
(2012) 04 GAU CK 0012

In the Gauhati High Court

Case No : WP (C) No. 449 of 2003 and 308 of 2009

Ranjit Kumar Roy and Others

APPELLANT

Vs

Tripura Gramin Bank and Others

RESPONDENT

Date of Decision : 05-04-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2013) 1 GLD 151 : (2013) 1 GLT 761

Hon'ble Judges : P.K. Saikia, J;I.A. Ansari, J

Bench : Division Bench

Advocate : C.S. Sinha, for the Appellant; Somik Deb and Mr. K. Bhattacharjee, for the Respondent

Judgement

I.A. Ansari, J.—A clear understanding of the concept of seniority-cum-merit vis-a-vis merit-cum-seniority lies at the root of the present two writ petitions made under Article 226 of the Constitution of India. These writ petitions put to challenge the legality of the procedure for promotion of officers from scale-I to scale-II and scale-II to scale-III in Tripura Gramin Bank (hereinafter referred to as "the respondent Bank") as prescribed by Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988 (in short, "the 1988 Rules"). With the help of WP(C) No. 449/2003, which was prior in point of time, the petitioners had put to challenge the procedure for promotion from scale-I to scale-II as contained in the circular, dated 18.03.2002, and the promotion of the private respondents, on ad hoc basis, by the office order, dated 04.11.2003. With the help of their later writ petition, which has given rise to WP(C) No. 308/2009, the petitioners have put to challenge the procedure chosen by the respondent Bank for promotion from scale-II to scale-III as contained in the circular, dated 29.09.2009.

2. We have heard Mr. C.S. Sinha, learned counsel, for the petitioners, and Mr. Somik Deb, learned counsel, for the private respondents. We have also heard Mr. K. Bhattacharjee, learned counsel, for the respondent Bank.

3. The facts, which are not really in dispute, may, in brief, be set out as under:

(i) The petitioner Nos. 1 to 4 were, initially, appointed as field supervisors on different dates and they were subsequently promoted to scale-1 officers on various dates and petitioner Nos. 5 to 8 were, initially, appointed to the post of Junior Clerks and came to be promoted to scale-I officers on different dates; whereas petitioner No. 7 was directly appointed as scale-I officer on 28.01.83 and is presently holding the post of scale-II officer on officiating basis.

(ii) As of now, all the petitioners are holding the substantive posts of scale-I officers, otherwise, known as Junior Management Officers, Grade-I. The respondent Bank, constituted under the Rural Banks Act, 1976, was sponsored by the United Bank of India. The next promotional post of Junior Management Officer, Grade-I, is Area Manager/ Senior Manager, which is also known as Middle Management Officer, Grade-II. The procedure for promotion of Junior Management Officer, Grade-I, to Middle Management Officer, Grade-II, is regulated by the impugned circular, dated 18.03.2002, issued by the respondent Bank.

(iii) In the circular, dated 18.03.2002, aforementioned, it was stated that the promotion process for promotion to the post of Middle Management Officer, Grade-II, would be held shortly for filling up 43 vacancies and that the source of recruitment would be 1000/0 by promotion from amongst the officers of the respondent Bank, the criterion for promotion being seniority-cum-merit. The eligibility criteria for the post, in terms of the said circular, was graduate from a recognised university or any equivalent qualification as recognised by the Government of India, preference being made available to graduates in Agriculture, Commerce and Economics. The circular further provided weightage for various factors as depicted below;

4. The grievance of the petitioners, who are, admittedly, senior to the private respondents, may, in brief, be described thus:

(i) Since the petitioners were eligible to be considered for promotion to the posts of scale-II and fall within the zone of consideration, they were called for interview by the Selection Committee on different dates. However, the private respondents, who are, admittedly, junior to the petitioners, were selected by the Selection Committee for the said posts and were given ad hoc promotion by the impugned office order with effect from, 04.09.2003. The petitioners felt aggrieved by the fact that when the criterion, prescribed for promotion to the post of Middle Management Officer, Scale-II, is seniority-cum-merit, a comparative assessment of merit was unnecessary and the promotions could not have been made on merit alone and what was required was the minimum merit necessary for the post. Hence, senior, even though less meritorious than his junior, shall have the priority and entitled to be promoted if he happened to meet the minimum benchmark, which a selection process prescribes. Consequently, a junior ought not to have allowed to steal a march over his senior and be

promoted if he is found to be more meritorious than his senior provided that the senior, as indicated hereinbefore, meets the requirement of minimum benchmark fixed for granting of promotion.

