

# SUPREME COURT OF INDIA

Rajendra Kumar Srivastava

Vs.

Samyut Kshetriya Gramin Bank

C.A.No.6691 of 2001

17.11.2009

(R V Raveendran and P.Sathasivam JJ.)

## JUDGEMENT

### **R.V.Raveendran, J.**

1. The appellants are employees of the first respondent Bank, having been appointed between 1979 and 1982. By notification dated 28.9.1988, the Central Government in exercise of powers conferred under section 17 read with section 29 of the Provincial Rural Banks Act, 1976 framed the "*Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988*" ('Rules' for short). Rule 5 of the Rules provided that all vacancies should be filled up by deputation, promotion or direct recruitment, in accordance with provisions contained in the Second Schedule to the Rules. Entry 7 in the Second Schedule related to recruitment to the posts of Area Manager or Senior Manager (in Scale II).

It provided that all the posts of Area Managers and Senior Managers should be filled by promotion from among the confirmed officers (in Scale I) working in the bank on the basis of seniority-cum-merit. It prescribed the educational qualification (graduate) and minimum period of service in the feeder cadre (eight years as an officer in the concerned regional rural bank). It also prescribed the mode of selection by promotion as "Interview and assessment of performance reports for the preceding three years period as officers". Sub-Rule (4) of Rule 10 provided that the Staff Selection Committee shall follow the procedure determined by the Board for selecting candidates for appointment or promotion, in accordance with the guidelines issued by the Central Government from time to time.

2. At the 131st meeting of the Board of Directors of the first respondent bank held on 29.11.1996, the following procedure for promotion of officers from scale I to scale II was approved:

"After considering the guidelines contained in the Government of India's letter dated 23rd September, 1988 and the Letter no. 823 dated 7th October, 1996 of the National Bank, the Board passed a resolution that 60 points be earmarked on the basis of work

done during the previous three years in the Selection procedure for promotion on the Scale II posts and 40 points be given for interview and in this manner the promotion procedure should be completed.

Also, an information in this behalf be given to the National Bank."

In pursuance of the above, the eligible candidates (officers Scale I), including appellants were considered and interviewed on 16.12.1996 and 17.12.1996 and a select list was published on 20.12.1996 promoting 64 officers (respondents 4 to 67) from scale I to scale II with effect from 20.12.1996.

3. Appellants 1 to 7 were not selected. Many, who were selected, were their juniors. The appellants allege that their service and conduct were good and there were no adverse entries against them and therefore, they ought to have been promoted from Officer scale I to scale II. They therefore filed a writ petition before the Allahabad High Court (WP No.3151/1997), for quashing the entire promotion process of the first respondent bank from scale I to scale II culminating in the order dated 20.12.1996 and for a direction to the first respondent bank to undertake the promotion process afresh. The appellants also sought quashing of the resolution of the Board of Directors dated 29.11.1996 prescribing the promotion procedure.

4. The respondent bank resisted the said petition by filing a counter defending the promotions. During arguments, the High Court secured the original records from the bank to ascertain the procedure followed by the 4 bank in the selection. The High Court also directed that the relevant documents be brought on record. Accordingly, the relevant documents were filed by the Bank with an additional affidavit, wherein the Bank described the selection procedure followed by it, as follows:

"That when the proposal for promotion came before the Board, the department of personnel under the direction of the Chairman prepared complete summary giving the past history and the proposals for selection procedure. A thick booklet was prepared and in chapter V of the same the details for the procedure for selection were given. This book was part of the agenda put before the Board of Directors in its meeting of 23.9.1996 in which the process was approved with certain modification. A copy of the proceedings of the Board meeting is Annexure A to this affidavit.

That the whole matter has to be again presented before the Board in its meeting dt. 29.11.96, as in the meantime a letter was received from NABARD giving certain directions. The Board in this meeting adopted the process given in chapter V with certain modifications in the process as desired in the letter of the NABARD dated 7.10.1996 is Annexure B to this affidavit and a copy of the NABARD letter dated 7.10.1996 is Annexure C to this affidavit.

