

SUPREME COURT OF INDIA

Rani Laxmibai Kshetriya Gramin Bank

Vs.

Manoj Kumar Chak

C.A.Nos.2970-2975 of 2013

(Surinder Singh Nijjar and H.L.Gokhale JJ.)

09.04.2013

JUDGMENT

SURINDER SINGH NIJJAR,J.

1. Leave granted in all the Special Leave Petitions.
2. These appeals are directed against the common judgment and final order dated 8th December, 2010 passed by the High Court of Judicature at Allahabad in Writ Petition Nos. 58206 of 2005 and in connected Writ Petition Nos. 58214, 59016, 59018, 59035 and 59758 of 2005, whereby the High Court has allowed all the Writ Petitions and set aside the Circular No. 17 of 2009 dated 30th November, 2009 and Circular dated 12th July, 2010 in so far as they make a provision to exclude the employees from consideration for promotion, who are otherwise eligible to be considered for promotion and are within the zone of consideration, on the basis that they have either obtained the 'D' rating in the annual performance report or have been penalized for any misconduct in the preceding 5 years.

Background:-

3. Before we take up for consideration, the issues involved, it would be appropriate to briefly notice the background leading to the present litigation.
4. There are currently about 82 Regional Rural Banks (for short "RRBs") sponsored by various nationalized banks, set up under the Regional Rural Banks Act, 1976 (for short "the RRB Act, 1976"). There are about 67,000 employees of the Bank, spread all over India mostly in the interiors.

5. To ensure uniformity amongst all the RRBs, Section 29 read with Section 17 of the RRB Act, 1976 empowers the Central Government to lay down the terms and conditions of service of employees of all the banks. Section 17 of the RRB Act, 1976 empowers the RRBs to appoint such number of officers and other employees as it may consider necessary or desirable in such manner as may be prescribed for the efficient performance of its functions and to determine the terms and conditions of their appointment and service. Section 24 of the Act lays down that in the discharge of its functions, RRBs shall be guided by such directions in regard to matters of policy involving public interest and the Central Government may, after consultation with the National Bank for Agriculture and Rural Development (for short "NABARD"), may prescribe. Under Section 29 of this Act, the Central Government has been empowered to make rules after consultation with the NABARD and the Sponsor Banks for carrying of the provisions of the RRB Act, 1976. By Clause (ba) of sub-section (2) of Section 29, which was inserted by the Regional Rural Banks (Amendment Act), 1988, the Central Government was empowered to make rules relating to the manner in which the officers and other employees of the RRBs shall be appointed.

6. Till the year 1988, there were no statutory rules governing the promotion of employees of RRBs and the same were governed by various Circulars issued by the Central Government and NABARD. On 1st December, 1987, NABARD issued guidelines to all RRBs vide letter No. IDD.RRB.NO. C-78/316(GEN)/87-88, explaining the concept of promotion by "Seniority-cum-Merit" as envisaging promotion by seniority with due considerations to minimum merit/fitness prescribed. Further, it was stipulated that "this rule 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 nor any adverse remarks have been conveyed to him in the reasonable recent past". Although the aforesaid Circular was issued in relation to promotion of Managers to the post of Area/Sr. Manager, it was observed that the similar procedure may be followed in case of the promotion of Sr. Clerk and internal promotion to Field Supervisor and Manager Posts.

7. The Central Government vide a Notification dated 28th September, 1988 framed statutory rules, known as Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988 (for short "the RRB Rules, 1988). These rules were made in exercise of the powers conferred on the Central Government by Section 29 read with Section 17 of the RRB Act, 1976 after

consultation with the NABARD and the Sponsor Banks specified in the First Schedule of the Rules.