5. By filing the writ petition, which gave rise to WP(C) 449/2003, the writ petitioners put to challenge the procedure for promotion from scale-I to scale-II and contended and even, now, contend that out of total marks of 100, when 40 marks are allotted for seniority, 25 marks for job performance and 35 marks for oral test/interview, it becomes clear that more than 50 marks were, thus, kept for assessment of merit, but the Circular, dated 18.03.2002, did not prescribe minimum qualifying marks for assessment of performance and merit on the basis of which an officer would be considered for promotion. By adopting this procedure, the respondent-authorities, according to the petitioners, have virtually followed the principle of merit-cum-seniority for the purpose of making promotion.

6. In other words, when the minimum qualifying marks for interview and minimum standard for assessing the merit of the candidates have not been prescribed, the concept of seniority-cum-merit cannot, but be said to have been completely ignored or defeated. The petitioners, therefore, contended and even, now, contend that the circular, in question, is illegal, arbitrary and liable to be quashed and, in consequence thereof; the order of promotion to scale-II of the private respondents, made on the basis of the exercise carried out in terms of the impugned circular, is not sustainable in law. This apart, there has been no promotion from scale-I to scale-II officer in the respondent Bank for a considerable period of time and since the petitioners have been serving as officers of the respondent Bank for the last 20 years without promotion, it is unfair and unjust to deny to them promotion, when the impugned circular itself lays down that in order to accord promotion, the principle of seniority-cum-merit would be followed. The impugned promotion order, dated 04.11.2003, and the weightage for various factors are, therefore, according to the petitioners, arbitrary and violative of Article 14 and 16 of the Constitution of India.

7. The respondents resisted the writ petition by filing their counter. Thereafter, the writ petition was allowed by judgment and order, dated 10.02.2006, with the following observations and directions:

14. The result of the aforesaid discussion is that this writ petition is disposed of with the following direction:

1. The impugned circular, dated 18.3.2002 is hereby quashed.
2. The office order, dated 04.11.2003, promoting the private respondents to the post of Middle Management Officer, Grade-11 (Scale II officer) in the Tripura Gramin Bank is also quashed.
3. The respondent Nos. 1 to 5 are, therefore, directed to formulate a fresh promotion procedure in accordance with law laid down by the Apex Court in BV

Sivaiah's case (supra) and thereafter, undertake a fresh promotion process for the promotion of the petitioners and other eligible candidates to the post of Middle Management Officer Grade-II in accordance with the new promotion procedure so formulated.

4. The entire exercise shall be completed by the said respondents within a period of three months from the date of receipt of this judgment.

5. To avoid management problems resulting from the quashing of the promotion order of the private respondents, the private respondents may be allowed to continue in the posts currently held by them pending completion of the selection process as directed in the foregoing.

It is made clear that the private respondents by this arrangement will not be entitled to any weightage in any manner.

15. The writ petition is allowed to the extent indicated above. On the facts and circumstances of the case, the costs quantified at Rs. 10,000/- shall be paid by the respondents No. 1 to 3 to the petitioners.

8. The decision, so rendered, was put to challenge by way of Writ Appeal No. 12/2006, The writ appeal was disposed of, on 08.04.2009, by remanding the writ petition for decision afresh on the ground that all persons, who were going to be affected by the directions issued in the writ petition, had not been impleaded as parties and, hence, it was ordered, in the appeal, that all persons shall be made parties and the writ petition shall be disposed of in accordance with law. Following the directions, so issued, the necessary parties have been added and it is in this background that the writ petition (WP(C) No. 449/2003) has come up for hearing before this Court.

