
(1989) 02 P&H CK 0103
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8579 of 1987

Surinder Singh Bangar

APPELLANT

Vs

The Union of India and another

RESPONDENT

Date of Decision : 27-02-1989

Acts Referred:

Citation : (1989) 02 P&H CK 0103

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : Jagdish Khehar, for the Appellant; H.S. Brar, for the Respondent No. 1 and Mr. L.M. Suri, for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Amarjeet Chandhary, J.—This judgment will dispose of C.W.P. No. 8579 of 1987 and C.W.P. 5716 of 1988 as identical questions of fact and law are involved therein.

2. For the purposes of rendering judgment, facts are taken from C.W.P. No. 8579 of 1987.

3. The Petitioner is a manager in the Bank of India in the Middle Management Grade Scale II to which he was promoted in the year 1981. The Bank has its own service regulations which envisage the procedure for promotion. Instructions issued by the Government from time to time in the matter of reservation of vacancies for the Scheduled Castes/Tribes members are followed. There were 75 vacancies to be filled up by promotion from about 742 candidates who were interviewed and considered. The Petitioner along with Scheduled Castes/Tribes candidates who were interviewed are considered. The Petitioner, however, could not get berth in the selection. The Petitioner, through this writ petition challenges the selection criteria and seeks promotion to the higher post on the plea that the Respondent-bank has not followed the Government instructions pertaining to the reservation of seats as per policy indicated in the Brochure on Reservation for

Scheduled Castes and Scheduled Tribes in Services.

4. Learned Counsel for the Petitioner has invited the attention of this Court to the relevant extract of Chapter 12 2 (a) of the Brochure. The second ground of attack is that the Government of India, Department of Personnel and Administrative Reforms, Ministry of Home Affairs, have issued instructions stipulating that at least one member of every Selection Committee/Interview Committee has to be a member belonging to the Scheduled Castes/Tribes. The non-inclusion of the Scheduled Castes/ Tribes member has vitiated the selection. In order to substantiate this argument the counsel for the Petitioner has relied upon a decision of the Supreme Court rendered in Civil Appeal No. 2443 of 1984 (All India Overseas Bank SC/ST Employees Welfare Association v. Union of India and others Civil Appeal No. 2443 of 1984 (S.C.), on April 30, 1985.

5. The Respondents have hotly controverted the stand of the Petitioner and have filled a detailed written statement.

6. Mr L.M. Suri learned Counsel for the Respondent-Bank, has contended that safeguards of the Scheduled Castes candidates have not been vitiated in any manner. All the Scheduled Castes candidates including the Petitioner were duly considered. The Petitioner secured only 54% marks and he was lower in merit as well as in seniority which did not provide any right to the Petitioner to supersede the meritorious and senior candidates what were over and above the Petitioner. It was specifically argued that the last candidate, who qualified, had secured 68.3% marks and nobody below that percentage of marks was promoted. The Petitioner was rated much below the above said cut-off percentage. It was brought to the notice of the Court that the entire record of the Petitioner was put up before the selection Committee. The marks allotted for the various qualifications of the Petitioner were included in the merit list but still he did not get enough marks to reach the cut off percentage of 68.3.

7. It was the stand of the Bank that the Petitioner did not fall into zone of consideration as he had not completed 8 years of service in the Middle Management Grade Scale II. It is only in the seniority channel promotion that the rule of unfit is to be followed. The Petitioner was not eligible for promotion under this channel. The Respondent Bank has produced official record pertaining to the Selection and a copy of the judgment rendered in C.W.P. No. 171 of 1988 (S.K. Kamble v. Union of India and others) C. W.P. No. 171 of 1938 (Bombay High Court), on February 19, 1988, by the Bombay High Court, to show that one S.K. Kamble who had also challenged the selection on identical grounds, and that his writ petition was dismissed. The Respondents* counsel contends that in view of the above decision of the Supreme Court, the present writ petition is liable to be dismissed.

8. I have considered the arguments of the learned Counsel for the parties and gone through the records.

9. Rule 12.2(a) of Brochure as on Reservation for Scheduled Castes and

Schedule Tribes in services reads as under:-

12.2(a) Promotions by selection within Group A (Class-I):-

In promotions by selection to post, within Group A (Class I) which carry an ultimate salary of Rs. 2,000/- per month or less, (Rs. 2,250/- per month or less in the revised scale) there is no reservation but the Scheduled Castes/Scheduled Tribes 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. Their position in the select list would, however, be the same as assigned to them by the Departmental Promotion Committee on the basis of their record of service. They would not be given, for this purpose, one grading higher than the grading otherwise assignable to them on the basis of their record of service.

