
(2007) 07 AHC CK 0213
In the Allahabad High Court

Sri Ajit Kumar Gupta

APPELLANT

Vs

Allahabad Kshetriya Gramin Bank and Sri Manindra Kumar
Verma

RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 7 AWC 7212

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—Aggrieved by the order dated 24.1.1998 passed by respondent No. 1 in respect to promotion to Officers" Grade Scale II in the service of Allahabad Kshetriya Gramin Bank, the petitioner has approached this Court by means of this writ petition under Article 226 of the Constitution of India.

2. It is said that in the year 1995 there were nine vacancies on the post of Area Manager/Senior Manager which is Officer"s Grade Scale II post in Allahabad Kshetriya Gramin Bank (hereinafter referred to as the Bank) for which in accordance with Rule 27 candidates including the petitioner on the criteria of seniority-cum-merit were considered. The department allotted marks for interview and performance appraisal as under:

- i) performance report (Average of last 3 years) 60 marks
 - ii) Interview 35 marks
 - iii) performance to agriculture commerce and Economics Graduate 5 marks
- Total 100 marks -----

3. Out of 100 marks the Bank determined 75 marks to qualify, meaning thereby persons securing 75 marks and above were eligible for promotion, depending

upon their position in seniority. Out of 27 candidates the selection committee selected 8 general candidates and one from the category of Scheduled Caste/Scheduled Tribe and therefore candidates who were at serial Nos. 3, 4, 5, 8, 11, 13, 15, 17 and 19 were selected and promoted. The petitioner was in the seniority list at serial No. 18 but since only 8 general candidates were to be selected, he could not be selected though he secured more than 75% marks. The petitioner represented stating that Officer Grade I is the post in the pay of Rs. 2250/- hence no reservation was applicable on the said post. Consequently on the higher post of officer grade scale II, no reservation could have been applied. The respondents in keeping one post reserved for Scheduled Caste/Scheduled Tribe acted illegally and why a person junior to him has illegally been promoted. His representation against the aforesaid non-promotion remained unheeded whereupon he approached this Court in Writ Petition No. 34104 of 1997 which was disposed of on 17th October 1997 directing the Chairman of the Bank to decide his representation within six weeks. Consequently vide order dated 24th January 1998, impugned in this petition, the petitioner's representation has been rejected.

4. Learned Counsel for the petitioner stated that the matter already stood decided by the Apex Court in *National Federation of S.B.I. and Others, etc. Vs. Union of India and Others*, in pursuance whereof no reservation of Scheduled Caste/Scheduled Tribe is available to a post which carry an ultimate salary above Rs. 2250/- and therefore respondents have acted illegally by keeping one post reserved for Scheduled Caste/Scheduled Tribe.

5. Respondent-Bank has filed a counter affidavit stating that appointment and promotion to the post is governed by Regional Rural Bank (Appointment and Promotion of Officer and other Employees) Rules, 1988 (hereinafter referred to as 1988 Rules). Rule 5 of 1988 Rules reads as under:

5. All vacancies determined under Rule 4 by the Board, shall be filled by deputation, promotion or direct recruitment in accordance with the provisions contained in the Second Schedule.

6. The source of recruitment for the post in question as provided in the schedule 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, these could be filled by taking temporarily officers of the sponsor banks and other banks or organisations on deputation. (b) Qualifications and : i. A Graduate of eligibility recognised University of 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, 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 inter-changeable.

(c) Mode of selection : Interview and assessment of performance reports for the preceding three years period as officer for promotion.

7. Rule 11 of 1988 Rules provides for reservation and reads as under:

11. There shall be reservation of posts for the Scheduled Castes, Scheduled Tribes and other categories of persons in such proportion as may be specified by the Central Government from time to time.

8. It is said that the matter of reservation of Scheduled Castes/Scheduled Tribes in promotion to officer scale II was clarified by the National Bank for Agriculture and Rural Development (NABARD) vide circular dated 8th December 1994 in pursuance whereof the Bank issued its circular dated 8th March 1995 and one vacancy of Scheduled Castes/Scheduled Tribes was reserved for promotion in question in accordance with the said decision.