8. Second Schedule of the aforesaid Rules laid down the criteria for appointment to different categories of posts whether by direct recruitment or by promotion in all the RRBs. The criterion for promotion on all the posts was specified as seniority-cum-merit. With regard to the post of Area / Senior Manager, Clause 7 of Schedule 2 provided that the appointment on the aforesaid post shall be made 100% by promotion from amongst confirmed officers working in the Bank. Promotion will be on the basis of seniority-cum-merit. If suitable officers are not available internally, these posts are to be filled by deputation in another banks or organization on deputation.

9. Clause 7(c) pertains to the mode of selection, which provided for “interview and assessment of performance reports for the preceding 3 years period as officer for promotion”. It is relevant to note here that in these rules, the provisions pertaining to merit/fitness contained in the NABARD Circular dated 1st December, 1987 were not incorporated. Even though, the 1988 Rules have been promulgated in consultation with NABARD and the Sponsor Banks.

10. In spite of the promulgation of the RRB Rules, 1988, the RRBs continued to make promotions by taking into consideration the criteria laid down in the 1987 Circular in addition to the provisions contained in the RRB Rules, 1988. This led to the actions of the RRBs being challenged by way of Writ Petitions in Andhra Pradesh High Court and Madhya Pradesh High Court. Both the Andhra Pradesh as well as the Madhya Pradesh High Court held that if seniority-cum-merit criterion is adopted for the purposes of seniority, then the first senior most eligible employee has to be tested to find out whether he possesses the minimum required merit for holding the higher post and only if he is not found suitable or fit, his immediate junior may be tested for the purpose of promotion. These decisions of the High Courts were challenged by the various RRBs as well as the promoted officers whose promotion has been set aside by this Court.

11. The controversy was laid at rest by this Court in the judgment delivered in the case of B.V. Sivaiah Ors. Vs. K. Addanki Babu Ors.[1] This Court distinguished the principle of “Merit-cum-Seniority” and the principle of “Seniority-cum-Merit”. It has been held that the principle of “Merit-cum-Seniority” lays greater emphasis on merit and seniority plays a less significant role. Seniority is to be given weight only when merit and seniority are approximately equal. As between two officers of “seniority-cum-merit”, the criterion of seniority-cum-merit lays greater emphasis

on seniority. However, this Court added a caveat that an officer can not claim promotion as a matter of right by virtue of seniority alone and if he is found unfit in the discharge of duties of the higher post, he may be passed over and the officer junior to him may be promoted. The aforesaid judgment of this Court was delivered on 17th July, 1998.

12. Thereafter on 29th July, 1998, in exercise of the powers conferred by Section 29 read with Section 17 of RRB Act, 1976, in supersession of the RRB Rules, 1988, the Central Government, after consultation with the National Bank and Sponsor Bank specified in the Second Schedule, promulgated the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998. The relevant provision for appointment by promotion as a Scale II officer is as under:-

“2.

(a) Name of Post Scale II Officer (b) Classification Group ‘A’ (C) Source of appointment 100 % by promotion (d) Whether promotion to be Promotion shall be made made on seniority basis on the basis of seniority or seniority-cum-merit -cum-merit basis.

(e) Eligibility Officer holding post for eight years as an officer on regular basis in the Regional Rural Bank shall be considered for promotion to Scale-II post in that bank :

Provided that no officer shall be considered for promotion unless he has been confirmed in feeder grade post:

Provided further that the 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.

Note:

(I) The officers eligible for promotion to the post of Area Managers/Senior Managers/Officers Scale-II on or before publication of this notification, shall continue to be considered for promotion to Scale-II officer Post.

(II) The service of the incumbents, who are holding the post eligible for promotion before publication of this notification, shall continue to be counted for the purpose of promotion to the Scale II officer post.

(f) Mode of Selection The selection of the candidates shall be made by the committee on the basis of written test, interview and assessment of Performance Appraisal Reports for the preceding five years as an officer in Scale I/Field Supervisor.

(g) Composition of Committee The committee (for considering promotion) shall consist of the following persons, namely,

i) The chairman of the concerned Regional Rural Bank- Chairman

(ii) A director nominated the sponsor bank-Member.

