performance appraisal comprised of matters such as dimension of work, general intelligence, job knowledge, initiative and resourcefulness etc. The service record of the officers who assailed the promotion before the High Court was adverse. In the judgment under appeal the High Court had set aside the promotion on the ground that service record of the recent past should have been taken into consideration and in case there was nothing adverse against an officer he could not be denied promotion on the ground that some other junior to him was more meritorious and the promotions were made on the basis of selection inasmuch as marks were assigned on the basis of performance appraisal and interview. The said judgment of the High Court was reversed by this Court. It was observed that the circular dated April 7, 1986 issued by the National Bank specifically provided that "the selection of the eligible candidates should be based on performance of respective candidates in the bank". It was held that the High Court was not justified in holding that the performance appraisal could not be taken into consideration while considering the officers for promotion to the higher rank. It was also observed that "while making promotions on the basis of seniority-cum-merit the totality of the service record of the officer concerned has to be taken into consideration". This judgment, in our opinion, does not make a departure from the law laid down by this Court in the earlier judgments explaining the criterion of "seniority-cum-merit" because in this case the selection had been made by taking into account the seniority as well as performance and performance was appraised by assigning marks on the basis of performance appraisal and interview. Those who secured 85 marks out of 150 marks were shortlisted for promotion, which shows that securing 85 marks out of 150 marks was treated as the "minimum standard of merit for purposes of promotion and those who satisfied the said minimum standard were selected for promotion on the basis of seniority.

On behalf of the promoted officers it was urged that for the purpose of promotion on the basis of seniority-cum-merit, seniority means the length of service and that among officers who were appointed on the same date and have the same length of service seniority can have no bearing and promotion has to be made on a comparative assessment of merit of such officers. We are unable to agree. While applying the principle of seniority-cum-merit for the purpose of promotion what is required to be considered is inter se seniority of the employees who are eligible for consideration. Such seniority is normally determined on the basis of length of service, but as between employees appointed on the same date and

having the same length of service, it is generally determined on the basis of placement in the select list for appointment. Such determination of seniority confers certain rights and the principle of seniority-cum-merit gives effect to the such rights flowing from seniority. It cannot, therefore, be said that in the matter of promotion on the basis of seniority-cum-merit seniority has no role where the employees eligible for promotion were appointed on the same date and have the same length of service.

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.

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We have heard the learned Counsel for the Appellants. It is not disputed that the selection was made on the basis of marks assigned on the basis of interview by the Selection Committee and those who secured the highest marks were selected. The selection process adopted for the purpose of promotion to the post of Area Manager/Senior Managers was thus not in consonance with the principle of "seniority-cum-merit" and the promotions were not made in accordance with the Rules. Civil Appeals arising out of SLP (C) No. 17780-81 of 1997 are, therefore, liable to be dismissed.

Rewa Sidki Gramin Bank: On February 2, 1989 the Chairman of the Rewa Sidhi Gramin Bank issued the promotion policy for promotion of Field Supervisors and Officers of the Bank to the higher posts. In paragraph 2.3 of the said policy it was prescribed that promotion from "Officer to Area/Senior Manager, subject to satisfaction of minimum period of service, shall be, at present, on the basis of assessment of his overall performance based on appraisal reports on him and his potentiality to shoulder higher responsibilities assessed in the interview, duty supplemented by weightages for seniority, job responsibility, placement/posting/mobility". With regard to promotion from Officer to Area/Senior Manager the following promotional criteria were laid down:

