
(2001) 05 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 783 of 1997

Subash Chander Gupta & Ors.

APPELLANT

Vs

State Bank of Patiala & Ors.

RESPONDENT

Date of Decision : 31-05-2001

Acts Referred:

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

Citation : (2002) 4 SCT 735

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : R.B. Sharma, M.K. Bhardwaj, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—Petitioners are working in clerical/cash cadre of State Bank of Patiala (hereinafter referred as to `the Bank') having its

head office at Patiala in the State of Punjab. They belong to that cadre of staff which is properly known as award staff. Grievance of the petitioners

is that respondent Nos. 3 to 16 who also belonged to the award staff cadre have been selected and promoted to the post of Junior Management

of Grade Scale I in General Category (hereinafter referred to `promoted posts'). They were as par the petitioners so promoted in violation of the

then existing policy of the Bank. This policy as per the petitioners was circulated on 20.8.1994.

2. Eligibility requirement in the circular dated 20.8.94 be noticed. This is in the form of agreement on promotion policy from clerical to promoted

posts between the Associate Banks including the respondent Bank and its employees. Highlights of this policy are:

(i) Number of persons who would be eligible for being considered for promotion would be upto five times the number of vacancies from out of

those who have given consent letters.

(ii) Process indicated at serial No. 1 would be carried on strictly on the seniority and written test.

3. As much depends upon the terms and conditions indicated in circular dated 20.8.94 this is being reproduced below :

Circular No. Per/22 dated 20.8.94

Agreement on promotion policy from clerical to JMGS I between the associate Banks (excluding State Bank of Saurashtra) of State Bank of India

and the State Sector Bank Employees Association under Section 2(P) read with Section 18(1) of the Industrial Disputes Act.

Whereas discussions were held on 6th February 1992 Panaji (Goa) on 13th November 1982 and subsequently on certain occasions at Bombay

and finally on 10th November 1993 at Bombay between the representatives of the Associate Banks and the Association on certain modifications

to the existing promotion policy agreement dated 30th July 1975 read with agreement dated 10th January 1980 which continues to operate till

now. Now this agreement witness are follows :

During a year when vacancies in JMG Scale I are estimated based on a review or otherwise by each of the aforementioned banks the number of

such vacancies shall be duly notified to the majority recognised union of its workmen and steps will be taken to fill them within a period of 6 months

from the date of such notification. Such notified vacancies shall be filled up by promotions in the manner mentioned hereunder. The number of

vacancies to be filled up under each ground being

1. Group A 55 of 100

2. Group B 25 of 100

3. Group C 20 of 100

Group A

Employees who have completed 8 years of service but are not above 55 years of age are eligible. Promotions under this group will take place on

the basis of performance through a written test and interview of the eligible employees and from amongst them vacancies shall be normally filled up.

The ratio between written test and interview marks will be 4:1 (80% for written test and 20% for interview). With a view to fill up the notified

vacancies the number of eligible employees upto five times the number of vacancies from out of those who have given consent letters will be called

in order of their seniority for the written test. Further when the number of employees upto five time the number of notified vacancies from out of

those who have given consent letters have not completed 8 years of required service in order to provide opportunities for the required number of

candidates to be considered for promotion the requirement of eight years service may be marginally reduced from eight years to the extent required

but in any case not below six years of service.

After the written test with a view to fill up the notified vacancies the number of successful candidates called for the interview will be $1\frac{1}{2}$ (one and

a half) times the number of vacancies notified in order of their performance in the written test.

An employee is eligible to appear for the written test five times. All such chances would have to be availed on a consecutive basis.

The batch concept for the promotion purposes is introduced on the following lines :

1) In the case of employees joining on the same date and later becoming eligible in a group all such employees should give (be given ?) a chance to appear for written test.

2) Once an employee is called for written test he or she should continue to be called in subsequent years also till he or she exhausts all the chances

availing to him or her even if the later exercise would lead to calling up of the employees for the written test in excess of 1:5 ratio.

