

(1990) 12 SHI CK 0033
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 331 of 1987

Surinder Kumar and Others

APPELLANT

Vs

Himachal Gramin Bank and Others

RESPONDENT

Date of Decision : 10-12-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Himachal Gramin Bank Staff Service Regulations, 1980 — Regulation 14
Regional Rural Banks Act, 1976 — Section 17, 3

Citation : (1990) 2 ILR HP 1505

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; M.L. Sharma and Dharam Chand, for Respondents No. 2 and 4 to 16, for the Respondent

Final Decision : Allowed

Judgement

Kamlesh Sharma, J.—The Petitioners who are Clerks in Himachal Gramin Bank have approached this Court under Articles 226/227 of the Constitution of India with a prayer that promotion of Respondent's No. 2 to 16 to the post of Field Supervisor may be set aside and Himachal Gramin Bank may be directed to make fresh promotions in accordance with law. Respondents No. 2 to 16 were promoted on 26.6.1987 in pursuance to the selection made by the Departmental Promotion Committee on 6-2-1987.

2. The Petitioners as well as Respondents No. 2 to 16 were appointed as Clerks by direct recruitment from July, 1979 to November, 1980. Admittedly, in the cadre of Clerks, Petitioners No. 1 and 2 are senior to Respondents No. 2 to 10 and Respondents No. 15 and 16, and Petitioners No. 3 to 7 are senior to Respondents No. 2 to 10. Respondents No. 11 to 14 are senior to the Petitioners. This has been stated on the basis of Annexure R-A filed by the Himachal Gramin Bank with its reply affidavit. Annexure R-A is a list of Clerks who completed six years of service on or before 31-12-1986 wherein the Petitioners as well as the

Respondents have been placed according to their date of appointment.

3. The Himachal Gramin Bank was established u/s 3 of the Regional Rural Banks Act, 1976. Section 17 of this Act pertains to staff of Regional Rural Banks and reads as under:-

17. Staff of Regional Rural Banks:(1) A Regional Rural Bank may appoint such number of Officers and other employees as it may consider necessary or desirable for the efficient performance of its functions and may determine the terms and conditions of their appointment and service:

Provided that it shall be lawful for a Sponsor Bank, if requested so to do by a Regional Rural Bank sponsored by it, to send, during the first five years of the functioning of a Regional Rural Bank, such number of officers or other employees on deputation to the Regional Rural Bank as may be necessary or desirable for the efficient performance of its functions:

Provided further that the remuneration of officers and other employees appointed by a Regional Rural Bank shall be such as may be determined by the Central Government and, in determining such remuneration, the Central Government shall have due regard to the salary structure of the employees of the State Government and the local authorities of comparable level and status in the notified area.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or any other law for the time being in force, no award, judgment, decree, decision or order of any industrial tribunal, Court or other authority, made before the commencement of this Act, shall apply to the terms and conditions in relation to the persons appointed by a Regional Rural Bank.

(3) The officers and other employees of a Regional Rural Bank shall exercise such powers and perform such duties as may be entrusted or delegated to them by the Board.

4. For providing terms and conditions of appointment and service of its employees, the Himachal Gramin Bank has framed Himachal Gramin Bank Staff Service Regulations, 1980. In these Regulations, the only provision in respect of promotions is Regulation 14 which is as under:

14. All appointments and promotions shall be made at the discretion of the Bank and no officer or employee shall have a right to be appointed or promoted to any particular post or grade.

5. Both the parties have placed on record communications from the National Bank for Agriculture and Rural Development (hereinafter referred to as "NABARD") to the Chairman of Regional Rural Banks prescribing guidelines for recruitment and promotion of the staff of Regional Rural Banks. The first letter is dated 31-12-1984

which has been filed as Annexure P-4 to the Writ Petition and Annexure R-C to

the reply affidavit of Himachal Gramin Bank. Para 3 of annexure to this letter pertain to Field Supervisors and reads as follows:

3. Field Supervisors:

Recruitment of 50% posts of Field Supervisors will be by direct recruitment in the open market and 50% posts will be filled by promotion from amongst the Senior Clerks-cum-Cashiers on the basis of seniority-cum-merit. Other terms and conditions will be as follows:

(a) Source of recruitment:

(i) 50% by direct recruitment from the open market.

