
(2015) 02 OHC CK 0028
In the Orissa High Court
Case No : W.A. No. 109 of 2014

Santosh Kumar Mohapatra and Others	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Regional Rural Banks Act, 1976 — Section 17, 29

Citation : (2015) LabIC 1545

Hon'ble Judges : Amitava Roy, C.J. Dr., J.; Akshaya Kumar Rath, J.

Bench : Division Bench

Advocate : G.A.R. Dora, Senior Advocate and C.R. Swain, for the Appellant;
Ashok Mohanty, B. Senapati, S.K. Das, A. Tripathy, B. Jena and H.N. Mohapatra,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. Akshaya Kumar Rath, J.—This appeal has been filed under Clause 10 of the Letters Patent against the judgment dated 12.2.2014 passed by the learned Single Judge in W.P.(C) No. 6355 of 2012 and batch of writ applications. By the said judgment, the learned Single Judge allowed the writ applications and quashed the list, for promotion of Office Assistants (Multipurpose Group "B" Clerical) cadre to Officer JMG Scale-1, prepared by the respondent No. 4-Bank, vide Annexure-3, and directed the Bank to reassess the Performance Appraisal Report of Office Assistants (Multipurpose Group "B" Clerical Cadre) and prepare a fresh list. It was, inter alia, directed that while preparing the said list, the Bank would consider the marks secured by the employees in the written test.

2. Respondent Nos. 5, 8, 11, 13, 19 and eleven others have filed Writ Application No. 6355 of 2012 contending that they were initially appointed as Junior Clerks in the erstwhile Puri Gramya Bank and subsequently promoted to the post of Senior Clerks. In the year 2007, Puri Gramya Bank was amalgamated with Dhenkanal Gramya Bank, whereafter Neelachal Gramya Bank was created. The posts of the petitioners were re-designated as Office Assistants (Multipurpose

Group "B" Clerical). After creation of Neelachal Gramya Bank on 30.8.2007, a provisional seniority list of the Office Assistants was prepared. While the matter stood thus, the Bank issued a notification on 11.6.2011 for promotion from the post of Office Assistant (Multipurpose Group "B" Clerical) cadre to Officer JMG Scale-1 Cadre to fill up 97 posts in accordance with Regional Rural Banks (Appointment and Promotion of Officers and Employees) Rules, 2010. As per the said notification, written test was conducted on 4.9.2011 and interview was held from 16.11.2011 to 19.11.2011. The petitioners were sanguine of their promotion, since they were seniors and blemishless service career. But then, the Bank had given promotion to the employees, who were juniors to them, basing upon their PAR, though they had secured less marks in the written test and interview. With this factual background they have prayed, inter alia, for a direction to the Orissa Gramya Bank (hereinafter referred to as "Bank") to reconsider their cases of promotion by awarding suitable marks in the Performance Appraisal Report (hereinafter referred to as "PAR").

3. Pursuant to issuance of notice, a counter affidavit has been filed by the respondent No. 4-Bank. The sum and substance of the case of the Bank is that a person in his PAR need not have any adverse remark, but that does not necessarily mean that he is having all "excellent" remark in his PAR. The bank as per the prevailing practice awarded marks keeping the evaluation of the particular candidate's performance, different grades, namely "A", "B", "C", "D" and "E" and these grades are awarded in order to facilitate the promotion process by converting the grades to numerical by the following procedure:--

Unit "A" represents remarks given for "outstanding" and taken as marks for 80 to 100, and since there is no clear cut/definite marks earmarked for such "outstanding", remark, the average of 80+100 is taken as the base which comes to 90. If a person has got 12 "A"s the said 90 is divided into 12 which comes to 7.5. Likewise "B" represents for "Good" and the base mark was 60 to 80. "C" represents "Average" with the base mark of 40 to 60. "D" represents "Below Average" and has the base of marks of below 40. "E" stands for "Not Demonstrated" and base mark are "0" for this. Further, it is stated that in view of Clause-11(i) read with Clause 11(iii) of Rules, 2010 a Committee was constituted for the purpose of promotion. The said committee recommended to the Appointing Authority the list of employees who were eligible to get promotion as per the Regional Rural Banks (Appointment and Promotion of Officers and Employees) Rules, 2010.

4. Two sets of counter affidavits have also been filed by some of the opposite parties taking the similar stand to that of the Bank. The learned Single Judge, on perusal of the records produced by the Bank, allowed the writ petition with the directions as stated (supra).

