
(1999) 11 PAT CK 0075

In the Patna High Court

Case No : L.P. Appeal No's. 208 and 209 (R) of 1991 and C.W.J.C. No. 160 of 1991 (R)

Ranchi Kshetriya Gramin Bank and Others

APPELLANT

Vs

D.P. Singh and Others

RESPONDENT

Date of Decision : 04-11-1999

Acts Referred:

Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988 — Rule 7
Regional Rural Banks Act, 1976 — Section 17, 29

Citation : (2000) 48 BLJR 643 : (2000) 2 LLJ 463 : (2000) 1 PLJR 251 : (1999) 9 PLJR 720

Hon'ble Judges : R.A. Sharma, J;M.Y. Eqbal, J;A.K. Prasad, J

Bench : Full Bench

Advocate : P.R. Prasad and R.R. Nath, for the Appellant; S.B. Gadodia, Tapan Sen, Anil Kumar Sinha and Sumir Prasad, for the Respondent

Judgement

M.Y. Eqbal, J.—Whether in case of promotions on the basis of "Seniority-cum-Merit", comparative merit of the candidates along with seniority have to be judged and whether allocation of less marks for seniority and more marks for assessment of work and interview is permissible when promotion is to be made on "Seniority-cum-Merit" basis, are the two significant and interrelated questions which have necessitated this reference to the Full Bench.

2. These two Letter Patent Appeals, one filed by the respondent Bank and another by the private respondents, whose promotion has been challenged, arose out of judgment dated November 20, 1991 passed by learned single Judge in C.W.J.C. No. 927 of 1991.

3. The facts may be noticed with relative brevity having relevance to the issues aforesaid. The writ petitioners who are respondent Nos. 3 to 5, in L.P.A. No. 209/91 R filed CWJC. No. 927/91R for issuance of appropriate writ in the nature certiorari for quashing the office order dated March 30, 1991 purported to have

been issued under the seal and signature of respondent No. 2, Chairman Ranchi Kshetriya Gramin Bank, whereby and whereunder appellant Nos. 1 to 6 who are respondent Nos. 3 to 8 in the writ petition were promoted to the post of Area Manager/Senior Managers with effect from March 8, 1991 on the ground inter alia that they are senior to respondent Nos. 3 to 8 as will appear from their respective dates of appointment. The writ petitioners claimed that the impugned order dated March 30, 1991 is illegal, arbitrary and unconstitutional and in violation of the policy decision and circular issued from time to time by the National Bank for the Agricultural and Rural Development (hereinafter referred to as the NABARD).

4. Petitioners' case was that by letter dated December 31, 1984 issued by the Chief General Manager, NABARD, a criteria was laid down in respect of appointment and promotion to the post of Area Managers and Senior Managers. According to the said circular, promotion was to be made from amongst the officers working in the Bank on the basis of seniority-cum-merit. It is stated that on October 8, 1984 a seniority list of the Ranchi Kshetriya Gramin Bank was duly published under the seal and signature of the Chairman, wherein petitioners were shown senior to respondent Nos. 3 to 8. Petitioners' further case is that in exercise of power conferred by Section 29 of the Regional Rural Banks Act read with Section 17 thereof the Central Government in consultation with National Banks and Sponsor Banks evolved the Regional Rural Bank (the Appointment and Promotion of Officers and other Employees) Rules, 1988. In terms of aforesaid rules the source of recruitment for the purposes of Area Managers and Senior Managers was the same as enunciated vide a circular dated December 31, 1984. According to the petitioners, respondent No. 1 evolved mode of selection which was wholly contrary to the aforementioned Rules as also the guidelines of NABARD. As it was resolved that 40 marks would be given to seniority, 6 marks would be given to educational qualification, 24 marks would be given in relation to performance of last 3 years and 10 marks would be given for interview. Petitioners' further case is that so far promotion to the post of Area Manager and Senior Managers is concerned, source of recruitment is 100% by promotion from amongst the confirmed officers working in the Bank and promotion was to be on seniority-cum-merit basis. According to the petitioner therefore respondent Nos. 3 to 8 have been promoted in violation of the aforesaid mentioned policy decision.