That the Chapter V of the Booklet which has been approved by the Board with modifications is also being filed as Annexure D to this affidavit.

That in the end of chapter V it is provided that the qualifying marks will be 78% and those who will secure 78% or above would be eligible for promotion.

That the selection Committee put these marks obtained on the seniority list and according to seniority those who were found eligible they have been promoted. This was done in accordance with the principle of seniority cum merit. As such there is nothing wrong in following this procedure.

That none of those petitioners could secure 78% marks and hence they were not selected."

The High Court, after considering the material made available and respective contentions, passed the impugned order dated 4.7.2001, whereby it upheld the process of selection. It held that the two stage process adopted by the bank - the first preparing a list of candidates who secured the minimum of 78 marks (aggregate) in the performance appraisal and interview, and the second promoting the candidates who secured the minimum marks, strictly on the basis of seniority - satisfied the seniority-cum-merit criteria for promotion. The said decision is challenged in this appeal by special leave.

5. It is contended by the appellants that the concept of promotion by seniority-cum-merit, did not contemplate prescribing of minimum qualifying marks for assessment of performance/interview, before applying the principle of seniority for promotion. It is contended that restricting the promotion to only those who secured the minimum qualifying marks, was violative of the seniority-cum-merit principle. It is further contended that even if any qualifying marks could be prescribed for assessing the minimum necessary merit required to meet the efficiency of administration, the fixation of an extremely high mark of 78 out of 100 as qualifying marks, had the effect of converting the criteria of 6 promotion from seniority-cum-merit to merit-cum-seniority. The appellants placed strong reliance on the decisions of this Court in *B.V. Sivaiah v. K. Addanki Babu*<sup>1</sup> and *Bhagwandas Tiwari v. Dewas Shajapur Kshetriya Gramin Bank*<sup>2</sup> in support of their contentions.

6. On the contentions urged, the following two questions arise for our consideration:

(i) Whether minimum qualifying marks could be prescribed for assessment of past performance and interview, where the promotions are to be made on the principle of seniority-cum-merit? (ii) Whether the first respondent bank was justified in fixing a high percentage (78%) as the minimum qualifying marks (minimum merit) for promotion? Re: Question (i)

7. In *State of Kerala vs. N. M. Thomas*<sup>3</sup> a seven- Judge Bench of this Court defined the concept of `seniority-cum-merit'.

"This Court held that "seniority-cum-merit" means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious

shall have priority." In *Union of India vs. Lt. Gen. Rajendra Singh Kadyan*<sup>4</sup> this Court observed that "seniority-cum-merit" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed, and subject to fulfilling the said requirement, the promotion is based on seniority. It was pointed out that requirement of assessment of comparative merit was absent in the case of 'seniority-cum-merit'."

8. It is also well settled that the principle of seniority-cum-merit, for promotion, is different from the principle of 'seniority' and principle of 'merit-cum-seniority'. Where promotion is on the basis of seniority alone, merit will not play any part at all. But where promotion is on the principle of seniority-cum-merit, promotion is not automatic with reference to seniority alone. Merit will also play a significant role. The standard method of seniority-cum-merit is to subject all the eligible candidates in the feeder grade (possessing the prescribed educational qualification and period of service) to a process of assessment of a specified minimum necessary merit and then promote the candidates who are found to possess the minimum necessary merit strictly in the order of seniority.

"The minimum merit necessary for the post may be assessed either by subjecting the candidates to a written examination or an interview or by assessment of their work performance during the previous 8 years, or by a combination of either two or all the three of the aforesaid methods. There is no hard and fast rule as to how the minimum merit is to be ascertained. So long as the ultimate promotions are based on seniority, any process for ascertaining the minimum necessary merit, as a basic requirement, will not militate against the principle of seniority-cum-merit."