5. Assailing the judgment, Mr. G.A.R. Dora, learned Senior Advocate with his usual vehemence submitted that the writ petitioners are fence sitters. They have taken a calculated chance and appeared at the interview. Since the result was

not palatable to them, they approached this Court and as such, the writ petition is not maintainable. He further submitted that the learned Single Judge has erred in sitting over the appeal on the assessment and award of marks by the promotional committee vested upon the successful candidates as well as the failed candidates as these aspects are the subjective satisfaction of the assessing authority. He further submitted that there is no prayer to quash the promotion accorded to the successful candidates for which their promotion cannot be distributed. To buttress his submission, he cited decisions of the Apex Court in the cases of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , Smt. Nutan Arvind Vs. Union of India and another, , Commander Head Quarter, Calcutta and others Vs. Capt. Biplabendra Chanda, , Union Public Service Commission Vs. L.P. Tiwari and Others, , Kuldeep Chand Vs. State of H.P. and others, and Union of India (UOI) and Another Vs. S.K. Goel and Others, .

6. Per contra, Mr. Ashok Mohanty, learned Senior Advocate supported the judgment.

7. The appointment and promotion of officers and other employees of Rural Banks were governed under the Regional Rural Bank Rules, 1998. In the year 2010, the Central Government in exercise of its power under Section 29 of the Regional Rural Banks Act, 1976 read with Section 17 thereof and in supersession of the Rules, 1998 promulgated the Regional Rural Banks (Appointment and Promotion of Officers and Employees) Rules, 2010 (hereinafter referred to as Rules, 2010). Rule 6(i) of the Rules, 2010 provides that all vacancies determined under Rule 5 by the Board shall be filled by promotion or direct recruitment in accordance with the provisions contained in the Rules and the Third Schedule to the Rules. Part I-Group "A" of Clause B of the Third Schedule deals with promotion to the post of Officer Junior Management (Scale I) from the Office Assistant. It provides that 50% of the vacancies for promotion shall be filled under Normal Channel and 50% under Fast Track Channel as per eligibility and selection process. In order to eligible in the Normal Channel, an employee must have ten years experience as Office Assistant (Multipurpose) on full time and regular basis whereas in the Fast Track Channel, he must have six years service as Office Assistant (Multipurpose) on full time and regular basis and should have passed graduation. The selection is made on the basis of the written test, interview and last five years PARs as per the division of marks given below:--

Thereafter a merit list is prepared on the basis of minimum qualifying marks of 50% in aggregate of written test, interview and PARs.

8. On the rival pleadings of the parties and submissions made at the Bar, the following issue arises for our consideration:--

"Whether the Departmental Promotion Committee constituted by the respondent No. 4-Bank can act upon the incomplete and non available performance appraisal report (PAR) of the employees while according promotion to the post of Officer

JMG Scale-1 from Office Assistant (Multipurpose Group-B Clerical), when Regional Rural Banks (Appointment and Promotion of Officers and Employees) Rules, 2010 provide PAR is one of the criteria of promotion having 30 marks?" 9. In course of hearing, this Court directed the Bank to file an affidavit on the following questions:--

"(1) When was the process of promotion, involved in the instant appeal, initiated by the Bank?

(2) Whether the Performance Appraisal Report of the relevant years 2006-07 to 2010-11 of all the candidates within the zone of consideration in terms of the Rules had been prepared in final form/(upto the stage of final recommendation/assessment/gradings of the Reviewing Authority). If not, for how many candidates the PARs were not prepared? The names of the candidates, the years for which this PARs were not ready, be indicated.

(3) When were the incomplete and not available PARs of the above candidates prepared by the Bank?

(4) Whether in the process of preparation of the not available and incomplete PARs, the Reviewing Authority had reopened the already prepared PARs of the other candidates and had moderated/upgraded the gradings recorded by the reporting authority?

(5) Whether the formula for conversion of grades into marks as per the document furnished to this Court had been applied uniformly to all the candidates to adjudge their inter se suitability for promotion?

(6) When was, after impugned judgment and order was passed, the next process of promotion undertaken and how many candidates were selected for promotion?

(7) What were the years of the PARs on the basis of which the subsequent selection was conducted?"

10. An affidavit has been filed by the Bank on 28.1.2015 stating therein that the process of the promotion was commenced with the publication of the relevant notification issued vide Circular No. 9 dated 31.5.2011. The PARs of the relevant years i.e., 2006-07 to 2010-11 of all the 231 candidates were not prepared in final form (up to the stage of final recommendation/assessment/gradings by the Reviewing Authority). Out of the said 231 candidates, PARs of 189 candidates were not prepared in all respects. A list has been appended, vide Annexure-4, to the said affidavit. It is further indicated that the exercise for incomplete and non-available PARs were made in 1st and 2nd week of June, 2014 in pursuance of the direction issued by the learned Single Judge on 7.5.2014 and the Selection Committee finalized the selection list on 14.6.2014. Accordingly, notification was made on 18.6.2014. It is further stated that while preparing the cases of unavailable and incomplete PARs, the reviewing authority had not reopened the cases of other candidates whose PARs were already prepared and had not moderated/upgraded the gradings recorded by the reporting authority. Out of

231 candidates, the reviewing authority had differed with the grades awarded by the concerned reporting authority in the case of PARs of 13 candidates, which were reviewed afresh. It is further stated that there were mistakes i.e., clerical errors in conversion of grades to marks in the PARs of 179 candidates. The said mistakes were detected while reassign the grades by the present reviewing authority in terms of the direction issued by the learned Single Judge on 12.2.2014 and 7.5.2014. All the PARs of 231 candidates were reassessed/rechecked and necessary corrections were made in PARs of 179 candidates. It is further stated that after the judgment the next process of promotion was undertaken on 22.4.2014. The selection committee found suitable 105 numbers of candidates against 97 number of vacancies and, accordingly, notification was issued on 29.4.2014. The case of one candidate was kept in sealed cover due to pendency of the disciplinary proceeding.