9. We have heard learned Counsel for the parties and perused the record.

10. The only question up for consideration is whether filling of one vacancy in question by a candidate belonging to Scheduled Castes/Scheduled Tribes who was at serial No. 19 of seniority list by considering the said vacancy reserved for Scheduled Castes/Scheduled Tribes candidate is consistent with the existing provision of reservation applicable in the Bank or not.

11. The Bank in order to justify its action has placed reliance on the Circular dated 8.12.1994 (Annexure-CA.3) of NABARD and it would be appropriate to consider the said circular of NABARD which contains the following decision taken by it:

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sponsor The matter reservation for banks have regarding promotion from advised that there provision or officer scale I to II is no reservation otherwise of and Area/Senior of posts for SC/ST reservation for Manager (Officer employees for SC/ST candidates Scale II) promotion from to the posts of officer scale I to Area Manager/ Scale II. However Senior Manager is the eligible SC/ST under candidates coming consideration of under Zone of GOI. Pending consideration are decision from being promoted as Government of per rank list. On India, we advise implementation of that the scheduled NOT Award along castes/scheduled with the Tribes Officers, recommendations who are senior of Equation enough in the Committee, the zone of posts and consideration for consequential promotion so as to fixation of the new be within the scales of pay, number of allowances and vacancies for other benefits of which the select the staff of RRBs list has to be are equated with drawn up, would the

comparable be included in that posts in the list provided they sponsor banks. In are not considered view of the above unfit for promotion. position, they If there are no contend, the policy candidates that is in operation belonging to in sponsor banks Scheduled can be followed by Castes/Scheduled their sponsored Tribes within the RRBs. zone of consideration, then the number of vacancies that are required to be reserved in accordance with the practice prevailing in the respective State may be set aside and only the balance vacancies may be filled in provided, however, the instructions issued by GOI/NABARD from time to time are complied with for making such promotions from the post of officer Scale I to Area/Senior Manager.

12. Following the aforesaid decision the Bank also issued its resolution dated 8th March 1995/19th April 1995, copy whereof has been filed as Annexure C.A.2 wherein also Para 4 (ii) and (iii) reads as under:

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ii. The SC/ST officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up would be included in that list provided they are not considered unfit for promotion. The names of such SC/ST candidates will in order of their inter-se-seniority, replace the names of those general category candidates whose names appear at the end of No. of vacancies in list "B". The names of such replaced gen. category candidates will be shifted just below the No. of vacancies in the final list.

iii. The maximum number of SC/ST candidates who will be given the benefit of above weightage will be restricted to the No. of vacancies that are required to be reserved in accordance with the practice prevailing in the U.P. State Government.

The candidates whose names appear within the no of vacancies in the final list prepared as above shall be declared as successful for promotion, provided there is nothing adverse which may disqualify them for promotion as per prevailing guidelines/norms.

13. It is evident from NABARD's circular and the bank decision that SC/ST candidates who as per their seniority list fall within the number of vacancies for which select list is to be drawn, shall be included provided they are nor considered unfit for promotion. A plain reading of the aforesaid makes it clear that special kind of weightage for reservation has been provided for SC/ST that if on the basis of seniority such a candidate fall within the number of vacancies, he would be selected provided he is not found unfit. Only on the basis of fitness he could be promoted and he need not to participate and compete with others on the criteria of merit but to attract this condition the requirement is that such candidate must come within the number of vacancies for which promotion is to

