
(1992) 08 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8578 of 1991

Sachchidan and

APPELLANT

Vs

The Punjab National Bank and Others

RESPONDENT

Date of Decision : 06-08-1992

Acts Referred:

Citation : (1992) 08 PAT CK 0019

Final Decision : Dismissed

Judgement

S.N. Jha, J.—This writ petition has been filed seeking quashing of the circular dated 3rd May 1991 reducing the number of years of service as condition of eligibility for selection from Junior Management Grade (JMG) Scale I to Middle Management Grade (MMG) Scale II from 10 years to 9 1/2 years i.e. by six months, and the promotion effected on the basis of the said circular as well as a mandamus to promote the Petitioner from JMG-I to MMG-II in terms of the circular dated 21st March 1991.

2. Service conditions of the officers of Respondent Punjab National Bank are governed by the Punjab National Bank Officers' Service Regulations, 1979 (in short "Service Regulations") framed under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Regulation 17 provides that the promotions to all grades of officers in the bank shall be made in accordance with the policy laid down by the Board of Directors from time to time having regard to the guidelines of the Government, if any. There are two modes of promotion from JMG-I to MMG-II known as Channel-I and Channel-II. In this case we are concerned with promotions under Channel-I for which minimum eligibility in terms of the number of years of service was ten years as would be evident from the circular dated 25th March 1991 inviting applications for promotions. A copy of the said circular has been marked Annexure-3. It is an admitted position that the last date for submission of the applications was 20th April 1991. On 3rd May 1991 the impugned circular was issued, inter alia, reducing the number of years in the manner stated above to be calculated as on

1.10.1990. A copy of the said circular has been marked Annexure-4. A controversy arose as to whether the decision contained in the circular dated 3rd May 1991 is a decision of the Board of Directors, since any such relaxation can be made only by the Board. In view of the supplementary counter affidavit filed on behalf of the Respondent-Bank this plea was given up in the course of final arguments.

3. Mr. Sunil Kumar, learned Counsel for the Petitioner, raised two contentions (1) the Respondents acted illegally in altering the eligibility criteria after commencement of the selection process, and (2) allotment of 35% marks for viva voce test was disproportionate and arbitrary and the whole selection made on that basis was illegal. Mr. Shailesh Kumar Sinha, learned Counsel, appearing on behalf of the Bank, on the other hand, submitted that the Petitioner having participated in the selection process and taken chance of selection cannot be permitted to question the validity of the selection process itself.

4. It would appear from the promotion policy, a copy whereof has been marked Annexure-2 to the writ petition, that in terms of the guidelines of the Government dated 28th July 1986, the number of candidates to be considered for promotion from one scale to Anr. shall normally be 3 to 4 times the number of vacancies available in the higher grade/scale for which promotions are being considered. The Board of Directors, however, is competent to relax this criterion in exceptional circumstances after recording reasons therefore in writing. The Respondents have filed copy of the proceedings of the Board of Directors dated 2nd May 1991, marked Annexure-B to the supplementary counter affidavit, on the basis of which the impugned circular dated 3rd May 1991 has been issued. It would appear from the said proceeding that out of 482 vacancies in MMG Scale II 145 vacancies were available for being filled up by promotion under Channel-I in terms of the ratio fixed for such promotion, namely, 30%. However, the Bank had received only 263 applications for promotion to MMG-II under Channel-I which was even less than 2 times the number of vacancies. Since this fell short of the number of candidates, who are required to be considered for such promotion, being 3 to 4 times the number of vacancies as per the Government guidelines, indicated hereinabove, a decision was taken to relax the eligibility criteria from 10 years of service to 9 1/2 years of service on the cut off date namely, 1.10.1990. As a result of the aforesaid relaxation, it was expected about 800 candidates would be eligible to apply for promotion to MMG Scale II under Channel-I. Faced with this situation, counsel for the Petitioner submitted that the power of relaxation of the eligibility criteria is confined only to promotion under Channel-II. Reference in this connection was made to eligibility criteria laid down for promotion under Channel-II, specifically mentioned in the relaxation clause. However, he did not dispute the stand of the Bank that the eligibility in terms of number appearing for promotion under Channel-II was common to both the Channels, the material difference being that the minimum number of years for promotion in Channel-I is ten years whereas it is seven years for promotion under Channel-II. In my opinion, power of relaxation covers both types of

promotion. I am further of the opinion that relaxation was for valid and justifiable reasons intended to expand the zone of consideration in order to select the best talent available and also to bring it in conformity with the Government guidelines. The impugned circular, therefore, cannot be said to be arbitrary at all. In any view, it is not in dispute that the Petitioner had knowledge about the impugned circular which was duly circulated inviting fresh applications. Having participated in the selection process and taken chance of selection it is not open to him to challenge the very criteria of selection, later after he had failed in the process. Reliance placed by counsel for Bank on *G. Sarana Vs. University of Lucknow and Others*, in this connection, is quite appropriate.