5. In the counter-affidavit filed by respondent Nos. 1 and 2 the stand taken was that the Central Government after consultation with Reserve Bank and the Sponsored Banks made rules in exercise of power u/s 29 of the Act which amongst others provided for promotion to Area Manager/Senior Managers under Clause 7 of the second schedule of the Central Government notification dated September 28, 1988. It is stated that the case of the petitioners were duly considered by Interview Board and the Selection Committee but the petitioners have not been found fit and suitable for promotion and were not recommended for promotion by the Selection Committee after observing the seniority-cum-merit principle. Accordingly on the basis of the recommendation of the said

Selection Committee the Board in its meeting held on March 8, 1991 approved the said recommendation of the Selection Committee and in accordance therewith notification for promotion was issued by the respondents. It is stated that the educational qualification, appraisal reports and performance before the Interview Board/Selection Committee were also taken into account for adjudging the suitability or otherwise of the candidate for promotion as the merit of the candidates concerned is also a relevant consideration. The learned single Judge after hearing the parties at length allowed the writ application and quashed the impugned order of promotion by judgment and order dated November 20, 1991. Learned single Judge issued writ of mandamus directing respondents for reconsideration of the matter relating to promotion of all eligible candidates. Learned single Judge has formulated, the following questions for consideration in the writ application:

(A) "Whether the norms for promotion from officers to the post of Area/Senior Managers as contained in Annexure A to the counter- affidavit filed on behalf of respondent Nos. 3 to 8 is ultra vires Rule 7 of the said Rules?"

(B) "Whether the impugned order as contained in Annexure 4 is vitiated in law by reason of non-participation of the Director nominated by NABARD and participation of Mr. M.N. Singh in place of Mr. Anand Kumar, Director, nominated by Reserve Bank of India?"

6. Learned single Judge, after considering the relevant provisions of the Act, Rules and Circulars and the orders time to time issued by the respondent Bank, came to a finding that the impugned order of promotion issued by respondent Bank is illegal, arbitrary and contrary to the Rules and the guidelines. In para 49 of the Judgment, learned Judge observed as under:

"Evidently in view of Rule 7, the Board of Directors have exceeded their limits in laying down the norms for promotion of officers to the posts of Area/Senior Managers. From Annexure A to the counter-affidavit filed on behalf of respondent Nos. 3 to 6 and 8 and as noticed hereinbefore it will appear that they have fixed only 40 marks towards seniority and 60 marks for other qualification for the purpose of judging the comparative merits of the candidates. Even in laying down the marks for educational qualification, they have allotted three marks not only in respect of those persons who are Graduates in Commerce/Agriculture/Economics but has allotted the same marks for CAIIB/Diploma in Rural Development which is clearly contrary to the Rule. Similarly no marks should have been allotted for the post graduate degree or Doctorate in the aforementioned subjects as in respect thereof the rule does not authorise the Board so to do. :

Similarly for interview not only total 30 marks have been allotted to it, but qualifying marks therefore had been laid down as being 10 marks. Laying down of qualifying marks for interview must be held to be in total disregard of the statutory Rules, as such qualifying marks may be laid down in the cases of direct

appointment in a selection post or where the job is of a particular nature."

The learned single Judge after considering various judgments of the Supreme Court and different High Courts further held as under:

"Rule 7 of the said Rules provides that the vacancy have to be filled up in accordance with the provisions of second schedule to the Rules and subject to such guidelines as may be issued by the Central Government from time to time.

The Central Government having not issued any guidelines, in my opinion, the respondent Bank has exceeded its jurisdiction in laying down the guideline for such promotion as noticed hereinbefore and thus took into consideration the irrelevant matters.

However, there cannot be any doubt, that the Selection Committee for the purpose of selection may lay down such suitable criteria within the framework, of the decision of the Supreme Court as referred to hereinbefore for promoting the suitable persons to the posts of Area/Senior Managers. It is pertinent to notice that guidelines were issued by NABARD which were to be given the shape of service regulation. From a comparison of the said guidelines (Annexure 1) and the relevant provision of the service rules, there cannot be any doubt that the same are in pan materia. In the rules only mode of selection has been provided.