9. In *Sivaiah* (supra), a three-Judge bench of this Court held that while the principle of seniority-cum-merit laid greater emphasis on seniority, the principle of merit-cum-seniority laid greater emphasis on merit and ability, with seniority playing a less significant role. This Court held:

"We thus arrive at the conclusion that the criteria 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."

10. Thus it is clear that a process whereby eligible candidates possessing the minimum necessary merit in the feeder posts is first ascertained and thereafter, promotions are made strictly in accordance with seniority, from among those who possess the minimum necessary merit is recognised and accepted as complying with the principle of 'seniority-cum-merit'. What would offend the rule of seniority-cum-merit is a process where after assessing the

minimum necessary merit, promotions are made on the basis of merit (instead of seniority) from among the candidates possessing the minimum necessary merit. If the criteria adopted for assessment of minimum necessary merit is bona fide and not unreasonable, it is not open to challenge, as being opposed to the principle of seniority-cum-merit. We accordingly hold that prescribing minimum qualifying marks to ascertain the minimum merit necessary for discharging the functions of the higher post, is not violative of the concept of promotion by seniority-cum-merit.

Re : Question (ii)

11. The next question is whether fixing of 78% as minimum qualifying marks (that is as the minimum necessary merit) is unreasonable and arbitrary. The Rules in this case provide that the mode of selection is by interview and assessment of performance reports for the preceding three years as officer Scale I. The seniority list of officers in scale I was published on 4.12.1996. Thereafter, the promotion process was held by earmarking 60 marks for assessment of performance Reports (at the rate of 20 marks per year) and 40 marks were allotted for interview. The officers possessing the minimum qualifying marks of 78%, were then promoted on the basis of seniority. What should be the minimum necessary merit for promotion, is a matter that is decided by the management, having in mind the requirements of the post to which promotions are to be made. The employer has the discretion to fix different minimum merit, for different categories of posts, subject to the relevant Rules. For example, for promotions at lower levels, it may fix a lesser minimum qualifying marks and fix a comparatively higher minimum qualifying marks for higher posts. In the first respondent Bank, the post of officer-Grade II (Area Managers and Senior Managers) is a very senior position, next only to the top post of General Manager. As the officers promoted to Scale II were required to head larger branches or departments in the Head Office, shouldering higher responsibilities and virtually competing with commercial banks, it cannot be said that the fixing the minimum qualifying marks at 78% is excessive, unreasonable or arbitrary. We may refer to the following observations of this Court in *K. Samantaray vs. National Insurance Col. Ltd.*<sup>5</sup> in this context:

"It is for the employer to stipulate the criteria for promotion, the same pertaining really to the area of policy-making. It was, therefore, permissible for the respondent to have their own criteria for adjudging claims on the principle of seniority-cum-merit giving primacy to merit as well, depending upon the class, category and nature of posts in the hierarchy of administration and the requirements of efficiency for such posts."

12. Another aspect requires to be noticed. Where the assessment of minimum merit is with reference to previous performance record (Annual Confidential Records) and/or by interview, as contrasted from a written examination, prescription of 78% as minimum, will not be considered as unreasonably high.

13. In *Sivaih* (supra), this Court held that prescribing a minimum of 50 marks out of 100 for interview was not violative of the principle of seniority. This Court held:

"During the course of hearing of the appeal, the learned counsel for the respondent-Bank has placed before us the relevant documents relating to the impugned selection and promotion. On a perusal of the said documents, we find that 50 marks out of the total of 100 marks were prescribed as the minimum qualifying marks for interview and only those who had obtained the qualifying marks in interview were selected for promotion on the basis of seniority. It was, therefore, a case where a minimum standard was prescribed for assessing the merit of the candidates and those who fulfilled the said minimum standard were selected for promotion on the basis of seniority. In the circumstances, it cannot be said that the selection has not been made in accordance with the principle of "seniority- cum-merit."