5. As regards the second contention, learned Counsel submitted that the selection of the candidates, in terms of the promotion policy, is done on the basis of the following parameters "Performance-60 marks, Interview-35 marks, and Qualification-5 marks". It was pointed out that in view of the recent judicial pronouncements, undue weightage should not be given to viva voce test, therefore, allocation of 35% marks for viva voce test being clearly on the higher side should be held to be arbitrary and selection made on that basis vitiated and illegal. It was also submitted that the Service Regulations to that extent must be held to be void. Reliance in this connection was placed on *Atri Kumar Sah v. Central Bank of India and Ors.* 1983 (1) SLR 8.

6. Two aspects arise for consideration—firstly whether the ratio of the law laid down by the Supreme Court, which I have presently referred to, can be said to be applicable to the selection process for promotion and secondly even if it does, whether the impugned selection can be said to be vitiated. The second aspect is fully covered by the decision in *Munindra Kumar and others Vs. Rajiv Govil and others*, . There out of 200 total marks, 120 marks were allocated for written test and 40 marks each for interview and group discussion. The appointments made in that process were challenged. The High Court held that the marks allocated for interview and group discussion were more than 20% and so the whole process was liable to be quashed. The Supreme Court held in agreement with the High Court that the rule prescribing 40% marks was arbitrary. However, on the question as to what direction would be just and proper in the circumstances of the case observed as follows:

We do not agree with the High Court to quash the entire selection made by the Board for the posts of Assistant Engineers (Civil). It may be noted that Rajeev Govil, Vivek Aggarwal and Gyanendra Srivastava who remained unsuccessful had filed the writ petitions after taking chance and fully knowing the percentage of marks kept for interview and group discussion. It is no doubt correct that they cannot be estopped from challenging the rule which is arbitrary and violative of Article 14 of the Constitution, but in modulating the relief, their conduct and the equities of those who have been selected are the relevant considerations.

(emphasis added)

In an earlier case, namely, *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, , their Lordships held that allocation of 22.2% marks allocated to the viva voce test was excessive "infecting the selection process with the vice of arbitrariness", but refused to pass any consequential order interfering with the selections already made, observing:

If selections made in accordance with the prescriptions contained in these rules are now to be set aside it will upset a large number of appointments already made on the basis of such selection and the integrity and efficiency of entire administrative machinery would be seriously jeopardised. We do not therefore, propose to set aside the selections made by Haryana Public Service Commission though they have been made on the basis of an unduly high percentage of marks allocated for the viva voce test.

7. Learned Counsel, however, submitted that even if the impugned selection is not quashed at this stage, nonetheless if the same promotion policy allocating 35% marks for viva voce test remains, the chance of arbitrary selection in future cannot be ruled out. The Supreme Court, no doubt, held that the percentage of marks allocated for viva voce test for selection to the public posts should not be excessive. In *Ashok Kumar Yadav* (supra) allocation of 22.2% marks to viva voce test was held to be infecting the selection process with the vice of arbitrariness. In the case of *Mohinder Sain Garg v. State of Punjab* (1990) 4 judgment Today, 704 the Supreme Court laid down that the percentage of marks should not exceed 15% of the total marks. However, it would appear that these decisions have been rendered in the context of direct appointment on the basis of competitive test consisting of both written test and viva voce. This would be evident from the following observations in paragraph 25 of the judgment in *Ashok Kumar Yadav* (supra):

If both written examination and viva voce test are accepted as essential features of proper selection in a given case, the question may arise as to the weight to be attached respectively to them.

In the instant case, promotion from JMG-Scale I to MMG-Scale II under Channel-I does not involve any written test. The parameters of evaluation of one's past performance and qualification (which have been allocated 60 marks and 5 marks respectively) have already been laid down in the promotion policy. What remains is the interview. It cannot be disputed that at the stage of consideration for promotion to the higher grade or scale, what has to be considered is the suitability of the persons concerned for the post in that grade or scale. Prescribing 35% marks for "interview" is intended to provide the selection authority basis to assess the suitability of the persons for the higher post on the basis of the viva voce test. The position would have been different, in the light of the decisions of the Supreme Court, if such a high percentage of marks would have been allocated to it vis-a-vis the written test. In my view therefore, allocation of 35% marks as one of the parameters to judge the suitability of the candidates for promotion from JMG Scale I to MMG Scale II under Channel-I

cannot be said to be illegal or arbitrary. I would also like to observe that the mode of recruitment is a matter which ordinarily should be left to be dealt with by the executives and should not be lightly interfered with. As has been observed in State of Andhra Pradesh and Another Vs. V. Sadanandam and Others, , it is not for judicial bodies to sit in judgment over the executives' decisions in such matters.

8. This application has no merit and is, accordingly, dismissed, but without costs.

Shamim Ahsan. J.

9. I agree.