Promotion

Percentage Weightage

Seniority

Job responsibility

Placement/posting /mobility

Performance

Interview

Officer to Area/

Senior

Manager

15

12

8

40

25

In accordance with the aforesaid promotion policy selection was made for promotion to the post of Area/Senior Manager in the bank and the selected officers were appointed as Area/Senior Managers vide order dated May 17, 1989. The said selection and appointment was challenged before the Madhya Pradesh High Court by officers who were not selected by filing Writ Petitions (M. P. Nos. 2268 of 1990 and 1937 of 1990). The said writ petitions were allowed by the learned Single Judge by judgment dated June 2, 1997. Letters Patent Appeals Nos. 91 and 92 of 1997 filed against the said judgment of the learned single Judge were dismissed by the Division Bench of the High Court by judgment dated September 5, 1997. Civil Appeals arising out of SLP (C) Nos. 19965-19966 of 1997 have been filed against the said judgment of the Division Bench of the High Court. The Division Bench of the High Court has followed its earlier judgment dated July 4, 1994 in L.P.A. No. 120 of 1997 which judgment was based on the earlier judgment dated October 9, 1996 passed in L.P.A. No. 151 of 1996 and other connected matters. Civil Appeals arising out of SLP (C) Nos. 17780-81 of 1997 filed against the judgment dated October 9, 1996 have been dismissed. For the same reasons, Civil Appeals arising out of SLP (C) Nos. 19965-19966 of 1997 are also liable to be dismissed inasmuch as according to the promotion policy dated February 2, 1989 selection was made on the basis of total number of marks obtained by the eligible candidates. The criterion of the promotion policy cannot be regarded as being in consonance with the principle of "seniority-cum-merit" as prescribed under the Rules. Civil Appeals arising out of SLP (C) Nos. 19965-19966 of 1997 are, therefore, dismissed.

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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 judgment of the High Court. The appeal has to be allowed and the impugned judgment of the High Court dated February 7, 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 order dated April 8, 1993 has to be affirmed.

The Hon'ble Supreme Court further in the case of Harigovind Yadav Vs. Rewa Sidhi Gramin Bank and Others, , has considered the promotion policy of the Bank dated 2-2-1989 and promotion. The Hon'ble Supreme Court further considered the fact in regard to denial of promotion to an employee on the ground that he did not secure minimum marks in interview i.e. 10 marks out of 25 marks for the purpose of consideration of his case for promotion, although he secured total 62 marks out of 100 and held as under:

It is thus clear that this Court did not accept the promotion policy contained in circular dated 2-2-1989 as being in consonance with the principle of seniority-cum-merit. This Court held that the policy which did not prescribe a minimum standard for assessing merit and which promoted candidates on the basis of comparative merit, with reference to total marks obtained by the eligible candidates, followed the merit-cum-seniority principle. The decision in SIVAIAH relating to Area/Senior Managers of the first Respondent bank was followed by the High Court in the case of Appellant, in its judgment dated 13-10-1998 and it was held that the procedure adopted by the first Respondent bank for promotion of third Respondent and V. P. Singh as per circular dated 2-2-1989 was contrary to the Rules which required promotions by seniority-cum-merit, and the bank was directed to redo the promotions by considering the case of Appellant and other eligible candidates by adopting the criteria of seniority cum merit. That decision attained finality as the appeal and SLP were rejected. It may be stated that even prior to the decision in SIVAIAH relating to Area/Senior Managers of the first Respondent bank, the same view had been expressed in the earlier judgment dated 9-10-1996 of the Division Bench of the M. P. High Court in LPA No. 151/1996 and connected cases and civil appeals arising out of SLP (c) Nos. 17780-81/1997 filed against the said judgment dated 9-10-1996 had been dismissed. Therefore we have several rounds of litigation which had been fought up to this Court where the High Court and this Court have repeatedly and clearly held that the procedure prescribed, in the promotion policy circular dated 2-2-1989, is not in consonance with the principle of seniority-cum-merit prescribed for promotion under the Rules but amounted to following the principle

of merit cum seniority and therefore vitiated. What is surprising is that, in spite of these decisions, the first Respondent bank again adopted the very same procedure contained in the promotion policy of 2-2-1989 and again failed to promote the Appellant by assigning him marks of 16(20), 10(10), 3(5), 24(40) and 9(25) and held that he was not eligible for promotion as he did not secure the minimum marks of 10 prescribed for interview. But, admittedly, there was no overall minimum and the procedure required assessment of comparative merit. This is not therefore a case of the Appellant failing to secure the minimum necessary merit required for promotion but a case where the Appellant's entitlement to promotion was sought to be assessed by adopting a procedure which allotted 20 marks for seniority, 40 marks for performance, 15 marks for posting at rural and difficult centres and 25 marks for interview. The bank has persisted in adopting the merit-cum-seniority procedure in spite of the decisions of this Court in several rounds of litigation referred to above. As the entire promotion procedure adopted by the bank as per its policy dated 2-2-1989 has stood rejected by the High Court and this Court in SIVAIAH (supra) as also in the earlier round of litigation of Appellant, the promotion of third Respondent and non-promotion of Appellant by adopting the very same procedure is liable to be interfered with.