4. Petitioners submit that they were fully eligible and qualified for being considered for promotion to the promoted posts. They had given their

consent. This aspect of the matter is adverted to in para 3 of the petition. It is submitted that they were declared successful. It is further submitted

that after interviews were conducted select list of 50 candidates was published. Respondent No. 3 to 16 are also among the promoted candidates.

Challenge to their promotion is being made on the ground they did not fall in the zone of consideration in terms of the promotion policy. It is

submitted that after written test was conducted selected candidates were called for interview. This number was to be one and half times the

number of vacancies. Petitioners fell within the first two hundred fifty candidates.

Petitioners submit that as number of vacancies was 50 only 250

candidates should have been called for written test. This is the crux of argument put across by the petitioners. In paragraph 7 of the petition this

stand is categoric. It is submitted that respondent Nos. 3 to 16 fell in that zone which is beyond the number of 250 and as such they could not be

considered at all in terms of policy decision to above.

5. Basic submission made by the petitioners who appeared in person is that :

(i) number of vacancies which were ultimately filled was 50.

(ii) in terms of the policy decision only those candidates were to be called for written test who fell within the zone of five times the number of vacancies.

(iii) after the written test number of candidates who were to be called for interview was one and half times the number of vacancies.

(iv) that the respondent Nos. 3 to 16 did not fall in that category which is within the numbers of 250.

6. The stand of the respondents be now noticed :

It is submitted that for the year 1996 150 vacancies in totality were identified in JMGS. This issue was discussed with workmen's recognised

Union as per the promotion policy 150 vacancies were to be filled up in the following fashion :

Group Percentage Vacancies.

Group A 55% of 150 Vacancies 82.5(82).

Group B 25% of 150 Vacancies 37.5(38).

Group C 20% of 150 Vacancies 30.

It is further submitted that under the directions of the Government of India and as notified in the brochure on reservation for Scheduled Castes

and Scheduled Tribes in services, 15% and 7.5% of the total vacancies are required to be respectively reserved for scheduled castes and

scheduled tribe candidates. The Scheduled Caste and Scheduled Tribe vacancies are also required to be carried forward for 3 succeeding years, if

sufficient number of scheduled castes and scheduled tribes candidates are not available for a particular year. Such vacancies can also be

exchanged between the scheduled castes and scheduled tribes categories. Further, the back log of scheduled castes and scheduled tribes

vacancies of the third preceding years, which remain unfilled either lapse in the fourth succeeding year or can be dereserved and made available to

the general category candidates. This can be done with the prior permission of the Government of India. It is submitted that in line with the

Government of India directions, out of the aforesaid 82 vacancies under group A, 15% of such vacancies were required to be reserved for

scheduled castes candidate and 7.5% of such vacancies were to be earmarked for scheduled tribes candidates. It is also stated that as there was a

back log of 13 vacancies under scheduled tribes category for the year 1996 comprising of 1 vacancy of 1993, 6 vacancies of 1994 and 6

vacancies of the year 1995 and the said back log was also required to be cleared, therefore, the break up of 82 vacancies in JMGSi for the year

1996, for the purpose of reservation and clearing the back log, was as under :

Current posts

General SC ST Total

64 12 6 82

The brought forward back log 13.