9. Coming to the second writ petition, namely, WP(C)- No. 449/2003, it may be noted that with the help of its circular, dated 29.09.2009, the respondent Bank has initiated process to fill up 44 posts of scale-III officers from scale-II. The petitioners herein, who are also petitioners in the earlier writ petition, namely, WP(C) 449/2003, have put to challenge the process of promotion initiated by the impugned Circular, dated 29.09.2009, on the ground, inter alia, that the procedure, adopted therein, is contrary to the chosen criterion of granting promotion on the basis of seniority-cum-merit.

10. Though the respondents resist the two writ petitions, the fact of the matter remains that if the petitioners succeed in the earlier writ petition, then, the process, which stands initiated by the circular, dated 29.09.2009, cannot be carried out except by adhering to the principles, which may be indicated in the earlier writ petition, particularly, because the present process of promotion has been initiated, when promotions of officers from scale-I to scale-II were still, as indicated above, sub judice and cannot be treated as final. This apart, the criterion for promotion, in both the cases, is seniority-cum-merit and not merit-cum-seniority. Hence, the criterion for promotion has remained intact and

uniform.

11. It may, now, be noted that the concept of seniority-cum-merit, in matters of promotion, postulates that given necessary merit requisite for efficiency of administration, senior, even though less meritorious than his junior, shall have the priority and a comparative assessment of merit is not required to be made. While applying the principle of seniority-cum-merit for the purpose of promotion, what is required to be considered is the inter se seniority of the employees, who are eligible for consideration. Such seniority is, normally, determined on the basis of the length of service; but between the employees appointed on the same date and having same length of service, it is, generally, determined on the basis of placement in a select list for appointment. Such determination of seniority confers certain rights on the senior and the principle of seniority-cum-merit gives effect to such rights. For the purpose of making promotion on the principle of seniority-cum-merit, the authority concerned shall lay down minimum standard, which may be required, and also prescribe the mode of assessment of the minimum merit of the employees concerned, (i.e., the employees, who will be considered for promotion), Such assessment can be made by assigning marks on the basis of past performance, service records and interview and also by prescribing minimum marks, which if attained or achieved, would entitle a person to be promoted. (See B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., .

12. In the present case, out of the total number of 100 marks, 40 have been awarded to seniority, while 25 marks are assigned for performance and 35 for oral test. There is no indication whatsoever, in the impugned circular, as to how 40 marks would be given to the candidate, who is, otherwise, eligible for consideration for promotion nor does the circular prescribe the minimum qualifying marks for assessment of performance and merit on the basis of which a candidate would be considered for promotion. In fact, in the counter affidavit, the respondent Bank has admitted that the selection has been made on the basis of marks and gradings in the selection process based on the assessment of the Selection Committee. This clearly shows that the promotions were given only to those officers who had secured high number of marks among the candidates. In other words, the result of not fixing the minimum benchmark, in the present case, was that the senior was left out, because his junior was found to be more meritorious. The concept and principle of seniority-cum-merit, thus, stood completely defeated in the present selection process.

13. What is, however, of immense importance to note, while considering the concept of seniority-cum-merit, is that it is not illegal or unreasonable to put more than 50% marks as benchmark for promotion even when the criterion is seniority-cum-merit. It is really for the authorities concerned to decide as to what minimum level of efficiency is necessary for a given post even when selection for promotion is based on the criterion of seniority-cum-merit; but what is imperative is that the selection process prescribes the minimum benchmark

necessary for effective functioning of the post to which a person would be promoted and if a senior receives the minimum benchmark, he has to be promoted even if his junior is found to be more meritorious.

14. In the case of *Rajendra Kumar Srivastava and Others Vs. Samyut Kshetriya Gramin Bank and Others*, , the minimum benchmark fixed was 78 and the Supreme Court has upheld the same, though the criterion for promotion was seniority-cum-merit.

15. Seniority-cum-merit, according to a decision of seven Judges Bench in *State of Kerala and Another Vs. N.M. Thomas and Others*, , means that given the minimum necessary merit requisite for efficiency of administration, the senior, though less meritorious, shall have the priority.