(iii) A director nominated by the National Bank Member.

Note: If none of the members of the Committee belongs to Scheduled Castes/Scheduled Tribes, the Board may nominate a person belonging to Schedule Castes or Schedule Tribe as an additional member and such person shall participate in the process of selection by the concerned committee.

(h) Reckoning of the The minimum eligibility in minimum eligibility terms of the number of years of service for promotion shall be reckoned as on the 1st April of the year in which the vacancy is expected to arise or has actually arisen.

(i) Number of candidates The number of candidates to be To be considered for considered for promotion from Promotion officer Scale I to officer Scale II shall be restricted to four times the number of vacancies available for promotion.

(j) Selection process for The Selection shall be on the Promotion basis of performance in the written test, interview and performance appraisal reports for preceding five years as per the division of marks given below.

(A) Written Test 60 Marks (B) Interview 20 Marks (C) Performance 20 Marks Appraisal Reports TOTAL MARKS 100 MARKS

(A) Written test (60 marks) 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 Policy Credit Management including priority Sector, Economics and Management. 60 marks allotted to written test shall be further divided as under :

Part "A" 30 Marks

Part "B" 30 Marks

A 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.
“

13. The Rules also provide that the written test shall be in two parts viz. Part A and Part B, each consisting of 30 marks. It was provided that the list of those candidates shall be prepared, who secure a minimum of 40% marks in each part and such candidates shall be called for interview. Thus the Rules had clearly introduced the minimum necessary merit as laid down by this court in the case of B.V. Sivaiah (supra). However, it appears that one of the Sponsor Banks, namely Punjab National Bank issued guidelines dated 27th February, 1999 laying down the “procedure to be adopted in RRBs for promotion in different cadres – clarification thereof”, to all its Sponsored Regional Rural Banks.

Present Litigation:

14. Thereafter, the individual officers of erstwhile RRBs filed 13 Writ Petitions before the High Court in the year 2004-2005 on the ground that the Circular sought to debar totally from consideration for promotion, officers against whom disciplinary action was pending or contemplated as well as those, who had been reprimanded or had obtained a ‘D’ rating in their annual performance reports in the preceding 5 years before the selection process commences.

15. Whilst the aforesaid matters were still pending, it appears that the Punjab National Bank and Bank of Baroda issued another clarification by the Circular No. 17 of 2009 dated 30th November, 2009. The aforesaid circular entitled “Appointment and Promotion of Officers and other Employees of RRBs” reiterated the provision contained in the Notification dated 29th July, 1998. Pursuant to the aforesaid, Sarva U.P. Gramin Bank issued a Circular dated 12th July, 2010 incorporating the clarification contained in the Circular dated 12th July, 2010,

subsequently reiterated on 30th November, 2009. The aforesaid Circulars were also challenged in Writ Petition Nos. 55913, 50638, 50629, 51003 and 50633 of 2010.

16. All the aforesaid writ petitions were clubbed and decided by the High Court of Judicature at Allahabad by a common judgment dated 8th December, 2010. By the aforesaid judgment, the High Court quashed the Circular No. 17 of 2009 dated 30th November, 2009 and Circular dated 12th July, 2010. The appellant bank was directed to consider the claim of the respondents (Writ Petitioners) for promotion in accordance with the procedure and method of punishment provided by the competent authority for selections. The High Court in its judgment concluded :-

“1. Where a person is eligible to be considered for promotion, his exclusion, on the ground that he has suffered minor or major penalties, cannot be a ground to exclude him from consideration. The competent authority, as held in K.V. Janakiram (supra) and B.V. Sivaiah (supra), can lay down minimum standards required and also prescribe mode of assessment of merit of the employees eligible to be considered for promotion. The assessment can be made by assigning marks on the basis of appraisal of performance on the service record and interview. The competent authority may also prescribe minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit. The employee, however, cannot be excluded and denied his right to be considered by the selection committee for promotion.