7. As the back log of 13 vacancies under Scheduled Tribes category was also to be cleared in the year 1996, the total vacancies under general

category stood reduced to 51 from 64 vacancies and as a necessary corollary the vacancies under Scheduled Tribes Category rose to 19 (16+3

vacancies). However, when the consents of the eligible candidates was sought the Bank received consents from only 10 eligible employees under

the Scheduled Tribes Category. It is in these circumstances stated that out of 82 vacancies under JMGSi under group A the respondentBank

increased the general category vacancies by 9 vacancies thereby increasing the 51 general category vacancies to 60 vacancies and the final break

up of 82 vacancies emerged as under :

General Category 60

Scheduled Caste 12

Scheduled Tribe 10

Total vacancies 82

8. It is further submitted that under the promotion policy RI the zone of consideration for the written test for promotion to JMGSi under Group A

comprises of 5 times the total vacancies under each category. Accordingly, for 60 posts of general category 307 eligible candidates (300 as 5

times of 60 vacancies + 7 persons with bracketed seniority) were called by the respondentBank for written test. Memo No. Per/29 dated the 26th

July, 1996 which deals with Annexure P3 to the writ petition is being relied upon. It is further stated that as the petitioners had also given their

consents for promotion under Group A for the year 1996 they were also called to appear in the written test vide the said memo dated the 26th

July, 1996. The petitioner Nos. 1, 2 and 3 respectively stood at Sr. Nos. 176, 183 and 193 in seniority wise position in the zone of consideration.

The petitioners did pass the written test.

9. It is also stated that only 2 Scheduled Caste candidates were successful in the written test. It is admitted that under the mandate of the said

policy for promotions under Group A out of the candidates who are successful in the written test only the candidates in meritwise order equal to

11/2 times of the total number of vacancies under group A were required to be called for interview. It is stated that while taking due care of

reserved vacancies and the number of reservations both fresh and carried forward cannot exceed 50% of the total No. of vacancies for a

particular year. In case of surplus vacancies in reserved categories over the permissible limit of 50% such surplus vacancies are to be carried

forward to subsequent year of recruitment subject to the condition that any vacancy so carried forward does not become time barred due to its

becoming more than 3 years old.

It is also stated that only 2 scheduled tribes candidates having cleared the written test, against the vacancies under Scheduled Tribes category the

Bank sought permission of the Government of India by its letter dated the 9th November 1996, seeking Government's approval for conversion of

the remaining vacancies under Scheduled Tribe categories into the vacancies of other categories for reasons of nonavailability of sufficient number

of Scheduled Tribes candidates clearing the written test. Letter dated the 9th November 1996 Annexure R/II is being relied upon. It is however

stated that the Government of India vide letter of 6th December 1996 permitted the respondentBank only to exchange the Scheduled Tribes

category carried forward vacancies pertaining to the year 1994 comprising of 6

vacancies with Scheduled Castes category vacancies. Copy of

Government of India letter dated the 6th December 1996 has been placed on the record as Annexure R/III.

10. It is thus stated that as Government of India had permitted the Bank to exchange 1994 carried forward Scheduled Tribes vacancies numbering

6, with that of Scheduled Castes category out of the total of 19 Scheduled Tribes vacancies and for reasons of only 2 Scheduled Tribes candidates

having qualified the written test of the Bank. In order to avoid one carried forwarded vacancy for the year 1993 in Scheduled Tribes category from

being lapsed filled up the same in addition to one carried forward for the year 1994 and exchanged the remaining 5 Scheduled Tribes category

vacancies for the year 1994 with Scheduled Castes category. Further, the respondent Bank also proposed to get dereserved the remaining 12

Scheduled Tribes vacancies for merger of the same into general category vacancies. The categorywise vacancy position for filling up 82 identified

vacancies under Group A for the year 1996 thus arose as under :

Category Vacancy Details

General Category 63 Vacancies Comprising of 51 original vacancies out of 82 vacancies and 12 Scheduled Tribes vacancies proposed to be got

dereserved from the Govt. of India.

SC Category 17 Vacancies Comprising of 12 original vacancies out of total 82 vacancies and 5 vacancies exchanged from Scheduled Tribes

category.

ST Category 2 Vacancies Comprising of original 6 vacancies plus 13 carried forward vacancies minus 12 vacancies proposed for dereservation

minus 5 vacancies exchanged with Scheduled Tribes Category.

Total 82 Vacancies.