(ii) 50% by promotion from amongst Senior Clerk-cum-Cashiers.

(b) Qualification/Eligibility:

(i) For Direct Recruitment:

Graduate of a recognized University. Preference to Agri/Commerce/Economics Graduates.

(ii) For promotion:

(a) Minimum Four years service as Senior Clerk-cum-Cashier.

(b) Six year service as Junior Clerk-cum-Cashier in RR Bs which do not have posts of Senior Clerk-cum-Cashiers. For the first six years after the year of establishment of RR Bs, posts of Field Supervisors will be filled only by direct recruitment and the promotion quota of these posts will be notionally carried forward and made good by promotions in the 7th and 8th years. From the 9th year onwards, the stipulated quota of 50% by promotion will be adhered to.

(c) Age:

FOR DIRECT RECRUITMENT:

As may be prescribed by the concerned State Government for its own employees of comparable status.

(d) Recruitment/Promotion Procedure and Agency:

As may be laid down by Government of India from time to time.

(e) Reservation of posts:

As may be laid down by Government of India from time to time.

6. In letter dated 7-4-1986, Annexure P-5 to the Writ Petition, the NABARD has given clarifications pertaining to promotions in Regional Rural Banks in reference to its letter dated 31-12-1984. In Para (1) of Annexure to this letter, procedure and agency for promotion has been provided which is as under:

ANNEXURE

Issues pertaining to Promotions in R.R. Bs Clarifications, (1) (2) Procedure- and Agency for promotion. For effecting promotion, the Board may constitute one or more staff selection committees depending on the scale of the posts for which the candidates are to be interviewed, for the purpose of selecting the employees of the bank for promotion to higher posts. The committee should have at least three official directors of the board excluding chairman, of which one should be from the National Bank or Reserve Bank and one each from Sponsor Banks and State Govts. Respectively. Also one member from SC/ST community should be represented in such committees as indicated in our letter dated 9-12-1985. The selection of the eligible candidates should be based on the performance of respective candidates in the bank. The recommendation of the Committee should thereafter have the approval of the Board before effecting promotions.

7. In letter dated 1-12-1987, Annexure P-10 filed along with rejoinder to the reply of Respondents No. 2 and 4 to 16, again the NABARD has given certain clarifications to Regional Rural Banks in respect of procedure to be followed in case of promotions from Clerks to Field Supervisors besides other posts. In this letter, it is specifically stated that the rule of seniority-cum-merit "envisages promotion by seniority with due considerations to minimum merit/fitness prescribed. Fitness implies that there is nothing against an officer; no disciplinary action is pending against him and none is contemplated. The officer has neither been reprimanded or any adverse remarks have been conveyed to him in the reasonable recent past." In reference to this letter dated 1-12-1987, one more letter dated 10-2-1989 is on record as Annexure P-I 1 to the rejoinder to the reply of Respondent's No. 2 and 4 to 16, wherein the NABARD has given further interpretation to the criterion of seniority-cum-merit for promotion. It has been stated that the guidelines contained in the letter dated 1-12-1987 "cannot be interpreted to mean that promotions would be automatic without any screening whatsoever. The management of RR Bs are not precluded from making objective assessment of the officers/employees" potential for considering their suitability for promotion."