16. The law was further clarified by the Supreme Court, in *Rajendra Kumar Srivastava (supra)*, in paras 10 and 11, as under:

10. In *Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another*, , this Court observed that "seniority-cum-merit" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed, and subject to fulfilling the said requirement, the promotion is based on seniority. It was pointed out that requirement of assessment of comparative merit was absent in the case of "seniority-cum-merit."

11. It is also well settled that the principle of seniority-cum-merit, for promotion, is different from the principle of "seniority" and the principle of "merit-cum-seniority". Where promotion is on the basis of seniority alone, merit will not play any part at all. But where promotion is on the principle of seniority-cum-merit, promotion is not automatic with reference to seniority alone. Merit will also play a significant role. The standard method of seniority-cum-merit is to subject all the eligible candidates in the feeder grade (possessing the prescribed educational qualification and the period: of service) to a process of assessment of a specified minimum necessary merit and then promote the candidates who are found to possess the minimum necessary merit strictly in the order of seniority. The minimum merit necessary for the post may be assessed either by subjecting the candidates to a written examination or an interview or by assessment of their work performance during the previous years, or by a combination of either two or alt the three of the aforesaid methods: There is no hard-and-fast rule as to how the minimum merit is to be ascertained. So long as the ultimate promotions are based on seniority, any process for ascertaining the minimum necessary merit, as a basic requirement, will not militate against the principle of seniority-cum-merit.

17. From the above observations, made in *Rajendra Kumar Srivastava (supra)*, it becomes clear that the concept of seniority-cum-merit postulates the requirement of prescribing a certain minimum merit for promotion or satisfying a benchmark previously fixed, and subject to fulfilling such benchmark, promotion is based on seniority. The question of assessment of comparative merit, in a case

governed by the principle of seniority-cum-merit, will not arise at all. In a case, where promotion is to be made on seniority alone, merit has no role to play. Where, however, promotion is based on the principle of seniority-cum-merit, promotion is not automatic. The selection method, applied in a case of seniority-cum-merit, is to subject all eligible candidates in the feeder grade, who possess the prescribed educational qualification and the requisite period of service, to a process of assessment of a specified minimum necessary merit and, then, promote the candidates, who are found to possess the minimum necessary merit strictly in order of seniority. The minimum merit, necessary for a post, may be assessed either by subjecting the candidates to a written examination or an interview or by assessment of their work performance during the previous years or by combining two or all the three factors aforementioned.

18. The case of Rajendra Kumar Srivastava (*supra*) takes note of B.V. Sivaiah (*supra*), which lays down, at para 18, as under:

18. 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.

19. From the above observations, made in B.V. Sivaiah (*supra*), what emerges is that the competent authority shall lay down the minimum standard required for promotion in a case of seniority-cum-merit and also prescribe the mode of assessment of the 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 and interview, but nonetheless it shall prescribe the minimum marks, which would entitle a person to be promoted if he is senior, though his junior may be more meritorious.

20. In no uncertain words, lays down Rajendra Kumar Srivastava (*supra*), that what would offend the rule of seniority-cum-merit is a process, where, upon assessing the minimum necessary merit, promotions are made on the basis of merit instead of seniority from amongst the candidates, who possesses the minimum necessary merit. The relevant observations, made by the Supreme Court, in Rajendra Kumar Srivastava (*supra*), at para 13, read thus:

13. Thus it is clear that a process whereby eligible candidates possessing the minimum necessary merit in the feeder posts is first ascertained and thereafter, promotions are made strictly in accordance with seniority, from among those who

possess the minimum necessary merit is recognised and accepted as complying with the principle of "seniority-cum-merit". What would offend the rule of seniority-cum-merit is a process where after assessing the minimum necessary merit, promotions are made on the basis of merit (instead of seniority) from among the candidates possessing the minimum necessary merit. If the criteria adopted for assessment of minimum necessary merit is bona fide and not unreasonable, it is not open to challenge, as being opposed to the principle of seniority-cum-merit. We accordingly hold that prescribing minimum qualifying marks to ascertain the minimum merit necessary for discharging the functions of the higher post, is not violative of the concept of promotion by seniority-cum-merit.