It is therefore, clear mat the judgment of the Kerala High Court (Annexure 5) still holds the field and must be held to be applicable even now, so far as its interpretations relating to the rule of promotion on the basis of "Seniority-cum-merit" is concerned. From the decisions cited hereinbefore also it is clear that the contention of the learned counsel appearing for the respondents that comparative merits of the candidates are to be judged, is not correct and thus cannot be accepted."

7. As stated above, learned single Judge therefore, allowed the writ application and quashed the order of promotion with a direction to respondents to consider the matter afresh in the light of the direction and the observation made in the judgment.

8. Aggrieved by the said judgment, the respondent Nos. 3 to 8 whose promotion have been quashed, filed L.P.A. No. 209/91R and respondent No. 1 and 2 filed L.P.A. No. 208/91R. It appears that during the pendency of these appeals, similar controversy was raised in three other cases, i.e. CWJC No. 13/91R (Mridul Kumar Sinha v. The Palamau Kshetriya Gramin Bank) C.W.J.C. No. 1452/86 Shyam Bihari Pandey, C.W.J.C. No. 7556/92R (Md. Rafi Ansari v. Bhojpur Rohtas Gramin Bank). In all these cases promotion of the officers of the Bank to the post of Area/Senior Managers was questioned. C.W.J.C. No. 13/91R was decided on February 13, 1994 by a Division Bench of this Court. It was held by the Division Bench that after making promotion on "Seniority-cum-merit" basis comparative merits of the candidates have to be adjudged along with seniority. The impugned judgment of the learned single Judge giving rise to the present two appeals was

overruled by the Division Bench. However, C.W.J.C. No. 1452/86R and 7556/92R were heard by another Division Bench of this Court and disposed of in terms of Judgment dated December 20, 1996. The Division Bench held that making promotion on the basis of seniority-cum-merit, comparative merit of the candidates are not required to be adjudged. It was further held that the Board of Directors cannot lay down norms for promotion to the post of Area/Senior Managers allocating less marks to seniority and more marks for interview. The decision of the learned single Judge giving rise to the two present appeals was cited, which was approved by the Division Bench.

9. When these two appeals were taken up for hearing by a Division Bench of this Court the aforesaid contrary view taken by the two Division Benches were cited by the learned Counsel appearing for the parties. There being direct conflict between the aforementioned two Division Benches of this Court. The Division Bench after hearing the instant appeals referred the matter to the Full Bench for decision on the following questions:

(i) Whether in case of promotion on the basis of "seniority-cum-merit" comparative merits of the candidates along with the seniority have to be adjudged.

(ii) Whether the Board of Directors can fix norms laying down marks for seniority, educational qualification, assessment of performance and interview for promotion to the post of Area/Senior Manager.

(iii) Whether allocation of less marks for seniority and more marks for assessment of work and interview is permissible when promotion is to be made on "Seniority-cum-merit" basis. This is how these appeals have been listed before us for answering the aforementioned points formulated by the Division Bench.

10. Before embarking upon consideration of the submissions urged at the Bar, it would be appropriate to set out the relevant provisions of statutes, the Rules, circulars and guidelines for the purpose of answering the questions involved in the case.

11. In 1976 the Parliament enacted Regional Rural Development Bank Act (Act No. 21 of 1976) mainly with a view to developing the rural economy by providing credit and other facilities for the purpose of development of agriculture, trade, commerce, industry and other productive activities. Section 3 of the said Act confers power to the Central Government to establish by notification one and more Regional Rural Bank in a State or in a Union Territory and satisfy the local limits within which each such Bank shall operate. Section 8 provides that the superintendence, direction and management of the affairs and business of Regional Rural Bank shall vest in a Board of Directors who may exercise all the powers and discharge all the functions which may be exercised or discharged by the Regional Rural Bank. Section 17 provides that the Regional Rural Bank may appoint such number of officers and other employees as it may be necessary or

desirable for the efficient performance of its function and may determine terms and conditions of their appointment and service. It further provides that the Sponsor Bank on request to Regional Rural Bank sponsored by it may depute or send such number of officers or other employees on deputation as may be necessary for the efficient performance of its function. Section 29 of the Act confers power to the Central Government to make Rules after consultation with the National Bank and the Sponsor Bank for carrying out the provisions of the Act. The Board of Directors of the Regional Rural Bank has also been empowered u/s 30 to make regulation after consultation with the sponsor Bank and National Bank for giving effect to the provisions of the Act.

