
(2006) 01 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition No's. 332 and 602 of 2003 and 220 of 2004 (S/B)

Surendra Singh Parmar

APPELLANT

Vs

Alaknanda Gramin Bank

RESPONDENT

Date of Decision : 04-01-2006

Acts Referred:

Citation : (2006) 1 AWC 651 : (2006) 3 SLJ 414 : (2006) 1 UD 185 : (2006) 1 UPLBEC 13

Hon'ble Judges : Cyriac Joseph, C.J; Prafulla C. Pant, J

Bench : Division Bench

Advocate : H.M. Raturi, V.K. Bisht and Seema Sirohi, for the Appellant; S.K. Jain and Ashish Joshi, for the Respondent

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—By means of above three writ petitions, the petitioners who are Scale I officers, have challenged the selection process for promotions to Scale II in the Alaknanda Gramin Bank Ltd., Pauri Garhwal, for its various branches in Uttaranchal.

2. We heard learned Counsel for the parties at length.

3. The petitioners were appointed in Group-A posts of Scale I by direct recruitment and were posted in different branches of Alaknanda Gramin Bank. Their promotions are governed by Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998. Petitioner in Writ Petition No. 332 of 2003 has challenged the promotion order dated 30.4.2003 (Annexure-8 to said writ petition) whereby Shri Krishna Chand Singh, Shri Sunil Mishra and Shri Sunil Dutt Bhatt who were junior to him at the time of his appointment in the seniority list. The six petitioners in Writ Petition No. 602 of 2003, have also challenged the selection process of the promotions to Scale-II by respondent-bank and sought the promotions of respondents No. 3 to 14 in said writ petition, be quashed. According to these petitioners, following number of

posts in Scale-II were vacant for promotions in the years 1999 to 2003 :

- (1) 1999 3 posts
- (2) 2000 5 posts
- (3) 2001 NIL
- (4) 2002 4 posts
- (5) 2003 8 posts

Respondents-Shri Krishna Chandra Singh Bisht, Shri Sunil Kumar Mishra and Shri Sunil Dutt Bhatt Were promoted against the vacancies of the year 1999. Respondents--Shri Girish Chandra Pant, Shri Prakash Chandra Bughani, Shri Lalita Prasad Dandriyal, Shri Krishna Mohan Sharma and Shri Guru Dayal Singh, were promoted against the vacancies for the year 2000. Respondents--Shri Chandi Prasad Pandey, Shri Sanjeev Kumar Gupta, Shri Sanjay Kumar Bhatt and Shri Rajneesh Kumar, were promoted against the vacancies for the year 2002. Petitioners of Writ Petition No. 220 of 2004 (S/B), have challenged the selection process for the year 2003, whereby respondents No. 3 to 10 namely- Shri Kunj Bihari, Shri Deepak Kainthola, Shri Anil Dobhal, Shri Sukhveer Singh, Shri Sohan Lal, Shri Shailesh Nautiyal, Shri Satendra Negi and Shri Dinesh Dobariyal, were promoted to Scale-11.

In all the three petitions, the ground of challenge is the same, i.e., the seniority of the petitioners has been ignored in the selection process. Respondent-Bank, i.e., Alaknanda Gramin Bank is included in Second Schedule of the Regional Rural Banks (Appointment and Promotion of Officers and Other Employees), Rules 1998. As such, the said Rules are applicable to the Bank. Third Schedule of aforesaid Rules provides the procedure for promotion. For the purposes of promotion to Scale-II officers in Group-A, it is prescribed in said third schedule that the promotion shall be made on the basis of Seniority Cum Merit. It is further provided that officer holding post for eight years as an Officer on regular basis in the Regional Rural Banks, shall be considered for promotion in Scale-II posts in that Bank, provided that no officer shall be considered for promotion unless he has been confirmed in feeder grade post, provided further that Board may with the prior approval of National Bank relax the qualifying service for a period not exceeding two years if eligible officers are not available. It further provides that selection of the candidates shall be made by the Committee on the basis of interview and assessment of Performance Appraisal Report for preceding five years as an officer in Scale-I Field Supervisor. The number of candidates to be considered for promotion from Officer Scale I to Officer Scale II, shall be restricted to four times the number of vacancies available for promotion. The selection shall be on the basis of performance in the written test, interview and Performance Appraisal Report for preceding five years as per the division of marks given below :

- (1) Written Test - 60 marks

(2) Interview - 20 marks

(3) Performance Appraisal Report - 20 marks

Total 100 marks

Schedule 3 of the aforesaid Rules, further provides that the candidates shall be required to appear for written test, comprising of two parts viz. part (A) covering Banking Law and Practice of Banking and part (B) covering Credit--Credit Management including Priority Sector Economics and Management and each part will be of 30 marks. List of only those candidates who secure a minimum of 40 marks in each part, shall be prepared and such candidates "shall be called for interview.