Interview can be held and assessment of performance can be made-by the Bank in connection with promotions. But that can be only to assess the minimum necessary merit. But where the procedure adopted, does not provide the minimum standard for promotion, but only the minimum standard for interviews and does the selection with reference to comparative marks, it is contrary to the Rule of "seniority-cum-merit". This aspect of the matter has been completely lost sight of by the learned Single Judge and the Division Bench of the High Court in this round of litigation. As noticed above, they have proceeded on the basis that the Appellant having failed to secure the minimum marks prescribed for interview, was rightly denied promotion, by ignoring the principle laid down by this Court in SIVAIAH in regard to seniority-cum-merit. At all events, as the promotion policy adopted by the Bank was held to be illegal in the earlier round of litigation (W.P. No. 4485/1993 dated 13-10-1988), the Bank could not have adopted the same policy to again reject the Appellant for promotion. We may also note that the law laid down in SIVAIAH was reiterated in Sher Singh v. Surinder Kumar wherein this Court had occasion to consider a similar question relating to the promotion for the post of clerk to Field Supervisor in the case of another Gramin Bank. This Court held that as the criterion for making promotion from the post of clerk to that of Field Supervisor was seniority-cum-merit but the Bank did not follow the criterion of seniority-cum-merit but made promotions on the basis of merit-cum-seniority, the promotion was vitiated and therefore invalid.

We will now deal with para 37 in SIVAIAH (supra) relied on by the Respondents. Para 37 related to Chhindwara Seoni Kshetriya Gramin Bank where the procedure adopted for promotion was different from the criteria that was adopted by the Rewa Sidhi Gramin Bank, first Respondent herein. In the case of Chhindwara

Seoni Kshetriya Gramin Bank, the assessment of minimum necessary merit was by interview. The candidate who secured a minimum of 50 out of 100 marks in the interview was selected for promotion on the basis of seniority. It was thus found to be a case where minimum standard was prescribed for assessing the merit of the candidates and those who qualified by securing the minimum marks (50%) were promoted strictly as per seniority. Thus, it was in consonance with the principle of seniority-cum-merit. Therefore, the observations in para 37 of SIVALAH are of no assistance to Respondents. As we have already noticed, in this case, the procedure is not one of ascertaining the minimum necessary merit and then promoting the candidates with the minimum merit in accordance with seniority, but assessing the comparative merit by drawing up a merit list, the assessment being with reference to marks secured for seniority, performance, postings at rural/difficult places and interview. The fact that the Appellant had failed to secure the minimum marks in interview, is not relevant as the entire procedure adopted by the bank (of which interview is a part) is found to be vitiated and not in consonance with the principle of seniority cum merit.

In this view of the matter, we do not propose to go into the contention of the Appellant that though he had secured very high percentages (overall 62%), with the intention of deliberately denying him promotion, he had been failed in interview by giving him 9 marks as against the minimum of 10 for interview.

The Hon''ble Supreme Court further in the case of Bhagwandas Tiwari and Ors. v. Dewas Shajapur Kshetriya Gramin Bank and Ors. reported in AIR 2007 SCW 773, has considered the provisions of the rules named as Regional Rural Bank (Appointment and Promotions of Officers and Other Employees) Rules, 1998 and also the criteria fixed by the Bank for promotion that only those employees who have secured 45 marks out of 60 marks from performance of work and interview shall be eligible for promotion. The Hon''ble Supreme Court has held that the prescribing 45 marks out of 60 marks is a high percentage and it is not in consonance with the criteria of seniority-cum-merit. The Hon''ble Supreme Court has held as under:

