
(1996) 07 MP CK 0015
In the Madhya Pradesh High Court
Case No : M. P. No. 943 of 1993

T. C. Panigrahi and Others

APPELLANT

Vs

K. N. Bajpayi and Others

RESPONDENT

Date of Decision : 24-07-1996

Acts Referred:

Citation : (1998) 2 MPJR 21

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

Bench : Single Bench

Advocate : J. Choudhary, for the Appellant; S. Shroti, for the Respondent

Final Decision : Allowed

Judgement

T. S. Doabia, J.

This order shall dispose of writ petition Nos. 945 of 1993 (Parshu Ram Harpal vs. K. N. Bajpai and Ors.) and 997 of 1993 (H. S. Maravi Vs. K. N. Bajpai and others). also.

Seniority-cum-merit is different from merit cum-seniority. This is the basis for the argument for contending that the petitioners in the three writ petitions referred to above have been wrongly deprived of the higher responsibility of Area Managers and Senior Managers. According to the petitioner, if Seniority is given due consideration then, there was no alternative for the respondents but to promote them to the higher posts referred to above. Before dealing with the legal submission noted above, it would be apt to notice a few facts. These facts have been taken from writ petition No. 943 of 1993.

The petitioners are working as Branch Managers of the Regional Rural Banks incorporated under the Regional Rural Banks Act, 1976 (hereinafter referred to as the Act). On the basis of seniority, they submit, they are entitled to promotion to the higher posts of Area Managers and Senior Managers. They are placing reliance on Regional Rural Banks (Appointment and Promotion of Officers and

other Employees) Rules, 1980 (hereinafter referred to as the Rules of 1980). The method and manner in which these promotions are made are contained in the Appendix appended to the aforementioned Rules. Entry No. 7 is relevant. This reads as under:

7. Area Managers or Senior Managers;

(a) Source of Hundred percent by promotion from amongst recruitment:

confirmed officers working in the bank. Promotions will be on the basis of seniority-cum-merit. If suitable officers are not available internally, these posts could be filled by taking temporarily officers of the sponsor banks and other banks or organization on deputation.

(b) Qualification

(i) A graduate of recognized University or and Eligibility : any equivalent qualifications recognized as such by Government of India, preference being given to Agriculture or Commerce or Economics Graduate.

(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, relax 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 interchangeable.

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

It is on the basis of the criteria indicated above, it is contended that promotions should have been made on the basis of seniority-cum-merit. It is argued that if senior most official is due for promotion he has to be promoted. The question of comparing his merit with those of his juniors would not arise. In a nutshell, the argument is that senior officials found worthy of promotion then he has a right to be promoted. In case he-is found unworthy for promotion, either on account of adverse record or he does not satisfy other conditions and qualifications, he can be denied promotion. The fact that promotion were made without taking into consideration seniority is highlighted in paragraphs 21 and 22 of the writ petition. In these paragraphs, it has been elaborated that the petitioners have an excellent record of service. It is stated that there is no adverse entry against them. It is also stated that no adverse entry has been communicated so far. The reply given to these averments be also noticed. The stand taken is that the selection was made by staff selection committee in accordance with rules. The performance reports for the past preceding three years were placed before the committee and assessment was done by the committee. The definite stand taken is:

On the basis of assessment of performance reports and interview, the staff

selection committee made the selection.

There is no whisper in the return that seniority was given some consideration in the matter of making promotions. As a matter of fact, the stand taken at the time of arguments was that if criterion indicated in the rules and relevant portion whereof has been noted in paragraph no. 3 is taken into consideration then interview and assessment of performance reports for preceding three years is the basis for making the selection.

In this petition, challenge has also been made to the constitution of the selection committee. I am of the view that so far as this aspect of the matter is concerned, this cannot be looked into. This is because the petitioners took part in the process of selection. They never raised any objection to the constitution of the Committee. Having taken part in the process of selection, it is too late for them to urge that the selection committee was not properly constituted.

As to what criterion is to be adopted in the matter of making the promotion be now considered. This would naturally require examination of the argument raised on behalf of the petitioner that seniority could not be ignored. It has also been suggested that the mode of selection was that assessment of performance reports for preceding three years and he would be taken into consideration only when due consideration has been given to the concept of seniority.

There can be no dispute with the proposition that there, is a fundamental difference between the concept of making promotions on the basis of merit-cum-seniority and seniority-cum-merit. This aspect of the matter was considered by the Supreme Court in the case reported as State of Kerala and Another Vs. N.M. Thomas and Others, . The relevant observation in this regard be noticed as under:

.....With regard to promotion the normal principles are either merit-cum-seniority or seniority-cum-merit. Seniority-cum-merit, means that given the minimum necessary merit requisite for efficiency of administration, the senior though less meritorious shall have priority.

Thus, where a statutory rule lays down that promotions would be made on the basis of seniority-cum-merit, then the question of considering the comparative merits of eligible candidates would not arise. As a matter of fact, this aspect of the matter was considered by the Kerala High Court. A challenge was made before the Kerala High Court to the promotion made to the posts of Area Managers, Senior Managers to the Banks constituted under the Act of 1976 that is the banks to which the petitioners also belong.