8. Relying upon the guidelines contained in Annexures P-4, P-5. P-10 and P-I 1 to the Writ Petition and Rejoinder, Sh. K.D. Sood, learned Counsel for the Petitioners, has urged that the selection as well as promotion of Respondents No. 2 to 16 is bad for two reasons. Firstly, that instead of "seniority-cum-merit" criterion of selection was applied by the Departmental Committee and, secondly, that the constitution of the Departmental Promotion Committee was defective by participation of one unauthorized person. It is not in dispute that the Petitioners as well as Respondents No. 2 to 16 had put in six years service as junior clerks-cum-cashiers and they were eligible for promotion to the post of Field Supervisor under Clause 3(b) (ii) of Annexure to letter dated 31-12-1984. It is also not in dispute that, in fact, all the Petitioners and Respondents were considered by the Departmental Promotion Committee on 6-2-1987.

9. The Petitioners in Para 10 and 11 of the Writ Petition have stated that instead of "seniority-cum-merit" the criterion of selection was applied and selection of Respondents No. 2 to 16 was made on the basis of marks awarded to them in interview, group discussion and assessment of A.C. Rs. It has further been averred that as per the criterion of "seniority-cum-merit" seniority was to play a pre-dominant role subject to rejection of unfit and the senior persons were to be promoted if there was nothing adverse against them. It has also been specifically pleaded that there was nothing adverse against the Petitioners to reject them as unfit. Since the criterion of selection was applied, Respondents No. 2 to 16 superseded the Petitioners on merit.

10. The Himachal Gramin Bank in its reply dated 14-8-1987 which is supported by the affidavit of Sh. Y.P. Gupta, its Chairman, has not denied the existence of above referred guidelines. Its case is that despite the criterion of "seniority-cum-merit" the process of selection as resolved by its Board of Directors on 13-11-1986 could be adopted for making promotions to the post of Field Supervisor. In Para 8 of the reply-affidavit it is specifically stated that "simply because the Petitioners were eligible for the post of field supervisors, they were not lawfully entitled to be promoted without appearing before the interview board and without attaining merit." In the same tenor, it has been averred in Para 10 of the reply affidavit that "Seniority is not only the criteria for selection of the post of field supervisors. Merit has to be adjudged by the members of the interview board and the principle of seniority-cum-merit has not been correctly and legally appreciated by the Petitioners. The performance of the candidates by the interview board had to be judged. Moreover, promotion is based on the principle of seniority-cum-merit. An officer cannot claim promotion as a matter of right by virtue of seniority alone. If he is found to be unfit to discharge the duties of a higher post, he may be passed over and an officer junior to him may be promoted."

11. In Para 11 of its reply, the Himachal Gramin Bank has referred to the resolution dated 13-11-1986 whereby the Board of Directors had prescribed 100 marks to be awarded by the interview board. Copy of decision dated 13-11-1986 has also been placed on the record as Annexure R-D to the reply affidavit. The decision dated 13-11-1986 is as under:-

ITEM No. XIII INTERNAL PROMOTION FROM CLERKS TO FIELD SUPERVISORS

The Board approved 15 vacancies of Field Supervisors to be promoted from Clerks internally from the Clerks eligible for promotion. The Interview Committee, as per the NABARD guidelines was approved as follows:

Chairman

One Director representing NABARD/RBI/GOI.

One Director representing Sponsor Bank.

One Director-representing State Govt.

SC/ST academician.

The selection process as follow was approved:

100 marks for selection will be as under:

Group discussion 20 marks Interview 40 marks Work and conduct of last three years. 40 marks The cut of points will be 40 marks.

12. Sh. M.L. Sharma, learned Counsel for the Bank, and Sh. Dharam Chand, learned Counsel for Respondents No. 2 & 4 to 16 have tried to dispute that when the criterion of "seniority-cum-merit" is applied for promotion, the seniority plays a pre-dominant role subject to the rejection of unfit. According to them, for assessing the merit of eligible candidates, the selection process consisting of interview, group discussion and assessment of A.C. Rs could be followed. They have further urged that by resolution dated 13-11-1986, the selection process was prescribed to supplement the criterion of "seniority-cum-merit" which was laid down by the NABARD for all the Gramin Banks.