2. The persons, who have been awarded censure entry or other minor punishments, thus cannot be excluded from the zone of consideration for promotion. The question of assessment on merit is to be made by the Selection Committee at the time of selection and not before that by eliminating the person who is within the zone of consideration.

3. We are further of the opinion that the circulars issued by the bank cannot override the statutory Rules nor can supplement it to the extent that the persons, who are otherwise eligible to be considered for promotion, will be rendered ineligible and will not be given a chance to be considered for promotion.”

17. Aggrieved by the aforesaid observations and the decision of the High Court, the appellant bank has filed the present appeals.

SUBMISSIONS:

18. We have heard very lengthy submissions by the learned counsel for the parties.

19. We may first briefly notice the submissions on behalf of the appellants. Mr. Dhruv Mehta, learned senior counsel appearing for the appellants submitted that the Circular dated 30th November, 2009 and 12th July, 2010 were not ultra vires of the RRB Rules, 1998. The two Circulars have only supplemented the RRB Rules, 1998, where they are silent. The Circulars do not have the effect of supplanting the RRB Rules, 1998. He elaborated that the aforesaid Rules do not provide for and/or are silent with regard to the treatment to be given /meted out to the case where “adverse remarks” have been recorded against an officer during the preceding 5 years, i.e., period under consideration for promotion. He submitted that the Sponsor Banks have merely reiterated the earlier Circular issued by the NABARD on 1st December, 1987, which was subsequently clarified on 27th February, 1999. The Circulars dated 30th April, 2009 and 12th July, 2010 have merely reiterated the earlier position. The appellant bank had only reiterated the aforesaid guidelines after the amalgamation of the small RRBs into one RRB (appellant bank) vide Notification dated 30th November, 2007. However, these guidelines were being followed by erstwhile RRBs also prior to amalgamation. Learned senior counsel relied on the judgment in the case of Sant Ram Sharma Vs. State of Rajasthan Ors.[2] to submit that it was permissible for the appellant bank to fill up the gaps and supplement the rules and issue instructions which were not inconsistent with the statutory rules. Learned senior counsel further submitted that the aforesaid Circulars have been issued in order to bring about uniformity as different RRBs were following different procedures for making promotions on similar posts. Since the Rules of 1998 are silent with regard to non-consideration of officers, who have adverse remarks against them in the preceding 5 years, it was necessary to lay down uniform guidelines. He emphasised that DPC under the RRB Rules, 1998 consists of :- (a) Chairman, RRB, (b) Director nominated by Sponsor Banks and (c) Director nominated by NABARD. In the absence of uniform guidelines, DPC consisting of individuals will be conferred with power to decide whether an individual officer despite having been punished in the preceding 5 years should be recommended/selected for promotion or not. According to Mr. Dhruv Mehta, introduction of such a process will lead to infusion of arbitrariness in the process of promotion. In such circumstances, the promotion of a particular officer, in spite of having been punished, will be based entirely on the perception of individual members of DPC. This could lead to more litigation by the officers, who are not selected/approved for promotion in spite of having a clean record. He points out that without the aforesaid guidelines, an officer, even though, he has been punished for gross misconduct, would have to be promoted in case he obtains minimum 40%

marks in the written test, because in other parameters, namely interview and performance appraisal, the RRB Rules, 1998 do not prescribe minimum marks. Debarring such a person from promotion would not be arbitrary as the rationale behind such procedure is to weed out the unfit at the initial stage. In support of this submission, the learned senior counsel relied on the observations made by this Court in the case of *Rajendra Kumar Srivastava Ors. Vs. Samyut Kshetriya Gramin Bank Ors.*[3] The instructions, according to him, merely prescribe minimum merit necessary for discharging the function of the higher post. Therefore, the procedure prescribed in the Circulars would not violate the concept of promotion by seniority-cum-merit. Learned senior counsel further submitted that same procedure will be followed in cases, where an officer has been communicated adverse remarks and graded as 'D' in the 5 years preceding the selection process. In support of this submission, the learned counsel relied on certain observations made by this Court in Civil Appeal No. 6072 of 2012, *Ram Ashish Dixit Vs. Chairman, Purvanchal Gramin Bank Ors.*