4. Petitioners, challenging the impugned selection process, have relied on Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others, , in which the Apex Court has held that guidelines issued by National Bank for Agricultural and Rural Development (NABARD) for promotions, were applicable to the promotion in the Regional Rural Banks. However, said case law does not help the petitioners in the present case, for the reason that in the case of Cauvery Gramina Bank, the promotions were held prior to enforcement of the Regional Rural Banks (Appointments and Promotion of Officers and other Employees), Rules 1998. In our opinion, after the 1998 Rules came into force, the guidelines inconsistent to the rules issued earlier by NABARD, lost it's significance.

5. Next case on which the petitioners heavily relied is B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., . Though this case also pertains to the promotion prior to the period of enforcement of 1998 Rules but expression "Seniority Cum Merit" has been explained in said case, whereby it has been made clear that once the bench mark is cleared by a candidate for promotion, the senior, even if secured lesser marks in merit, would be promoted first. The relevant para of aforesaid judgment is being quoted below :

We thus arrive at the conclusion that the criterion of "seniority-cum-merit" in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.

6. In other words, to apply the principle of "Seniority-Cum-Merit", promotions are required to be made not strictly according to the final merit list but according

to seniority from amongst the qualified candidates, who have cleared the bench marks of written test and that of interview. Clause (d) of item No. 2, mentioned in the third schedule of Regional Rural Banks (Appointment and Promotion of Officers and other Employees), Rules 1998, clearly provides that the promotion shall be made on the basis of seniority-cum-merit. That being so, the entire procedure prescribed thereafter, in said schedule, is to be interpreted on the basis of principle of seniority cum merit.

7. In the counter-affidavit, the respondent-bank, defending the impugned promotion have denied having committed any illegality or arbitrariness in the selection process for promotion. It has been specifically stated that the Regional Rural Bank (Appointment and Promotion of Officers and Other Employees) Rules 1998, have been followed in the impugned promotions. It is further stated in the counter-affidavit that the guidelines issued by the Government of India were also followed in making the selection for promotions. As to the "seniority" in the counter-affidavit, it has been stated that adequate weightage to the seniority has been given in accordance with the notification dated 29.7.1998 containing the instructions of Government of India.

8. It is pertinent to mention here that 29.7.1998 is the date of notification whereby the aforesaid Rules of 1998, framed under Central Government Provincial Rules Act, 1976 (20 of 1976), were made applicable to the banks concerned. There is no dispute as to the seniority of the petitioners in the Scale-I. The private respondents, as alleged in the writ petition were junior in Scale-I to the petitioners of the writ petitions in which they were impleaded. It is also not disputed that the petitioners had cleared the bench mark required in the written test. The entire controversy revolves round the point of interpretation of "Seniority-Cum-Merit" mentioned in the Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1998. The principle of law contained in B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., , read with Regional Rural Banks (Appointment and Promotion of Officers and Other Employees), Rules 1998, makes it clear that expression "Seniority-Cum-Merit" once the bench mark is cleared, the senior even though less meritorious shall have priority and a comparative assessment of merit is not required to be made in preparation of the select list for promotion to Scale-II. In the counter-affidavit, the respondent-bank itself has stated that they have followed the aforesaid case law. If that is the case, once the bench mark is cleared by a senior officer, he cannot be deprived of promotion against his juniors, merely for the reason that in the selection process on merit, the junior has secured more marks. As discussed above, in the third Schedule of Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1998 it is expressly made clear that promotion shall be made on "Seniority-Cum-Merit". That being so, as discussed above in para-4 if the bench mark is cleared by a candidate, the procedure prescribed under rest of the paras in the third Schedule are to be interpreted keeping in mind the expression "Seniority-Cum-Merit". It is not denied by the respondent/bank that the private respondents to the writ

petitions who were junior to the petitioners of the respective writ petitions above, have been placed over the petitioners in the selection list for promotion for being appointed in Scale-II. This is contrary to the spirit of the procedure prescribed under third Schedule of aforesaid rules of 1998. If the contention of the respondent/bank and other respondents is accepted, in that case, seniority would lose its importance altogether and the selection and the impugned promotions would amount to have been made only on the basis of merit and not on the basis of "Seniority-Cum-Merit".

9. In our considered opinion, in view of above position of law as discussed in B. V. Siuatah (supra) read with the aforesaid rules of 1998, the respondents have acted illegally in placing the juniors higher in merit for promotions after the seniors cleared the bench mark for selection. Therefore, we are of the view that without disturbing the result of the written test held, the preparation of impugned select list for promotion to Scale-II being violative of law, is liable to be quashed.

10. Accordingly, all the writ petitions are allowed to the above extent. The respondent/bank is directed to prepare the list afresh for promotion to Scale-II within a period of three months, placing the seniors who have qualified the minimum bench mark over their Juniors.