11. It is thus stated that 63 vacancies were identified and proposed to be available under the general category. As such 98 passed general

category candidates comprising of 95 candidates equal to $11/2$ times the number of general category vacancies, in accordance with the promotion

policy and 3 candidates who obtained the same marks as the 95th candidate in the written test were called. It is thus stated that these general

category candidates more than $11/2$ times the general category posts were not

called.

12. The Bank has further stated that it approached the Government of India vide its letter dated the 10th January 1997 seeking permission to

dereserve 12 Scheduled Tribes vacancies and for their merger with general category vacancies. As this request was made after the interviews

stood completed for promotion to JMGSi for the year 1996 the Government of India vide its letter of 29th January 1997 rejected the proposal of

the respondentBank to dereserve 12 Scheduled Tribes vacancies. It is ultimately stated that the Bank could only fill up 51 general category posts

and declared the promotion result accordingly vide Annexure P/5 to the writ petition.

13. On the basis of the pleadings which have come on the record and even if the facts and figures as given by the bank are taken into

consideration, the legal and factual position on the basis of the policy decision noticed above can be spelled out as under :

i) That the total number of vacancies were to be worked out;

ii) That for written test, the number of persons who were to be called for was to be five times the number of vacancies;

iii) That after the written test, the number of candidates who were to be called for interview was one and a half times the number of vacancies;

14. Another legal position which is by now settled is that it is the number of posts which are available at the time of initiating the selection process,

which is to be taken as a factor for determining the eligibility criteria. Thus, it is the vacancy position as worked out by the respondentBank before

the written test was conducted has to be taken note of. This legal position has been clearly laid down by the Supreme Court in the case of Surinder

Singh and Others v. State of Punjab and Another, 1997(4) SCT 133 (SC) : (1997)8 SCC 488. In the aforementioned case, it has been

categorically laid down that before any advertisement is issued, it would be incumbent upon the authorities to take account of the existing

vacancies and anticipated vacancies. It is not as a matter of course that the authorities can fill more posts as advertised. In expressing this view, the

Supreme Court placed reliance on an earlier decision reported as 1994(3) SCT 325 (SC) : 1994 Supp(2) SCC 592, Gujarat State Dy. Executive

Engineers' Association v. State of Gujarat. In the present case, on the date when

the examination commenced, in the General category, there were 51 vacancies, for Scheduled Caste, there were 17 and for Scheduled Tribe category there were two vacancies. It is the case of the respondentBank that after the written test was over, it was found that sufficient number of Scheduled Caste and Scheduled Tribe candidates are not available, then effort was made to shift the vacancies meant for Scheduled Caste and Scheduled Tribe categories into General category. This was because the respondent authorities thought that if this process is not resorted to, then the vacancies of a year three years earlier to filling up of vacancies, may go waste. It was in these circumstances, the backlog was supposed to be cleared.

15. It is seen that if this was to be done, then this should have been done only with regard to the year 1993. The backlog for 1993 was one, for 1994 it was 6 and for 1995, it was again six. For 1996, the backlog was 13. If this be the position, then, on the reasoning given by the bank, only one extra vacancy would become available. As a matter of fact, respondents have been making reference to the Government of India and the Government of India finally permitted the respondentBank to exchange Scheduled Tribe carried forward vacancies pertaining to the year 1994 with Scheduled Caste category. No other permission was granted. As indicated above, for the year 1993, there was only one vacancy and at the most this could be added. If this reasoning is taken into consideration, even then, the candidates which could be called for written test, by no stretch of imagination would be 307. On mathematical calculation as also on the basis of decision given by the Government of India, this figure does not become available.