In all services, whether public or private there is invariably a hierarchy of posts comprising of higher posts and lower posts. Promotion, as understood under the service law jurisprudence, is advancement in rank, grade or both and no employee has right to be promoted, but has a right to be considered for promotion. The following observations in Sant Ram Sharma v. State of Rajasthan and Ors. are significant:

The question of a proper promotion policy depends on various conflicting factors. It is obvious that the only method in which absolute objectivity can be ensured is for all promotions to be made entirely on grounds of seniority. That means that if a post falls vacant it is filled by the person who has served longest in the post immediately below. But the trouble with the seniority system is that it is so objective that it fails to take any account of personal merit. As a system it is fair to every official except the best ones; an official has nothing to win or lose

provided he does not actually become so inefficient that disciplinary action has to be taken against him. But, though the system is fair to the officials concerned, it is a heavy burden on the public and a great strain on the efficient handling of public business. The problem, therefore, is how to ensure reasonable prospect of advancement to all officials and at the same time to protect the public interest in having posts filled by the most able man? In other words, the question is how to find a correct balance between seniority and merit in a proper promotion-policy.

The principles of seniority-cum-merit and merit-cum-seniority are conceptually different. For the former, greater emphasis is laid in seniority, though it is not the determinative factor, while in the latter merit is the determinative factor. In the State of Mysore and Anr. v. Syed Mahamood and Ors. it was observed that in the background of Rule 4(3)(b) of the Mysore State Civil Services (General Recruitment) Rules, 1957 which required promotion to be made by selection on the basis of seniority-cum-merit, that the rule required promotion to be made by selection on the basis of "seniority subject to fitness of the candidate to discharge the duties of the post from among persons eligible for promotion". It was pointed out that where the promotion is based on seniority-cum-merit the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted. But these are not the only modes for deciding whether promotion is to be granted or not.

These aspects were highlighted in K. Samantaray v. National Insurance Co. Ltd., and in State of U.P. v. Jalal Uddin and Ors.

There is no basis, in the instant case, for the stand that for assessing merit a minimum number of marks has been prescribed. The contention that minimum marks were 45 out of 60, means that an employee is to secure 75% of marks. Such a high percentage cannot be a measure of prescribing minimum marks to assess merit. It obviously would be a case of shifting the focus to merit-cum-seniority. In para 37 of Sivaiah case (supra), this Court noted that minimum marks prescribed for assessing merit do not depart from the seniority-cum-merit principle. But the factual position is different here. There is no mention that 45 marks out of 60 relate to the prescription of minimum marks for assessing the merit. In Jalal Uddin's case (supra) it was noted that in seniority-cum-merit greater emphasis is on seniority though it is not the determinative factor. In the case of merit-cum-seniority, merit becomes a determinative factor. In fact, the position noted by this Court in paragraphs 19, 20 24 and 25 of Sivaiah case (supra) dealt with almost identical fact situation, apart from paragraph 16 of the judgment.

Appellants have no grievance so far as Respondents 2, 3 and 4 are concerned as their date of joining is earlier and they have secured higher marks. The appeal stands dismissed, so far as they are concerned.

In the present case, as per the report filed by the Respondents No. 1 and 2-

Bank, the Bank invited those candidates for interview, who secured 40% marks in written examination and thereafter the candidates, who secured 65% marks out of 100 marks have been promoted. The aforesaid criteria, in my opinion, is not in accordance with the principle of seniority-cum-merit. Because the Hon''ble Supreme Court has clearly held in the case of Bhagwandas Tiwari (supra), that fixing a criteria that an employee who has secured 75% marks is entitled for promotion is not in consonance with seniority-cum-merit. In the present case, as per the Rules of 1998, it is obligatory for the bank to call for the interview to those employees who secured 40% marks in written examination and thereafter it was obligatory on the part of the Bank to prescribe a minimum criteria on the basis of marks obtained by an employee in interview and A.C.R. valuations and that would be sufficient to met out the requirement of criteria of promotion on seniority-cum-merit.