12. It appears by letter dated December 31, 1984 purported to have been issued under the seal and signature of Chief General Manager of NABARD the criteria was laid down in respect of the appointment/promotion to the post of Area Manager/Senior Managers. From perusal of the letter it will appear that for the purpose of appointment to the post of Area Managers and Senior Managers the main criteria that was required to be observed was that promotion shall have to be made 100% from amongst the officers working in the Bank on the basis of "Seniority-cum-merit". The relevant portion of guidelines incorporated in the said letter reads as under:

"The post of Area Managers and Senior Managers will be equivalent in rank and will be interchangeable. Appointments to the post of General Manager/Area Managers and Senior Managers will be according to the following guidelines:

1. Area Managers/Senior Managers:

a) Source of recruitment

100% by promotion from amongst officers working in the bank. Promotions will be on the basis of seniority-cum-merit. If suitable officers are not available internally, these posts could be filled by taking temporarily officers of the sponsor Banks and other banks/organisations on deputation.

b) Qualifications & eligibility

i) A graduate of recognised University, preference to Agriculture/Commerce/Economics Graduates.

ii) Eight years service as an officer in the bank. The above condition will be relaxable by a maximum period of two years with the specific prior approval of National Bank for Agriculture and Rural Development if suitable candidates with requisite experience are not available.

c) Reservation of Posts

As may be laid down by Government of India from time to time.

d) Procedure and agency for selection

As may be laid down by Government of India from time to time.

The above posts of Area Managers/Senior Managers will carry a special pay of Rs. 75/- p.m. over the grade pay of the officer concerned.

13. In the year 1988 however, Central Government in exercise of power conferred by Section 29 read with Section 17 of the said Act of 1976 in consultation with the National Bank and Sponsor Bank framed Rules by notification dated September 28, 1988 namely Regional Rural Bank (the Appointment and Promotion of Officers and other Employees) Rules, 1988. Rule 6 of the said rules provides that the Chairman of the each Regional Rural Bank shall be appointing authority in respect of posts in that bank. Rule 7 provides that the vacancies of officers and employees shall be filled by each Regional Rural Bank in accordance with provision of second schedule of these rules and subject to the guidelines as may be issued by the Central Bank from time to time. The relevant portion of second schedule which relates to promotion to the post of Senior Managers/Area Managers reads as under:

a) Source of recruitment

Hundred per cent by promotion from amongst confirmed officers working in the bank. Promotions will be on the basis of seniority-cum-merit. If suitable officers are not available internally, those posts could be filled by taking temporarily officers of the sponsor banks and other banks or organisations on deputation.

b) Qualifications and eligibility

i) A graduate of recognised University or any equivalent qualifications recognised as such by Government of India, preference being given to Agriculture or Commerce or Economics Graduates.

ii) Eight years service as an officer in the regional rural bank concerned. Provided that the Board may, with the prior approval of National Bank, relax the period of service by a period not exceeding two years, if suitable candidates of requisite experience are not available.

Note: The post of Area Managers and Senior Managers will be equivalent in rank and will be interchangeable. c) Mode of Selection

Interview and assessment of performance reports for the preceding three years period as officer for promotion."