be made. In the case in hand nine vacancies were sought to be filled in and SC/ST candidate i.e. respondent No. 3 who has been promoted was at serial No. 19 of the seniority list. He was much outside the purview of the number of vacancies for which promotion was under consideration. Ex-facio, in our view, the aforesaid decision providing benefit to SC/ST candidates is inapplicable in the case in hand. The aforesaid decision is applicable before the process of selection and simply on the mathematical calculation, namely, number of vacancies for which selection is to be made and position of candidate belonging to SC/ST in his seniority and if he is within the number of his seniority qua vacancies, he would attract the aforesaid decision and not otherwise, if respondent No. 3 would have been in seniority list at any serial number from 1 to 9, the decision of NABARD as contained in the Circular dated 8th December 1994 would have been attracted but not otherwise. The aforesaid decision thus could not be attracted in this case. Admittedly 9 general candidates in order of seniority were found fit for promotion including the petitioner who were above respondent No. 3. In the circumstances respondent no. 3 could not have been promoted by ignoring a person who was senior to him. Therefore, it is not necessary for us to consider as to whether reservation for SC/ST in general is applicable on the post in question since promotion of respondent No. 3 in the case in hand in view of NABARD's decision dated 8th December 1994 is illegal and cannot sustain. We are supported in taking the said view from the illustration contained in the letter dated 7th November 1983 which came up for consideration before the Apex Court in National Federation of State Bank of India (supra) and the Apex Court has noted this illustration in para 7 of the judgment as under:

Take a case where twenty vacancies arise which have to be filled by promotion by selection; according to the relevant rules, thrice the number of vacancies are to be considered -in other words, a list of sixty eligible candidates has to be prepared who alone will be considered for promotion to the said twenty posts, which list is but another name for "the zone of consideration" referred to in the Office Memorandum; (ordinarily, this list is prepared on the basis of seniority-cum-eligibility); if any Scheduled Castes/Scheduled Tribes officer happen to fall within Serial No. 1 to 20 in the said list, they shall be included in the select list without further ado, i.e., without subjecting them to the process of selection and without comparing their merit and grading with the merit and grading of the other officers within the zone of consideration. But for the said concession, it may be noted, these Scheduled Castes/Scheduled Tribes Officers may not get selected even though they may fall within Serial Nos.1 to 20 in the zone of consideration for the reason that the candidates below Serial No. 20 may have a better record of service and grading than them. Since the promotion is on the basis of selection, the more meritorious (the officer having better grading) will get selected notwithstanding his position in the zone of consideration. It appears quite obvious that candidates belonging to Scheduled Castes/Scheduled Tribes were not getting selected by following the normal procedure of selection and hence, the said concession was provided. According to it, it is enough if a

Scheduled Castes/Scheduled Tribes candidate comes within Serial Nos. 1 to 20 in the zone of consideration in the illustration given above. He would be automatically included in the select list., even though his grading on the basis of his record and performance may be for inferior to the grading of the other officers below Serial No. 20 in the zone of consideration provided, of course, such Scheduled Castes/Scheduled Tribes officer is not found unfit for promotion. So far as Scheduled Castes/Scheduled Tribes candidates below Serial No. 20 in the zone of consideration are concerned, they will, of course, be not entitled to any such concession and, therefore, have to compete with other candidates within the zone of consideration. It is equally clear that the O.C. Candidates between Serial Nos. 1 to 20 in the zone of consideration will not be entitled to the aforesaid concession, they will have to compete with all others in the zone of consideration (S.Nos.1 to 60). For selection to the said vacancies.

14. The provision in letter dated 7.11.1983 is pari material with NABARD's Circular dated 8.12.1994. Therefore, the above ratio squarely apply to the present case.

15. In the result the writ petition is allowed. The order dated 24th January 1988 (Annexure-11 to the writ petition), whereby respondent-Bank has upheld promotion of respondent No. 3 and non promotion of petitioner, is hereby quashed. Respondent No. 3's promotion to the post of Officer Grade II is declared illegal. Respondents No. 1 and 2 are directed to consider the petitioner for promotion on the post of Officer Grade II from due date in accordance with law. The petitioner shall also be entitled for all consequential benefits except the arrears of salary. Refixation of salary on promoted post shall be made on notional basis and shall be actually paid from the date of assuming charge of promoted post. No orders as to cost.