The promotions were made by evaluating the comparative merits of the candidates. These were set aside by the Division Bench of the Kerala High Court. This decision was noticed by the Karnataka High Court in W. P. 14471 of 1990. The precise question which has been agitated in this petition was there before the Kerala and Karnataka High Courts. While dealing with this aspect of the

matter, significant observations were made in paras 6, 7 and 8 by the Karnataka High Court. These paragraphs be noticed.:

It is now an undisputed proposition that there is a difference between "merit cum-seniority" and "seniority-cum-merit" as a basis for promoting the candidates working in an establishment. In the latter case, "the promoting authorities has to consider the cases of officer eligible for promotion on strictly according to seniority. If senior most official due for promotion is found fit for promotion he has to be promoted. There is no question of comparing his merit with those of his juniors. In other words, unless the senior official is found unworthy for promotion either on account of adverse service record, or does not satisfy other conditions or qualification, he has a right to be promoted. It is only after reaching the conclusion that the senior most official is unsuitable for promotion the appointing authority could proceed to consider the case of next senior and so on each occasion for promotion.

Therefore, the merit of each eligible officer has to be considered in the order of seniority; his merit has to be examined with reference to his fitness to hold the higher post and discharge its functions. The "merit" has an exclusive nexus only with the higher post for which promotion is to be effected; "Merit", here, has nothing to do with the "merit" of other competing officers.

Therefore, when the relevant Rules prescribed the basis for promotion as "seniority-cum-merit", there was no scope to consider the comparative merits of eligible candidates. The guidelines could not have gone beyond the scope of the rules. On this short ground these petitions are entitled to succeed." In this very judgment, reference was made to the decision given by the Division Bench of Kerala High Court. It has also been noticed that special leave petitions were preferred against the decision given by the Kerala High Court. The numbers of these Special Leave Petitions are 6066 to 6068 of 1990. The leave was declined by the Supreme Court. It is again mentioned in para 11 of the judgment of the Karnataka High Court that the decision of the Kerala High Court was also followed by the Andhra Pradesh High Court in writ petition No. 9768 of 1990.

I am of the opinion that the view expressed by the Karnataka High Court, Andhra Pradesh High Court and the Kerala High Court dealing with the very rules which are subject matter of these writ petitions, if the correct interpretation placed on the statutory rules. If this be the position then the argument raised by the learned counsel for the petitioner that the Bank has not given due consideration to the concept of seniority and the resultant promotions of the respondents are not in accordance with the law has to be accepted.

To be fair with the learned counsel for the respondents, reference be made to the decision given by the Allahabad High Court. This is reported as Sheetla Bux Singh Vs. Union of India, 1994 Lab. I.C. 313. This decision, though relied upon by the respondents, would not come to their rescue. In this decision, it has been held that when for promotion the criterion was seniority-cum-merit, no senior

can be superseded unless there existed some adverse material against him. It was elaborated that the process of selection by seniority-cum-suitability indicates that the screening is to be made 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. While making the appointment on the basis of seniority-cum-merit, the merit of the candidates shall be assessed objectively and with reference to his records. The observations made by S. H. A. Raja, J. of Allahabad High Court also support the view taken by the Karnataka, Andhra Pradesh and Kerala High Courts. As a matter of fact, the Allahabad High Court also took notice of the view expressed by the Kerala High Court. This is referred to in para 20 of the judgment of the learned Judge of Allahabad High Court. In para 21, he observed as under :-

Thus it is evident that the judgment of the Division Bench of the Kerala High Court to the effect that under seniority-cum-fitness Rule, no senior can be superseded unless there existed some adverse material against him and the said Rule was not made to give a chance for junior people with more merit to supersede the seniors, was upheld by the Hon'ble Supreme Court.

It may also be seen that the bank has been taking a stand that the promotions would be made on the basis of seniority-cum-merit. Such an assurance was given to a Division Bench of this Court in writ petition No. 3674 of 1987 (Madhusudan Yadav and others Vs. The Kshetriya Grameen Bank, Hoshangabad). As a matter of fact, the Calcutta High Court also has taken similar view in C. O. 5026 (WX and C. O. 5027 (W) of 1990, decided on 16th of July 1991. The relevant observations are as under :-

In the result, I am unable to hold that on making proper assessment of the merits the petitioners have been denied promotion. There is sufficient justification for taking the view that the selection of the promotional post being on the basis of seniority-cum-merit the seniority will get the first preference then merit. The service record shows that their work was satisfactory. Unless there was good reason for the selection committee to deny their promotion, their promotion should have been on the basis of the respective seniority.

The judicial precedents dealing with the very argument which have been raised in this petition are unanimous. All the High Courts have taken a consistent view. This view is that where rules prescribed promotion by seniority-cum-merit then seniority has to be given due place. Merely because a person has a better merit, he cannot be promoted over and above the person senior to him, unless he lacks in qualification or is otherwise found to be unfit i. e., there is something against him. This is not the position in this case. The concept of seniority has been given no weight age in this case.

So far as writ petition no. 945 of 1993 is concerned, it be seen that it is the case of the petitioner that some penal order was served on him just two weeks before the selection committee was to be constituted for the purpose of making the

selections. It is argued that these adverse remarks should be set aside. It be seen that the petitioner has already represented against the adverse remarks made. Accordingly, a direction is given to the competent authority to decide his representation.

In view of what has been stated above, these petitions are allowed. The promotions made by the Bank ignoring the concept of seniority-cum-merit are quashed. The petitioners would be entitled to costs. Costs Rs. 500/-in each case. The amount of security, if paid, be refunded to the petitioners as per rules.

The order passed in this writ petition today shall remain in abeyance for sixty days. This direction has been given so that the banking system being run through the respondents who have been promoted as Area Managers or Senior Managers is not put in jeopardy.