13. In my opinion, the contentions of Mr. Sharma and Mr. Dharam Chand, learned Counsel for the Respondents, must be rejected. The principle of "seniority-cum-merit" is so well known, well understood and widely applied that there is no scope of its misinterpretation. "Seniority-cum-merit" implies that seniority is the primary consideration with fitness as the supporting concomitant. Fitness is in respect of discharge of duties of the higher post to which the promotion is to be made. That fitness is generally seen by the work, conduct and past record of the employees unless some other criterion is prescribed under the Rules. Therefore, where for promotion the criterion of "seniority-cum-merit" is followed, promotion is not automatic and the employee cannot claim it as a matter of right. The Departmental Promotion Committee is to assess whether the employee is fit to discharge the duties of the higher post. On the other hand, when the criterion of "merit-cum-seniority" is followed for promotion, merit is the dominant factor and seniority loses its significance except for determining the zone of consideration.

14. In *The State of Mysore and Another Vs. Syed Mahmood and Others*, while deciding the case of promotion of junior statistical assistants to the post of senior statistical assistants, the Supreme Court observed:

..... Rule 4(3)(b) of the Mysore State Civil Services General Recruitment Rules, 1957 requires such promotions to be made by selection on the basis of seniority-cum-merit, that is, seniority subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotionWhile making selections for promotion to the posts of senior statistical assistants from the cadre of junior statistical assistants in 1959, the State Government was under a duty to consider whether having regard to their seniority and fitness they should be promoted....

..... The argument overlooks the fact that promotion to the post of senior

statistical assistant was based on seniority-cum-merit. In spite of their seniority, officers junior to them could be promoted if they were unfit to discharge the duties of the post. Promotion could not be claimed as a matter of right by virtue of seniority alone.

15. The principle of "seniority-cum-merit" came for consideration before a Full Bench of this Court in *Shri Hari Dutt Kainthla and Anr. v. The State of Himachal Pradesh and Ors.* (1973) ILR HP 999. Mr. Justice R.S. Pathak, the then Chief Justice, speaking for the Full Bench observed as under:

..... It has been said that a milder form of the principle

of seniority is that seniority should determine the order in which an officer of a particular grade should be considered for promotion, but those considered unfit may be passed over, and officers below them may be considered. This means the seniority-cum-fitness principle, and what it implies is that the senior person unless unfit should get the promotion....

Further,".....The principle of seniority-cum-merit" formula stated with different variations, Merit-cum-seniority is one. And we are not unfamiliar with "merit with due regard to seniority"....

16. In the case of *Hari Dutt Kainthla*, the promotion to the post of District Judge as well as grant of selection grade to Senior Sub Judges was under challenge. While examining the Full Bench judgment, the Supreme Court in *Hari Datt Kainthla and Another Vs. State of Himachal Pradesh and Others*, found that the criterion adopted by the High Court for the promotion as well as for the grant of selection grade was seniority- cum/merit. The observations made by the Supreme Court in this regard are relevant to conclude that when the principle of seniority- cum-merit is followed, the promotion is made on the basis of seniority subject to fitness. These observations are:

..... The silence of the High Court on the most important question as to what criterion it adopted while formulating its recommendation coupled with the fact that those at the top of gradation list according to their seniority were recommended is eloquent enough to conclude that principle of seniority-cum-merit was adopted by the High Court. What the High Court appears to have done is as and when the vacancy occurred the senior most in the case of subordinate judges was considered and if found fit was recommended.....