21. It may also be pointed out that the Supreme Court, in *Rajendra Kumar Srivastava (supra)*, took note, at para 20 of its earlier decision, in *Bhagwandas Tiwari and Others Vs. Dewas Shajapur Kshetriya Gramin Bank and Others*, , wherein the Supreme Court has upheld 78% as the minimum marks for eligibility for promotion. Taking this aspect into account, the Supreme Court, in *Rajendra Kumar Srivastava (supra)*, at para 20, observed thus:

20. We have carefully examined the decision in *Bhagwandas Tiwari and Others Vs. Dewas Shajapur Kshetriya Gramin Bank and Others*, , Even if the Rules applicable and mode of selection prescribed (interview and assessment of performance for the preceding three years period as officers for promotion) are the same in both cases, the criteria and standards adopted for assessing the minimum necessary merit are completely different. We extract below the standards adopted for promotion in this case and in *Bhagwandas Tiwari*;

Standards adopted in this case Marks allotted

The minimum marks for eligibility for promotion: 78%

Standards adopted in *Bhagwandas*:

In order to be selected for promotion, obtaining 45 marks shall be compulsory,"

22. Finally, in *Rajendra Kumar Srivastava (supra)*, the Supreme Court concluded, at para 21, as under:

21. It would, thus, be seen that the schemes for assessing minimum necessary marks are completely different in the two cases. While work performance carried only 30 marks in *Bhagwandas* case, it carried 60 marks in this case. While period of service carried 40 marks in *Bhagwandas* case, no marks are provided for "period of service" in this case. While the marks for interview were 30 in *Bhagwandas* case, it is 40 in this case. The minimum qualifying marks was 78 out of 100 in this case. In *Bhagwandas*, the minimum qualifying marks prescribed was 45 marks out of 100. But ignoring the requirement of 45 out of 100, the Selection Committee adopted a minimum of 45 out of 60 (that is, aggregate of marks for work performance and interview only) ignoring the marks of 40 for period of service though that was the highest segment. This Court was

persuaded to interfere in that case, as the guidelines which prescribed the minimum qualifying marks as 45 out of 100 was ignored and the Committee changed the minimum qualifying marks to 45 out of 60, thereby ignoring the marks secured for the period of service. Thus, the decision in Bhagwandas Tiwari will not assist the appellants.

23. From the observations made, as a whole, in Rajendra Kumar Srivastava (*supra*) and other decisions referred to above, what becomes clear and beyond pale of doubt is that where promotion is governed by the principle of seniority-cum-merit, it would postulate that given the necessary merit required for efficiency of administration, senior, even though less meritorious, shall have priority and a comparative assessment of merit cannot be made. The selection procedure for making promotion, in a case governed by seniority-cum-merit, shall be to put all eligible candidates to a process of selection by prescribing the minimum marks. The authorities concerned shall make the assessment of minimum marks on the basis of appraisal of previous performance, written test or interview or by taking into account the performance of an officer in all the three aspects, namely, previous performance, written test or interview. The minimum benchmark can be any such mark, which may be reasonable for holding a particular post and the requisite mark can be as high as 78% inasmuch as such a benchmark has been approved by the Supreme Court in R.K. Srivastava (*supra*).

24. In the case at hand, when the 1998 Rules make the principle of seniority-cum-merit as the basis for promotion, it was wholly illegal, on the part of the respondent Bank, to not prescribe the minimum benchmark and thereby promote the juniors on the basis of their assessment of merit with the seniors. Thus, the procedure for selection is *ex facie* illegal and cannot be sustained.

25. In the result and for the reasons discussed above, both the writ petitions are hereby allowed. The impugned circulars, dated 18.03.2002 and 29.09.2009, are hereby set aside and quashed. The office order, dated 04.11.2003, promoting the private respondents to scale-II officer is also hereby quashed. The respondent Bank is hereby directed to undertake the exercise afresh for filling up the post of scale-II officer as well as scale-III officer by laying down a procedure, which would satisfy the principle of seniority-cum-merit.

26. With the above observations and directions, these writ petitions shall stand disposed of. No order as to costs.