11. Bearing in mind the aforesaid factual scenario, let us have a glance at the decisions cited by Mr. Dora.

12. In *Madan Lal (supra)*, the Apex Court held that if a candidate takes a calculated chance and appears at the oral interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the said case the Apex Court relied upon an earlier decision in the case of *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, in which it was held that when the petitioner appeared at the interview without protest and when he found that he would not succeed in the examination, he filed a petition challenging the said examination, the High Court should not have granted any relief to such petitioner.

13. In the instant case, neither the petitioners challenge the marks awarded in the written test nor vive-voce nor constitution of the committee. They essentially challenge the award of marks/conversion of marks in the respective PARs. When the Bank in its affidavit candidly admits that the PARs of 231 candidates were not prepared in the final form, more so, out of 231 candidates, PARs of 189 candidates were not prepared in all respects and that there were mistakes i.e., clerical errors in conversion of grades in the PARs of 179 candidates, we are of the view that the ratio in *Madan Lal (supra)* does not apply to the facts and circumstances of the case.

14. In *Smt. Nutan Arvind (supra)*, it is held that when a high level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, the Court cannot sit over the assessment made by the DPC as an appellate authority. There is no quarrel on the proposition of law.

15. True it is, while arriving at the conclusion the learned Single Judge came to hold that there is no material before the Reviewing Authority to come to a different opinion than the grades awarded by the Reporting Authority and the

Reviewing Authority has also not assigned any reasons whatsoever to defer with the grades awarded by the Reporting Authority. While arriving at the said conclusion, the learned Single Judge perused the records produced by the Bank. But the same does not deter us to decide the issue in view of the affidavit filed by the Bank dated 28.1.2015 indicating the serious irregularities committed by it as indicated above.

16. In *Kuldip Chand (supra)*, the Apex Court held that the State Administrative Tribunal exceeded its jurisdiction in entering into the field exclusively reserved for the Selection Committee in judging the comparative merit of the candidates and finding fault with the award of marks in viva voce. In the instant case, the learned Single judge took note of the irregularities in award of marks to some of the candidates in PARs. Thus, the judgment is distinguishable.

17. In *L.P. Tiwari and others*, the Apex Court held that the evaluation made by an expert committee should not be easily interfered with by the courts, which do not have the necessary expertise to undertake the exercise i.e., necessary for such purpose. The same view was taken in the case of *S.K. Goel (supra)*. In *S.K. Goel*, the Bench referred to the judgment in *L.P. Tiwari*. Both the judgments are distinguishable. As has been stated *supra*, the judgment of the learned Single Judge is not based upon the assessment of the comparative merits of the candidates. The learned Single Judge has only taken note of irregularities in award of marks in PARs. The learned Single Judge on perusal of the relevant record passed the order.

18. On a bare reading of the aforesaid decisions, however, it shows that there is a significant difference in the factual matrix in which the said case arose for consideration. What is the more disquieting feature of the case is the admission of the Bank in the affidavit dated 28.1.2015. When the Bank admits serious irregularity and infirmity as stated *supra*, what more is required to be proved? The selection process consists of written test, interview and PARs. The marks awarded under the heading PARs is 30. On the date of consideration of the cases of the appellants vis-à-vis the contesting respondents for their promotion to the post of Office Assistants (Multipurpose Group "B" Clerical) cadre to Officer JMG Scale-1, the PARs of 189 candidates out of 231 candidates were not prepared in all respects. Further, there were mistakes i.e., clerical errors in conversion of grades to marks in the PARs of 179 candidates.

19. In our considered opinion, on the basis of incomplete PARs and the clerical errors in conversion of grades to marks in the PARs of 179 candidates, the Departmental Promotion Committee constituted by the Bank committed a patent illegality in acting upon the incomplete PARs and awarding marks. The exercise undertaken by the committee was wholly unjustified and the same is detrimental to the future prospectus of 179 candidates. The committee was fully conscious of the aforesaid facts. In spite of that, for the reasons best known, it proceeded with selection leaving the future of most of the employees in a state of despair and uncertainty.

20. In view of the analysis made in the preceding paragraphs, we are of the view that the judgment dated 12.2.2014 passed by the learned Single Judge warrants no interference of this Court. Accordingly, the appeal is dismissed.

Amitava Roy, C.J.

I agree.