17. In another case *D.K. Bhatnagar and Anr. v. The State of Himachal Pradesh* 1979 (2) S.L.R. 693 a Division Bench of this Court happened to deal with Rule 9(a) of the Himachal Pradesh Territorial Council Secretariat Recruitment Rules, wherein the criterion for promotion was seniority and service record of the concerned servants and it was held that:

..... The recruitment and promotion committee was to take into account the seniority and the service record of the concerned servants. Neither this rule nor any of the other rules provided for promotion to the posts of Assistants on the

basis of merit-cum-seniority. Unless the rule shows that a particular promotion should be based principally on the principle of selection, the formula of merit-cum-seniority should not be applied, and the normal principle of seniority-cum-merits should be followed.....

18. From these observations, it is clear that principle of selection is followed for promotion if the criterion is merit-cum-seniority and for "seniority-cum-merit" only fitness of the employee for promotion to the higher post is seen.

19. M.L. Sharma, learned Counsel for Respondent No. 1-Bank, has relied upon the following observations made in State of Mysore Vs. C.R. Sheshadri and Others, to urge that for making promotions on the basis of the principle of "seniority-cum-merit" comparative merit is to be assessed:

..... However, if the criterion for promotion is one of seniority-cum-merit, comparative merit may have to be assessed if length of service is equal or an outstanding junior is available for promotion.....

20. In my opinion, Mr. Sharma is not correct as these observations are to be read in the context in which these were made. The issue before the Supreme Court was whether the High Court could issue direction to give notional promotion to the Petitioner from the date his junior was promoted. Answering the issue in the negative, the Supreme Court held that when the criterion for promotion was seniority-cum-merit, the promotion of the Petitioner was not automatic. In this context, the Supreme Court visualized a situation when comparative merit was required to be assessed even in the case of the principle of "seniority-cum-merit" when length of service is equal or a junior is found of some outstanding merit. By these exceptions, the rule is proved. If comparative merit is to be assessed when the criterion of "seniority-cum-merit" is applied for promotion, the difference between non-selection and selection post will be obliterated.

21. It seems, like the H.P. Gram Bank the principle of "seniority-cum-merit" was being miss-interpreted and miss-applied by the Regional Rural Banks of other States and the NABARD had to issue clarifications from time to time. In Annexure P-10, it was clarified that under the rules of "seniority-cum-merit" if any employee satisfies the minimum qualifications and eligibility criterion and there is nothing against him, his due promotion should not be denied to him. In other words, the suitability of an employee for promotion to the higher post is to be judged by his work, conduct and past record. In Annexure P-II, the NABARD has recommended that the Regional Rural Banks should evolve a system of objective assessment of the performance of its employees including their potential to shoulder higher responsibility to ensure that only efficient employees are eligible for promotion. It clearly shows that fitness of an employee for promotion is to be assessed only on his past performance and not on the basis of comparison of merit drawn by holding written test, interview, group discussion etc. etc.

23. After admitting that the instructions/guidelines contained in Annexures P-4,

P-10 and P-II were/are applicable to its employees for promotion to the post of Field Supervisor, the H.P. Gramin Bank was not justified to pass resolution dated 13-11-1986 Annexure R-D, to prescribe such a method of assessment of merit as to change the nature of the post of Field Supervisor from non-selection to selection post. Assessment of merit on the basis of marks obtained in interview/group discussion and A.C. Rs is nothing but selection and it is done in the case of selection post where "merit-cum-seniority" is the criterion, and not where the post is non-selection and "seniority-cum-merit" is the criterion.

24. In view of the above discussion, I have no hesitation to hold that the promotion of Respondents No. 2 to 16 made by following the criterion of selection, that is, "merit-cum-seniority" is bad being violative of the instructions/guidelines contained in Annexure P-4. The resolution dated 13-11-1986, Annexure R-D, whereby the method of selection was prescribed does not supplement the instructions/guidelines, Annexure P-4, but supplants them. Therefore, it is held that promotion to the post of Field Supervisor is to be given by the instructions/guidelines, Annexure P-4 only and not by the resolution dated 13-11-1986.