The objection raised by the learned Counsel for the Petitioner in the petition that the Petitioner has participated in the process of selection, hence, he is not entitled to challenge the selection process, is not maintainable because as held in this petition the selection made by the Bank is not in consonance with the provisions of Rules of 1998, which is statutory force of law.

Another objection raised by learned Counsel for the Respondents No. 1 and 2 in regard to maintainability of the petition that all the affected persons have not been made as party, is also not tenable because in this petition, the Petitioner has not challenged the individual appraisal of the employees. The Petitioner challenged that the promotions are not in accordance with the Rules, 1998. Apart from this, the Petitioner has also made two affected persons as Respondents No. 4 and 5 as party in the petition and the Respondent-Bank has contested the case and placed all the facts before this Court. The Hon''ble Supreme Court in the case of V.P. Shrivastava and Others Vs. State of M.P. and Others, , has held that if challenge is in regard to principle of placement of persons in the gradation list and some of the persons have been added as party, in that circumstances, the petition is not liable to be dismissed. The findings of the Hon''ble Supreme Court are as under:

The conclusion of the Tribunal that non-inclusion of the affected parties is fatal to the Appellants case is also unsustainable in law. It is to be stated that the Appellants do not challenge the so-called ad hoc appointments of the promotee Respondents but they do challenge the position of the said ad hoc promotee Respondents over the Appellants in the seniority list. In other words the very principle of "determination of seniority" made by the State Government is under challenge and for such a case State is the necessary party who has been impleaded. It has been held by this Court in the case of General Manager, South Central Railway Secundrabad and Anr. Etc. v. A.V.R. Siddhanti and Ors.

As regards the second objection, it is to be noted that the decision of the Railway Board impugned in the writ petition contain administrative rules of general application, regulating absorption in permanent departments, fixation of

seniority, pay etc. of the employees of the erstwhile Grain Shop departments. The Respondents-Petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the Petitioners vis-a-vis particular individuals pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the Petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952 were, at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition.

In the case of *A. Janardhana v. Union of India and Ors.* a similar contention was also repelled by this Court in the following words:

In this case, Appellant does not claim seniority over particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing-up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as Respondents.

Further in view of finding of the Tribunal that Respondents 3 and 4 successfully safeguarded the interest of the promotees. The Tribunal erred in law in holding that non-inclusion of the affected parties is fatal to the proceeding. It has been held by this Court in the case of *Prabodh Verma and Ors. Etc. v. State of Uttar Pradesh and Ors.* that:

A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as Respondents or at least some of them being before it as Respondents in a representative capacity if their number is too large to join them as Respondents individually.

Even in *Janardhana* case referred to supra this Court also rejected a similar objection on the ground that 9 of the direct recruits having been impleaded as party, therefore the case of direct recruits has not gone unrepresented and therefore the non-inclusion of all the 400 and odd direct recruits is not fatal to the proceedings.

In the aforesaid circumstances we have no hesitation to come to the conclusion

that the Tribunal was wholly in error in coming to the conclusion that the Appellants application becomes unsustainable in the absence of all the promotees being impleaded as party.

Consequently, all the petitions i.e. W. P. No. 2025/08(s), W. P. No. 5105/08(8), W. P. No. 2687/08(s), W. P. No. 5478/08(s) and W. P. No. 2616/2010(s) are hereby disposed of with the following directions:

- i) The impugned order of promotion is hereby quashed.
- ii) The matter is remanded back to the Respondent-Bank to prepare a fresh list of candidates after prescribing the minimum criteria of marks on the basis of marks of interview and appraisal and those candidates who would secure the minimum marks would be entitled for promotion in accordance with the order of merit.
- iii) It is hereby clarified that for final promotion, the marks obtained in written examination shall not be calculated.
- iv) Necessary orders be passed in this regard within a period of three months from the date of receipt of the copy of the order and upto that period, the persons who have been promoted be permitted to continue to work on their promoted posts.
- v) It is further clarified that the persons who would be entitled for promotion in accordance with the directions issued by this Court shall be entitled to promotion from the date of issuance of the order Annexure-P/1.