14. It appears that Board of Directors in its meeting dated September 29, 1989 adopted certain norms by passing resolution for promotion from the post of officers to the post of Area Managers and Senior Managers. The said resolution reads as under:

"Norms for promotion from officer to the post of Area/Senior Managers:

Total marks for selection on the basis of seniority-cum-merit on the pattern of Government of India Notification dated September 23, 1989 are as under:

i) Seniority : Total 40 marks

(one mark for each completed quarter of services)

ii) Educational Qualification: Total 6 marks

Graduate in Commerce/Agriculture/ Economics/CAIIB

Diploma in Rural Development 3 marks

Post Graduate in Rural Development/ CAIIB-I 2 marks

Doctorate in Rural Development/CAIIB-I 1 mark

6 marks

iii) Assessment of performance of last 3 years : Total 24 marks

Very good (A) 8 marks

Good (B) 6 marks

Average (C) 5 marks

Poor (D) 0 marks

iv) Interview: Total 30 marks

(qualifying marks for interview) 10 marks

Grand Total 100 marks"

15. Mr. P.K. Prasad, learned counsel appearing for the appellant/petitioners assailed the impugned judgment of the learned single Judge as being contrary to law and the Rules which lay down the mode of selection. Learned Counsel has drawn our attention to Rules 7 and 10 and submitted that admittedly no guidelines have been framed by the Central Government and therefore the Committee constituted by the Board followed the procedure as determined by the Board for selecting the candidates for appointment or promotion. Learned Counsel submitted that the guidelines framed by the Board is perfectly legal and valid, may be that selection committee has not correctly followed up. Learned Counsel further submitted that although in the guideline 30 marks was fixed for interview but qualifying marks has been mentioned as 10 and therefore it cannot be said that the excessive mark has been allotted for the interview. Learned Counsel then submitted that the learned single Judge has erred in holding that the Board of Directors has exceeded its authority in laying down the norms for selection of the candidates for promotion to the post of Area/Senior Managers particularly as there was nothing in the Rules, which prohibited the fixation of norms for selection by the Board of Directors of the Appellant. Learned Counsel then submitted that the finding of the learned single Judge is vitiated in law in view of the law laid down by the Supreme Court in various decisions.

16. On the other hand Mr. Tapan Sen, learned Counsel for the private respondent submitted that Rule 7 is a statutory Rule according to which all the eligible

candidates for their promotions to the post in question should have been considered only on the basis of seniority-cum-merit and therefore the authority should have given due weightage to the seniority instead of judging merit and the performance of the candidates. Learned Counsel then submitted that although specific marks were allotted for educational qualification but the same has not been strictly followed. Learned counsel then submitted that the selection committee has committed serious illegality in making comparative assessment of the candidate which could not have been done.

17. Mr. A.K. Sinha, learned senior counsel for some of the respondents who have been given promotion under the reserve category, submitted that in no case promotion of his client could have been cancelled. Learned Counsel tried to impress such that although some candidates have got highest marks in seniority, but their performance was not upto the mark therefore they got poor marks in performance and interview. According to learned Counsel in managerial service the merit and performance of the candidates must be given due weightage in comparison to the seniority. Learned Counsel then submitted that the marking system adopted by the Board was not under challenge of the writ petitioner. Learned single Judge ought not to have entered into this question.

18. We have considered the main rival contention in the light of the case presented before us and also gone through the decision relied upon by the learned counsel appearing for the parties.

19. Seniority is one of the important matters relating to the condition of service, because it has direct bearing on the question of promotion to the higher cadre where promotion to the next higher cadre is based on principle of seniority-cum-merit, the seniority of an official becomes important, because where senior official is suitable for promotion, he is entitled to get promotion on the basis of seniority in preference to juniors. Even in cases where promotion is based on selection, seniority is also important because where persons are allotted to the next higher post, on the basis of merit and suitability from amongst the persons on merit the senior is entitled to be preferred for appointment.

20. The question whether the Circular Guideline issued by the NABARD was to be followed for consideration of the cases for promotion, came for consideration by a Division Bench of this Court in C. W. J.C. Nos. 933 and 857 of 1988 (Radheyshyam Lal and Suresh Prasad v. Vaishali Kshetriya Gramin Bank). The Division Bench, after considering the role of the Central Government and of NABARD and also considering various decisions of the Apex Court, held that the Central Government, sponsor Bank and NABARD had definite role to play in the affairs of giving direction to regional rural banks and they are empowered to issue such directions to the Banks from time to time. The said decision was upheld by the Supreme Court in SLP (C) No. 15040-41 of 1994. In the instant case also it has not been disputed that the directions and/or guidelines issued by NABARD are binding upon the Regional Rural Bank.