Whether the guidelines/rules adopted for assessing the minimum necessary merit by prescribing marks under several heads or by prescribing a specific minimum mark, is reasonable or arbitrary, would depend upon the facts of each case. If it is demonstrated that the minimum marks were fixed with the intention of favouring someone or to specifically exclude someone, the courts may interfere. Similarly, where the minimum marks are shown to have been fixed to defeat or nullify the mode of seniority-cum-merit for promotion, there may be a cause for interference. In other cases, there is very little scope to interfere with the procedure adopted to ascertain the minimum required merit.

14. In *Bhagwandas Tiwari* (supra), this Court reiterated the principle laid down in *Sivaiah* (supra) and *State of UP vs. Jalal Uddin*<sup>6</sup> that principles of seniority-cum-merit and merit-cum-seniority are conceptually different and that in seniority-cum-merit greater emphasis is on seniority though it may not be the only determinative factor. It then held on the facts of that case, that the method adopted therein fixing 75% as minimum marks, violated the principle of seniority- cum-merit. Reliance is placed by the appellants on the following observations of this Court:

"The contention that minimum marks were 45 out of 60, means that an employee is to secure 75% of marks. Such a high percentage cannot be a measure for prescribing minimum marks to assess merit.

It obviously would be a case of shifting the focus to merit-cum- seniority principle. It obviously would be a case of shifting the focus to merit-cum-seniority principle. In para 37 of *Sivaiah* case, this Court noted that minimum marks prescribed for assessing merit do not depart from the seniority-cum-merit principle. But the factual position is different here. There is no mention that 45 marks out of 60 relate to the prescription of minimum marks for assessing the merit."

The appellants contend that the Rules considered in *Bhagwandas Tiwari* and in this case are the same and therefore, the effect of the decision in *Bhagwandas Tiwari* is that wherever minimum qualifying marks is fixed as 75% or more, the seniority-cum-merit rule would be violated.

15. We have carefully examined the decision in Bhagwandas Tiwari.

Even if the Rules applicable and mode of selection prescribed ("interview and assessment of performance for the preceding three years period as officers for promotion") are the same in both cases, the criteria and standards adopted for assessing the minimum necessary merit are 14 completely different. We extract below the standards adopted for promotion in this case and in Bhagwandas Tiwari :

"Standards adopted in this case Marks allotted (i) Work performance during the previous years 60 (ii) Interview 40 ----- Total 100 ===== The minimum marks for eligibility for promotion : 78%.

Standards adopted in the case of Bhagwandas :

(a) Work performance during the previous 3 years 30 (b) Period of service (at the rate of 2 marks per year 40 For completed period of service subject to a Maximum of 40) (c) Interview 30 ----- Total 100 ===== In order to be selected for promotion, obtaining 45 marks shall be compulsory"

It would thus be seen that the schemes for assessing minimum necessary marks are completely different in the two cases. While work performance carried only 30 marks in Bhagwandas's case, it carried 60 marks in this case. While period of service carried 40 marks in Bhagwandas's case, no marks are provided for 'period of service' in this case. While the marks for interview were 30 in Bhagwandas's case, it is 40 in this case. The 15 minimum qualifying marks was 78 out of 100 in this case. In Bhagwandas, the minimum qualifying marks prescribed was 45 marks out of 100. But ignoring the requirement of 45 out of 100, the selection Committee adopted a minimum of 45 out of 60 (that is aggregate of marks for work performance and Interview only) ignoring the marks of 40 for period of service though that was the highest segment. This Court was persuaded to interfere in that case, as the guidelines which prescribed the minimum qualifying marks as 45 out of 100 was ignored and the committee changed the minimum qualifying marks to 45 out of 60, thereby ignoring the marks secured for the period of service. Thus, the decision in Bhagwandas Tiwari will not assist the appellants.

16. We therefore find no merit in this appeal and it is accordingly dismissed.

<sup>1</sup>1998 (6) SCC 720

<sup>2</sup>2006 (12) SCC 574

<sup>3</sup>1976 (6) SCC 310

<sup>4</sup>2000 (6) SCC 698

<sup>5</sup>AIR 2003 SCC 4422

<sup>6</sup>(2005 (1) SCC 169