20. The next submission of Mr. Dhruv Mehta was that the employee only has a right to be considered for promotion and does not have an absolute right to be promoted only on the basis of seniority. Learned senior counsel reiterated that criteria of "fitness", i.e., a candidate should not be found to be "unfit to discharge the duties of higher post" is a condition implicit in the criteria of promotion on the basis of "seniority-cum-fitness" criteria.

21. Learned senior counsel has further submitted that different rules prescribed different criterias for adjusting the suitability of candidates for promotion viz. "seniority-cum-fitness", "seniority-cum-merit" and "merit-cum-seniority". However, the "fitness" of a candidate to discharge duties of higher post, has to be considered necessary, relevant and an implicit condition of promotions in all the above criterias. He draws support for the aforesaid submission from the judgment of this Court in the case of *State of Mysore Anr. Vs. Syed Mahmood Ors.*[4] and *Haryana State Warehousing Corporation Ors. Vs. Jagat Ram Anr.*[5]

22. Mr. Dhruv Mehta then submitted that the employee/officers, who have not been promoted in view of the guidelines dated 30th November, 2009 and 12th July, 2010, had not been debarred from consideration as they were, in fact, considered along with all the other officers, who had completed the requisite period of service but have been weeded out/eliminated at the threshold, in view of the fact that they had been either punished or graded 'D' in the 5 years preceding the selection. Learned senior counsel further submitted that non-promotion of those officers, who have either been punished or have been recipient of adverse remarks such as Grade

‘D’, would not be violative of Article 14 and 16 of the Constitution of India. The candidates, who have been imposed penalty/punishment or whose performance is assessed as unsatisfactory during the period under consideration for promotion can not be placed at par with the candidates, who have not been imposed any punishment/penalty or whose performance has been outstanding, very good or good during the said period. The classification made on the basis of the service record is a reasonable classification and has a nexus with the object sought to be achieved namely promotion to the next grade/cadre. In support of this, he relies on the judgment of this Court in the case of Union of India Ors. Vs. K.V. Jankiraman Ors.[6]

23. Mr. Dhruv Mehta has also brought to the attention of this court the “subject wise bifurcation” of the present special leave petitions, which appears to have been premised on the basis of different levels of punishment imposed on the writ appellants/respondents herein which rendered them ineligible from consideration for promotion. The bifurcation is as under :

- i) SLP (C) No. 9284-9301/2011: The concerned employees in this bunch were rendered ineligible for consideration for promotion due to imposition of punishment on them during the preceding five years.
- ii) SLP (C) No. 9181-86/2011: The assessment of the concerned employees in this bunch was rendered “unsatisfactory”, i.e., they were rated “D” in any one year out of preceding five years.
- iii) SLP (C) No. 9432-9444/2011: Some punishment was imposed on the employees herein during the preceding five years and also, their performance was rated as unsatisfactory, i.e., they were rated “D”.
- iv) SLP (C) 9306-9309/2011: Issues raised by the writ petitioners herein were not same/similar to the lead matter therein.