25. An identical controversy was before a Division Bench of Kerala High Court in North Malabar Gramin Bank Officers Association v. North Malabar Gramin Bank (W.A. No. 604 of 1988). The writ Application No. 604 of 1988 was decided along with Writ Applications No. 679 and 793 of 1988 on 7-3-1990. Mr. K.D. Sood, learned Counsel for the Petitioners has placed a copy of the judgment on the record of this petition. In these Writ Applications, promotion of Area Manager/Senior Manager was challenged on the ground that instead of the criterion of "seniority-cum-merit", mode of selection was adopted by the North Malabar Gramin Bank which resulted in super session of senior officers. After examining the instructions/guidelines of the NABARD which are applicable to the Regional Rural Banks of all the States and also the clarifications dated 1-12-1987 and 10-2-1988, copies of which are Annexures P-10 and P-II to the present petition, the Division Bench of the Kerala High Court held as under:-

...It should also be remembered that while the criterion for posts of Area Managers Senior Managers is on the basis of seniority-cum-merit, Ext. P1 itself lays down the criterion of merit only for appointment to the post of General Managers. The guidelines never contemplated assessment of comparative merit. This is clear from the fact that in the subsequent clarification given by the NABARD it clearly pointed out that it is a promotion post "on non-selection rule of seniority-cum-merit and it also further says that the rule envisages promotion by seniority with due consideration to minimum merit/fitness. It also lays down that there should be no super session unless warranted by adverse remarks, disciplinary action etc.

It clearly mentions that the promotions made should be reviewed on the basis of these clarifications, and see that there are no super sessions unless warranted in the light of the above guidelines. We find that though the guidelines indicated

seniority-cum-merit basis, under the guise of implementing the guidelines the Gramin Bank resorts to applying the principle of merit-cum-seniority and the process of assessing comparative merit. What the Gramin Bank has done is not contemplated by the guidelines.....It only mentions that promotions are not to be given automatically, without any screening whatsoever and the management is entitled to make objective assessment to consider their suitability. This clearly indicates that the screening is meant to weed out people who are not suitable for the post. It is not meant to give a chance for junior people with more merit to supersede the seniors.

26. Before concluding, the present case I must place on record that despite specific direction dated 11-10-1990 to the H.P. Gramin Bank, the proceedings of the Departmental Promotion Committee were not placed before this Court. The learned Counsel for the Bank, M.L. Sharma, took time twice on 19-10-1990 and 26-10-1990 to comply with the directions of the Court but failed. Ultimately, on 1-11-1990, he showed his inability to show to this Court the proceedings of the Departmental Promotion Committee, as the General Manager of the H.P. Gramin Bank did not hand over the same to him despite assurances. In these circumstances, I am constrained to conclude that the Respondent-Bank has failed to show to this Court that it has followed a fair and just method of selection for promotion to the post of Field Supervisor. Such a non-cooperating attitude of a public body which is expected to be a model employer, militates against the fair adjudication of the issues raised before the Court. It is advisable for a litigant party, and more so, if the litigant party is the Government of a Public Body, to avoid any secrecy and put its record beyond the slightest pale of controversy to enable the Court to decide the points in issue. .

27. In the result, the Petitioners succeed on the first point that the promotion of Respondents No. 2 to 16 to the posts of Field Supervisors is bad for the reason that the H.P. Gramin Bank arbitrarily followed the criterion of selection/"merit-cum-seniority" instead of "seniority cum-merit" applicable to the post. As the Petitioners succeed on the first point, I need not decide the second point raised by them that the promotions were bad because the constitution of the Departmental Promotion Committee was defective due to the participation of one unauthorized person. Therefore, the promotion of Respondents No. 2 to 16 to the posts of Field Supervisor made on 26-6-1987 in pursuance to the selection made by the Departmental Promotion Committee on 6-2-1987 is set aside. The Himachal Pradesh Gramin Bank is directed to make fresh promotions to the posts of Field Supervisor in accordance with law. The writ petition is allowed with costs which are assessed at Rs. 1,000/-.