21. As noticed above, the Board of Directors had adopted a resolution of allotment of marks laying down norms of promotion from officers to the post of Area/Senior Managers. 100 marks were fixed as total marks for selection on the basis of "Seniority-cum-merit" on the pattern of Government of India Notification dated September 28, 1989. Out of 100 marks 40 marks were allotted for seniority (one mark for each completed quarter of service), 6 marks for educational qualifications (3 marks for graduation in Commerce/ Agriculture/ Economics etc. 2 marks for post graduate degree and 1 mark for Doctorate) 24 marks were allotted for assessment of performance of last three years and 30 marks were allotted for interview. In other words, out of 100 marks only 40 marks were allotted for seniority and 60 marks were allotted for judging the merit of the candidate. As quoted above, Rule 7 of the guideline issued by the NABARD in regard to the manner of appointment of Senior Manager/Area Managers clearly speaks about filling of 100 per cent of the said post by promotion from amongst confirmed officers working in the Bank and the basis to be followed is seniority-cum-merit. The Resolution adopted by the Board of Directors therefore, on the face of it, is not in consonance with the guidelines inasmuch as they fixed only 40 marks towards seniority and 60 marks for other qualifications for the purpose of judging the comparative merit of the candidates, rather the resolution of the Board of Directors is contrary to Rule aforesaid inasmuch as no mark should have been allotted for post graduate degree or Doctorate in the aforementioned subject as the rule does not authorise to do so.

22. Mr. P.K. Prasad, learned Counsel, tried to impress us that although the marks allotted for interview is 30 but the qualifying mark has been prescribed as 10 and therefore, it cannot be said that it is contrary to the rules.

23. In order to appreciate his contention, we called upon Mr. Prasad learned Counsel for the Bank to produce the relevant record of the Selection Committee to show that only 10 qualifying marks were taken into consideration out of the total marks obtained in interview for the purpose of deciding the eligibility of the candidates. Pursuant to that order Mr. Prasad produced before us compilation sheet of the candidates for the purpose of promotion to Senior Area Manager Grade. From perusal of the compilation sheet it is apparent that not only 10 marks out of the marks obtained in interview were taken into consideration rather the marks obtained by the candidates under different heads were added and the total marks were taken into consideration for the purpose of promotion. From the chart it further appears that most of the candidates, who have been given promotion, have secured less marks under the heading seniority whereas most of the candidates who have secured highest marks under the heading seniority have not been given promotion because of the less mark obtained under the different heads. On the face of it, therefore, I have no doubt in my mind in holding that the method of selection adopted by the respondent Bank is totally contrary to the principles of promotion on seniority-cum-merit basis and it virtually amounts to the application of the principle of "merit-cum-seniority".

24. The learned Counsel appearing for the parties have cited series of decisions of the Apex Court in support of their submissions but in my opinion, the question involved in these cases are no longer res integra in view of the law laid down by the Apex Court recently in the case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., . In the aforesaid case before the Apex Court similar orders of promotion to the post of Area Manager/Senior Manager in the Regional Rural Bank have been challenged. Those promotions were given on the basis of different circulars, laying down the mode of assessment of the candidates by allotting marks on the different heads. Their Lordships considering the different circulars, guidelines, Act and Rules, came to the following conclusion (para 18 of Lab IC):

"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."

Their Lordships further observed (Para 26 of Lab IC):

"Having heard the learned Counsel for the Rayalaseema Grameena Bank as well as the five Branch Managers who had been promoted as Area/Senior Managers in the proceeding on December 1, 1989, we find that no case is made out for interference with the said view of the High Court. The promotion process laid down by the Rayalaseema Grameena Bank in the circular dated September 27, 1989, on the basis of which the selection of promotion had been made on December 1, 1989, sets apart 34 marks for seniority, 10 marks for qualification, 20 marks for interview and 56 marks for performance which shows that out of a total number of 120 marks the maximum number of marks that could be awarded for seniority is 34 and that 0.75 mark was to be given for each completed month of service over and above the minimum qualifying service. In other words if two persons are appointed on the same day, the same number of marks had to be awarded for seniority. Moreover, out of a total number of 120 marks, more than 50% marks were set apart for interview and performance. The High Court has found that only those officers who had secured the highest number of marks were ultimately, promoted. It is not a case where minimum qualifying marks are prescribed for assessment of performance and merit and those who secure the prescribed minimum qualifying marks are selected for promotion on the basis of seniority. In the circumstances, it must be held that the High Court has rightly come to the conclusion that the mode of selection that

