(2014) 02 CHH CK 0008

In the Chhattisgarh High Court

Case No : W.P. No. 1209/2002

R.K. Ahuja APPELLANT

Vs

Durg Rajnandgaon Gramin Bank RESPONDENT

Date of Decision : 04-02-2014

Acts Referred:
Regional Rural Banks Act, 1976 — Section 17, 29

Citation : (2014) 2 MPJR 42

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Single Bench

Advocate : Varun Sharma, Advocate for the Appellant; N. Naha Roya, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Nawal Kishore Agarwal, J.

1. By Notification dated 28.9.1988, the Central Government in exercise of powers conferred u/s 17 read with Section 29 of the Regional Rural Banks Act, 1976 framed the Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988 ("hereinafter referred to as the Rules"). Rule 5 of the Rules provided that all vacancies should be filled up by deputation, promotion or direct recruitment, in accordance with provisions contained in the Second Schedule to the Rules. Entry 7 in the Second Schedule related to recruitment to the posts of Area Manager or Senior Manager (in Scale II). It provided that all the posts of Area Manager and Senior Manager should be filled by promotion from among the confirmed officers (in Scale I) working in the Bank on the basis of seniority-cum-merit. It prescribed the educational qualification (graduate) and minimum period of service in the feeder cadre (eight years as an officer in the Regional Rural Bank concerned). It also prescribed the mode of selection by promotion as "interview and assessment of performance reports for the preceding three years period as officers". Sub-rule (4) of Rule 10 provided that the Staff Selection Committee shall follow the procedure determined by the

Board for selecting candidates for appointment or promotion, in accordance with the guidelines issued by the Central Government from time to time. As per above Rules, the respondent No. 1/Bank circulated draft promotion policy for promotion to the post of Officers/Managers in Scale II (Area/Senior Managers) in Durg Rajnandgaon Gramin Bank for the vacancies existed prior to 29.07.1998. According to above policy the selection shall be on the basis of Performance Appraisal Reports (PARs) for preceding 3 years and interview as per the division of the marks given below:

The cut-off point for satisfying the minimum merit required of for selection for promotion is fixed at 60% of the aggregate of marks allocated for the two factors, i.e., Performance Appraisal and Interview. The minimum qualifying marks for the PARs and interview are fixed at 50% of the total marks assigned against each parameter. However, the aggregate qualifying marks for both the parameters taken together should not be less than 60%. In other words, an officer must secure atleast 35 marks in PARs and a minimum of 15 marks in interview but the aggregate of both these parameters must be 60 for qualifying for promotion.

2. Indisputably, as per document-A filed by the respondent No. 1/Bank on 15.1.2014, the petitioner did not secure either minimum qualifying marks in PARs and in interview or aggregate qualifying marks and had secured 39.20 marks in PAR and 13.60 marks in interview.

3. Shri Varun Sharma, learned counsel appearing for the petitioner, would submit, the promotion is made not on the basis of seniority-cum-merit but, in fact, on the basis of merit-cum-seniority, which is contrary to the rules. He placed his reliance upon the judgment of Supreme Court in the case of Harigovind Yadav Vs. Rewa Sidhi Gramin Bank and Others, .

4. On the other hand, Shri N. Naha Roy, learned counsel appearing for respondents No. 1 & 2 supported the impugned order dated 8.5.2000 and placed his reliance upon the judgment of Supreme Court in the case of Rajendra Kumar Srivastava and Others Vs. Samyut Kshetriya Gramin Bank and Others, .

5. I have heard learned counsel for the parties and perused the paper book.

6. The principle of seniority-cum-merit, for promotion, is different from the principle of "seniority" and the principle of "merit-cum-seniority". While the principle of seniority-cum-merit lays greater emphasis on seniority, the principle of merit-cum-seniority lays greater emphasis on merit and ability, with seniority playing a less significant role. Where promotion is on the basis of seniority alone, merit will not play any part at all. But where promotion is based 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 eligible candidates in the feeder grade (possessing the prescribed educational qualification and period of service) to a process of assessment of a specified minimum necessary merit and then promote

candidates who are found to possess the minimum necessary merit strictly in the order of seniority. 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 all the three of the aforesaid methods. There is no hard-and-fast rule as to how 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. [Please see Rajendra Kumar Srivastava and others vs. Samyukt Kshetriya Gramin Bank and others (supra)].

7. In the instant case, indisputably, the petitioner did not secure minimum qualifying marks, i.e., aggregate of 60% in the PARs and interview, and therefore, he was found not eligible to be considered for promotion.

8. The Supreme Court in Rajendra Kumar Srivastava and others vs. Samyukt Kshetriya Gramin Bank and others (supra) while considering the promotion policy of Samyukt Gramin Bank wherein two-stage process was adopted by the Bank-the first preparing a list of candidates who secured the minimum of 78% marks (aggregate) in the performance appraisal and interview, and the second promoting the candidates who secured the minimum marks, strictly on the basis of seniority-cum-merit, has framed two issues:

(i) whether minimum qualifying marks could be prescribed for assessment of past performance and interview, where the promotions are to be made on the principle of seniority-cum-merit? and (ii) whether the first respondent Bank was justified in fixing a high percentage (78%) as the minimum qualifying marks (minimum merit) for promotion?

9. Answering in affirmative, the Supreme Court has held that a process whereby eligible candidates possessing 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 minimum necessary merit is recognized 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 minimum necessary merit, promotions are made on the basis of merit (instead of seniority) from among candidates possessing 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 principle seniority-cum-merit. It was further held, the employer has the discretion to fix different minimum merit, for different categories of posts, subject to relevant rules. For example, for promotions at lower levels, it may fix lesser minimum qualifying marks and fix a comparatively higher minimum qualifying marks for higher posts, and therefore, fixing of the minimum qualifying marks at 78% (aggregate) is not excessive, unreasonable or arbitrary.

10. Even in the judgment of Supreme Court in the case of Harigovind Yadav vs.

Rewa Sidhi Gramin Bank (supra), the Supreme Court has held in para-22, interviews 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 interview and does the selection with reference to comparative marks, it is contrary to the rule of "seniority-cum-merit". In the instant case, it is not the procedure, which has been adopted by the Bank but the Bank has fixed the minimum necessary merit and thereafter has selected/promoted the candidates strictly in accordance with seniority among the candidates, who satisfied the minimum eligible criteria, therefore, the promotions have been made strictly on the basis of seniority-cum-merit and not on the basis of merit-cum-seniority and the contention of petitioner''s counsel, being devoid of merit, is liable to be rejected.

11. For the reasons mentioned herein above, the petition, being sans merit, is liable to be and is hereby dismissed. No order as to costs.