16. There is another lacuna also. If figure of 60 is to be taken note of, then only 300 candidates could be called for test. Respondents have called 307 candidates. 7 candidates have been called on the basis of their bracketed seniority. Against last figure of 300, seven candidates were not bracketed. Such is the stand taken by respondent authorities. As a matter of fact, the respondentBank is well aware of this factual and legal position and that is why they called the candidates for written test. They have categorically stated that even though 95 was the number equal to one and a half times, three more candidates were called as they were having 95th

candidature. Thus, respondents were aware of the fact that bracketing can be done only if certain candidates are bracketed with last candidate. If the decision which was applied at the time of calling the candidates for interview is made applicable to the written test also, then seven extra candidates were called; this is not permissible. Even with regard to the figure of 98, the mathematical calculation is erroneous. Against Sr. No. 95, three candidates were bracketed. If this figure is taken into consideration, then only 97 candidates would be called. Calling of an additional candidate i.e. 98th candidates is again not justifiable. In view of the above, it is held that the number of vacancies for which candidates could be called and which could be taken note of is 51. On this rationale, the number of candidates which were to be called for written test was 255. Again, the number of candidates which could be called for interview is to be taken into consideration by taking the figure as 51. If this is taken into consideration, then the number of candidates which could be called for interview would become 77 (i.e. 51+26). Therefore, the bank committed an error in first calling 307 candidates against 51 vacancies and it again committed an error by treating 63 vacancies having come into existence and then calling 98 candidates for interview. Therefore, it is held that all those candidates who were beyond the number of 225 could not be called for written test and again the candidates beyond the number of 77 could not be called for interview. The selection process is definitely vitiated and cannot be sustained.

17. Again on internal page of the counter the Bank has stated : ""that further the back log of Scheduled Castes and Scheduled Tribes vacancies of the third preceding year, which remain unfilled, either lapse in the fourth succeeding year or can be dereserved and made open to the general category candidates with the prior permission of the Government of India. Leave of this Hon'ble Court is prayed to refer to the said Government of India brochure at the time of hearing."" Prior permission would mean permission before the start of selection process. This was also not done. For this reason also the process of dereservation cannot be sustained.

18. The question arised as to what relief is to be ultimately granted. The private respondents have since been appointed. They came to be so appointed more than four years back. Without upsetting their appointment a

direction is given to the respondent Bank to adjust these three

petitioners. This observation would be in line with the decision given by the Supreme Court in case of 1991(1) SCT 116 (SC) : AIR 1991 SC 295

H.C. Puttaswamy and Ors v. The Hon'ble Chief Justice of Karnataka High Court, Bangalore & ors. Let this direction be complied with within a

period of six weeks from the date of copy of this order is made available to the bank by the petitioners. They shall get all consequential benefits. In

case this is not done then the petitioners would become entitled to emoluments and responsibilities of higher post and they would be paid

accordingly.

19. Before parting with this judgment is it would be apt to notice the preliminary objections raised by the Bank. One such objection is that the

petitioners fall with the category of 'award staff' and they should resort to the remedy available under Industrial Disputes Act.

20. The legal position in this regard is well settled. Where an alternative remedy is provided i.e. one under the general law and the other (under) the

Industrial law then it is the option of the concerned person to take recourse to any of these. Reference in this regard be made to the decision of the

Supreme Court in the case of AIR 1975 SC 2238, The Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke and others. Therefore, this

objection is found to be without merit.

21. With regard to the territorial jurisdiction of this court to entertain the present petition, which objection has also been raised by the respondent

Bank. It be seen that the petitioners are serving in the State Bank of Patiala branch at Jammu. They were found qualified to take part in the

selection process. The nonpromotion of the petitioners who are serving in the State of Jammu became effective qua them in this State. The illaffect

of the action on the part of respondent Bank has fallen on the petitioners in the State of Jammu and Kashmir. Therefore, this Court would have

jurisdiction. This preliminary objection is also found to be without merit and is rejected.

22. This petition shall stand allowed in the manner indicated above. Let the needful be done within six weeks. In case this is not done petitioner

shall start getting monetary benefits notwithstanding nonpassing of a specific order.

Disposed of accordingly.