was in fact employed was contrary to the principle of "seniority-cum-merit" laid down in the Rules. Civil Appeals Nos. 3799-3803 of 1996 filed by the Rayalaseema Grameena Bank as well as Civil Appeals Nos. 3811-3812 of 1996 filed by the promoted officers, are, therefore, liable to be dismissed."

In the conclusion portion of the judgment, their Lordships further observed (Para 37 of Lab IC)

"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."

25. I need not discuss the other decisions of the Apex Court viz. Sant Ram Sharma Vs. State of Rajasthan and Another, , State of Mysore and Another Vs. Syed Mahmood and Others, , State of Mysore Vs. C.R. Sheshadri and Others, , Union of India (UOI) Vs. Mohan Lal Capoor and Others, , State of Kerala and Another Vs. N.M. Thomas and Others, and Jagathigowda, C.N. v. Chairman, Cauvery Gramin Bank 1996 AIR SC 2733 for the reason that all these decisions have been considered and discussed by the Apex Court in the case of B.V. Sivaiah v. K.A. Addankibabu (supra).

26. It is, therefore, evident that para 7(c) of the second schedule to the rules does not, in my opinion, lend support to the contention that criterion of seniority-cum-merit envisaged by the rule making authority involve 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 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 is consistent with the criterion of seniority-cum-merit. The said mode enables an assessment to be made for 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. It is well settled that" service rule should provide reasonable promotional opportunity in every wing of public service to generate efficiency in service. I am, therefore, of

the view that in the case of promotion on the basis of seniority-cum-merit, obtaining minimum percentage of marks in viva voce test cannot be a decisive factor for selection and such provision is arbitrary.

27. The learned Counsel appearing for the Bank, relied upon the decision of the Apex Court in the case of State of Sikkim Vs. Dorjee Tshering Bhutia and others, and State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc., , for the proposition that in absence of any statutory rule, governing promotion to selection grade posts, guidelines and administrative instruction regarding principles, to be followed for the purpose of promotion cannot be said to be illegal or arbitrary. In my opinion, the principle laid down by the Apex Court in the decision referred above, are not applicable in the facts and circumstances of the present case and also for the reason that the guidelines/Resolution adopted by the Board for promotion is contrary to the rules.

28. To conclude all these aspects the answer to the reference shall be as under:

(i) In case of merit on the basis of criteria of seniority-cum-merit greater emphasis" has to be given on seniority. But an officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duty of higher post, he may be passed over and an officer junior to him may be promoted.

(ii) Seniority-cum-merit in the matter of promotion postulates that given minimum necessary merit requisite for efficiency of administration, seniors even though less meritorious shall have priority and a comparative assessment of merit is not required to be made.

(iii) Board of Directors can fix norms laying down marks for seniority, educational qualification, assessment of performance and interview for promotion to the post of Area/Senior Manager but allocation of less marks for seniority and more marks for assessment of work and interview is not permissible when promotion is to be made on "Seniority-cum-merit" basis. Similarly selecting the persons for promotion who secured highest marks in the interview is not in consonance with the prescribed principles of "Seniority-cum-merit".

29. Thus after having answered the points of reference as aforesaid the decision of the Division Bench of this Court in the case of "Shyam Bihari Pandey 1997 1 Pat LJR 93 is approved and the decision of another Division Bench in the case of Mridul Kumar Sinha C.W.J.C. No. 13 of 1991 (R) taking contrary view is overruled.

30. Accordingly let these appeals and the writ petition be placed before the Division Bench for disposal in accordance with law.

A.K. Prasad, J.

31. I agree.