24. Lastly, he submits that this Court in a catena of judgments has held that an employee can be validly debarred from consideration for promotion during the rigour of punishment. He has made a reference to the following judgments:-

State of T.N. Vs. Thiru K.S. Murugesan Ors.[7], L. Rajaiah Vs. Inspector General of Registration Stamps, Hyderabad Ors.[8] and Collector of Thanjavur Distt. Ors. Vs. S. Rajagopalan Ors.[9]

25. On the other hand, learned senior counsel for the respondent, Mr. Fakhruddin, submitted that the submissions made by the appellants about the usurpation of the power of selection of the management by the members of the DPC clearly indicates that the two Circulars have not been issued bonafide and are in fact intended to whittle down the role and powers of Independent Selection Committee prescribed in the statutory rules of 1998. The function of selection has been statutorily conferred on the DPC, and can not be permitted to be usurped by the Bank Management. He further submitted that by virtue of Section 29 and Section 17 of the RRB Act, 1976, the powers to determine the service conditions including promotions of the employees of the RRBs are vested in the Central Government. Therefore, the two Circulars can not be permitted to prevail over the provision of the statutory rules of 1998. Mr. Fakhruddin emphasised that Government of India has promulgated the aforesaid rules in consultation with NABARD and the Sponsor Bank. Even then, no provision has been made in the aforesaid rules to debar the employees/officers for being considered for promotion amongst them who fall in the zone of consideration, on the basis that they have been either penalized or given an unsatisfactory/'D' rating annual performance appraisal report. It is submitted by all the learned counsel appearing for the respondent that the RRB Rules, 1998 are in consonance with the observations made by this Court in the case of B.V. Sivaiah (supra) and is a complete code, which does not need to be supplemented by any instructions. It is further submitted that in the guise of laying down minimum marks as a benchmark to determine the suitability/fitness/merit for promotion, the appellants have introduced the criteria of merit-cum- seniority in the place of seniority-cum-merit. Such change in the criteria could only be made by making the necessary amendment in the Rules and not by issuing guidelines/Circulars by the Sponsor Banks or NABARD.

26. Learned senior counsel further submitted that the two Circulars are wholly arbitrary since even the employees who had been only given the lowest penalty of censure or reprimand can be eliminated at the threshold, from being considered for promotion. It is further submitted by the learned counsel for the respondent that blanket debarment will have the effect of giving an unbridled/untrampled power in the hands of the superiors of an employee. Such power can be abused and misused to give/deny "promotion to a particular employee/officer due to personal reasons and likes and dislikes of a particular officer". Learned senior counsel, therefore, submitted that the High Court has correctly quashed the aforesaid two Circulars.

CONSIDERATION/CONCLUSIONS:

27. We have given due consideration to the submissions made by the learned counsel for the parties. It is by now settled beyond cavil that statutory rules can be supplemented but can not be supplanted. This is the ratio of law laid down in the case of Sant Ram Sharma (supra). It has been reiterated by this Court in a catena of subsequent judgments. It is, however, not necessary to burden the present judgment by making a copious reference to the other decisions which merely reiterated the same ratio.

28. We have noticed earlier that till 1988, there were no statutory rules governing the promotions of the employees of RRB. The promotions in these banks were governed by various Circulars issued by the Government, NABARD and the Sponsor Banks. One such Circular is dated 1st December, 1987, which provided that the word “merit”, provides that criteria of seniority-cum-merit envisages promotion by seniority with due consideration to minimum merit/fitness prescribed. However, the Circular further provided that 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 nor any adverse remarks have been conveyed to him in the reasonable recent past.

29. The aforesaid Circular is prior in time to the RRB Rules, 1988. The aforesaid rules clearly provided that promotion shall be made by following the criteria of seniority-cum-merit. Rule also provides that any officer/employee having 8 years of service as an officer/employee shall be eligible to be considered for promotion. The criteria for determining the minimum merit required of the candidate for promotion is to be ascertained on the basis of his performance in the written test, interview and his assessment in the performance appraisal report. There is no provision in the Rules that an employee/officer, who has been punished in the 5 years preceding the selection process or has been given an adverse remark or graded ‘D’ shall not be considered for promotion at all. The Circular dated 1st December, 1987 was, therefore, clearly contrary to the 1988 statutory rules, and, therefore, ceased to have any legal effect from the date of the enforcement of the rules.