In order to improve the chances of Scheduled Castes and Scheduled Tribes Officers for selection to the higher categories of posts in Group A (Class I)

(i) Scheduled Castes/Scheduled Tribes officers in Group A (Class I) Services/ posts should be provided with more opportunities for institutional training and for attending seminars/symposia/ conferences Advantage could also be taken of the training facilities available at the Lal Bahadur Shastri National Academy of Administration, Mussorie, National Police Academy, Hyderabad/ Indian Institute of Public Administration, New Delhi, the Administrative Staff College, Hyderabad etc. and

(ii) It would be the special responsibility of immediate superior officers of the Scheduled Castes/Scheduled Tribes officers in Class I to give advice and guidance to the latter to improve the quality of their work.

10. The above said provision came up before the Supreme Court of India for interpretation in Bihar State Harijan Kalyan Parishad Vs. Union of India and Others, . Their lordships held as under:-

A close perusal of the directive and in particular paragraph 9 which deals with "concessions to employees of Scheduled Castes and Scheduled Tribes in promotions by selection method makes it abundantly clear that the rule of reservation is also applicable to promotion by selection posts within Group "A" which carry an ultimate salary of Rs. 2,250/- per month or less, but that procedure is slightly different than in the case of other posts. While the rule of reservation applies to promotions by selection to posts within Group "A" carrying salary of Rs. 2,250/- per month or less, it is prescribed that only those officers belonging to the Scheduled Castes and Scheduled Tribes will be considered for promotion, who are senior enough to be within the zone of consideration. Thereafter a select list depending upon the number of vacancies would be drawn up in which would also be included those officers belonging to the Scheduled Castes and Scheduled Tribes who are not considered unfit for promotion. Their

position in the select list would be that assigned to them by the Departmental Promotion Committee on the basis of the record of the service. In other words, their inclusion in the Select List would not give seniority, merely by virtue of their belonging to the scheduled castes and scheduled tribes over other officers placed above them in the Select list by the Departmental Promotion Committee.

11. From the perusal of above said interpretation of the Supreme Court, it seems that certain procedure is to be followed, a procedure different from the usual procedure adopted in filling up posts reserved for Scheduled Castes/Scheduled Tribes. The position of the Scheduled Castes/Scheduled Tribes candidates in the Select List would be that assigned to them by the Departmental Promotion Committee on the basis of the record of the service. The mere inclusion of their names in the Select List would not give them seniority merely by virtue of their belonging to the Scheduled Castes/Scheduled Tribes over other officers placed above them in the Select List by the Departmental Promotion Committee.

12. For 75 posts to be filled up by promotion about 742 candidates were considered and interviewed. All the officers belonging to the Scheduled Castes/Scheduled Tribes category including the Petitioner were also called for interview and considered. In the said interview, he had secured only 54 per cent marks. The Petitioner, thus, stood no chance, whatsoever, of being promoted over and above the other Scheduled Castes candidates. In the seniority list the Petitioner was at No. 699 and was brought to 460 after interview. It was only due to this that the Petitioner did not get promotion. The mere fact that the Petitioner was within the zone of consideration for promotion would not give him any right to supersede the candidates who were placed higher in Seniority.

13. The next submission of the Petitioner was that the Respondent-Bank has violated the Government instructions by not including a member of the Scheduled Caste/Scheduled Tribe in the Selection Committee. Under Rule 13 of the Promotion policy of the Bank, an interview committee is constituted for carrying on the promotion process. As per the Government guidelines a member belonging to Scheduled Caste/Scheduled Tribe is required to be associated with interview committee but it is also provided that the Scheduled Caste/Scheduled Tribe Officer to be a part of the interview committee has to be in one scale higher to the category to which the interview is being conducted. The Respondent Bank has categorically stated in para 5 of the written statement that since the interview was conducted for promotion to scale III Officer in the next higher scale i.e. Scale IV could be the member of the interview Committee. However, in the Respondent-Bank there was no officer belonging to Scheduled Caste/Scheduled Tribe category in scale IV available and as such no such person could be associated with the interview panel. I find substance in this argument of the learned Counsel for the Respondent-Bank.

14. The judgment relied upon by the Petitioner in the case of All India Overseas Bank Scheduled Castes/Tribes Employees Welfare Association (supra) has no application to the facts and circumstances of the present case. In that case before

the Supreme Court a member of interview committee belonging to Scheduled Caste/Tribes was withdrawn from the interview panel after the interview of Scheduled Caste/Scheduled Tribe candidates was over. The member of the panel belonging to Scheduled Caste/Scheduled Tribe was not allowed to interview the other candidates and in those circumstances, the Supreme Court observed that the action of the management was unfair and it was. therefore, directed that the member belonging to Scheduled Caste/Scheduled Tribe category in the interview panel should interview all the candidates and not only Scheduled Caste/Scheduled Tribe candidates Governments letter dated August 16, 1985 (Annexure P,3) was issued for giving directions to the Bank that a Scheduled Caste/Scheduled Tribe member appointed in The interview board should continue and interview all the eligible candidates but the letter did not visualise that where there is no officer available in the higher grade for being nominated, then what to do.

15. In view of the discussion made above, I find no substance in the writ petition which is dismissed with no order as to costs.