30. It is a matter of record that the RRB Rules, 1988 were superseded by the RRB Rules, 1998. The aforesaid rules incorporated the principle of minimum merit as enunciated by this Court in B.V. Sivaiah (supra). In Paragraph 18 of the aforesaid judgment, this Court observed as follows:-

“18. 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.”

31. Following the aforesaid observations, the RRB Rules, 1998 have introduced a detailed procedure for determining the minimum merit for promotion to the next higher post/grade. The RRB Rules, 1998 clearly provided that officers holding post in 8 years as an officer on regular basis in the RRB shall be considered for promotion to the next higher post. The aforesaid rule does not provide that any employee/officer, who has suffered a punishment or has received an adverse appraisal/Grade ‘D’ in the performance appraisal, shall not be eligible. However, the Circulars dated 30th November, 2009 and 12th July, 2010 enables the appellant banks to eliminate such employees, which is clearly contrary to the provisions contained in the statutory service rules. The procedure prescribed under the aforesaid two Circulars clearly has the effect of supplanting the provision of eligibility, which is not permissible.

32. Such an additional provision can not be justified on the basis that it would form part of the minimum merit required to be considered for promotion. In our opinion, the reliance placed in support of this proposition on the judgment in the case of Rajendra Kumar Srivastava (supra) is wholly misplaced. In the aforesaid judgment, this Court has observed as follows:-

“11. It is also well settled that the principle of seniority-cum-merit, for promotion, is different from the principle of “seniority” and the 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 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”

33. These observations clearly apply at the time when the eligible persons are being considered for promotion by the DPC. Eligibility under the rules is on the basis of minimum length of service – eight years, unless relaxed by two years confirmation in the lower/feeder post. It is not possible to accept the submission of Mr. Dhruv Mehta that bare minimum merit can be determined even before the list of candidates is placed before the DPC for consideration of their merit. Rule (2e) clearly provides firstly for the determination of the eligibility, as noticed above. The criteria for promotion (seniority-cum-merit) is provided in Rule 2(d). Rule 2(f) provides for “mode of selection”. It is clearly provided that “the selection of the candidates shall be made by the committee.....”. The second part of Rule 2(f) provides the criteria for determination of the bare minimum merit. In fact, for this very reason, the rules themselves provide that in order to succeed in the written test, a candidate has to secure a minimum 40% marks in each part of the written test consisting of 30 marks each. It is only when all the candidates within the zone of consideration have participated in the selection procedure and their performance is assessed on the basis of written test, interview, and past performance i.e. performance appraisal that the minimum merit would become relevant. When the bare minimum merit of the candidates is determined, the promotion shall be made on the basis of seniority irrespective of the better performance of the junior candidates in the written test/interview/performance appraisal.

34. Similarly, the reliance placed by Mr. Dhruv Mehta on the judgment of this Court in K.V. Jankiraman’s case (supra) is also misplaced. In this judgment, this Court considered the circumstances under which the banks could resort to the “sealed cover procedure”, when considering the claims of the eligible candidates for promotion. The court also examined the impact of departmental punishment for assessment of the suitability of an employee for promotion. The relevant ratio of this Court is as under:

“29. According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second subparagraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal.”

These observations make it abundantly clear that promotion can be justifiably denied to eligible candidate at the time of his/her performance appraisal by the DPC. The fact that the officer/employee has been departmentally punished would form part of the service record and can be taken into account by the DPC. In such circumstances, the employee cannot possibly claim to have been subjected to a further penalty on the basis of the misconduct which led to his punishment. This, however, would not permit the management to debar an employee from being considered for promotion at the stage of considering whether such an employee is “eligible” to be considered in terms of Rule 2(e).

35. The observations in Rajendra Kumar Srivastava (*supra*) also do not support the submissions made by Mr. Dhruv Mehta. In paragraph 13, it is observed as follows:

“13. 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.”

These observations also make it clear that whilst assessing the eligibility of the candidates, determination of bare minimum merit is not envisaged. There is, in fact, a complete segregation of Rule 2(e) from Rule 2(f). Determining the eligibility of candidate is in the nature of a ministerial function. The management merely has to see that the candidate possesses the minimum length of service and that he/she is confirmed in the feeder cadre. The determination of bare minimum merit is on the basis of the performance in the written test/interview and performance appraisal. This is the function of the Selection Committee i.e. Departmental Promotion Committee.

36. There is no doubt that punishment and adverse service record are relevant to determine the minimum merit by the DPC. But to debar a candidate, to be considered for promotion, on the basis of punishment or unsatisfactory record would require the necessary provision in the statutory service Rules. There is no such provision under the 1998 Rules.

37. In *B.V.Sivaiah* (supra), this Court laid down the broad contours defining the term “bare minimum merit” in the following words:

“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.”

From the above, it becomes clear that the determination of the bare minimum criteria is the function of the DPC and cannot be taken-over by the management at the time of determining the eligibility of a candidate under Rule 2(e).

38. The reliance placed by Mr. Dhruv Mehta on the judgment of this court in the case of *Ram Ashish Dixit* (supra) is also misconceived. In the aforesaid case, the officer had been considered for promotion during the pendency of the departmental proceedings to Middle Management Grade II. However, the result was kept in a sealed cover. After finalization of the proceedings, the appellants requested the authority to open the sealed cover. He was, however, informed that he can not be promoted in view of the bank Circular dated 28th March, 1998 as he had been punished. Subsequently, again his case was to be considered for promotion in September, 1999. However, he was denied consideration for promotion in view of the conditions contained in Circular dated 28th March, 1998. It was submitted on behalf of the appellants that the punishment imposed upon the staff of the Bank can not be treated to be an ineligibility for promotion since the eligibility for promotion is prescribed under the RRB Rules, 1988. It was submitted on behalf of the bank (respondent therein) that since stoppage of increment for 3 years is a

punishment imposed upon the appellants, during the period, he would be undergoing punishment, he could not have been considered to be eligible for promotion. Therefore, according to the bank, respondent had been rightly held to be ineligible under Circular dated 28th March, 1998. It was also claimed by the bank that the Circular is supplementary in nature and can not be said to be in any manner inconsistent and ultra vires of the rules. In answering the rival submissions, this Court held as under:-

“The criteria for promotion from Junior Manager Grade-I to Middle Management Grade-II is on the basis of the seniority- cum-merit. Clearly therefore, the fact that the appellant has been punished for a misconduct, the same would form a part of his record of service which would be taken into consideration while adjudging his suitability on the criteria of seniority-cum-merit. If on such assessment of his record of service the appellant is not promoted, it cannot be said to be by way of punishment. It is a non-promotion on account of the appellant not reaching a suitable standard to be promoted on the basis of the criteria.”

39. We also do not find any merit in the submission of Mr. Dhruv Mehta that the Circular No.17 of 2009 dated 30th November, 2009 and Circular dated 12th July, 2010 are to ensure that the individual members of the DPC do not recommend for promotion an individual officer despite having been punished in the preceding 5 years. Such curtailment of the power of the DPC would have to be located in the statutory service rules. The 1998 Rules do not contain any such provision. The submission needs merely to be stated, to be rejected. We also do not find any merit in the submission of Mr. Mehta that without the aforesaid guidelines, an officer, even though, he has been punished for gross misconduct would have to be permitted to be promoted as no minimum marks are prescribed for interview or performance appraisal. In our opinion, it is fallacious to presume that under the 1998 Rules, once an officer gets the minimum marks in the written examination, he would be entitled to be promoted on the basis of seniority alone. There is no warrant for such a presumption. The misconduct committed by eligible employee/officer would be a matter for DPC to take into consideration at the time of performance appraisal. The past conduct of an employee can always be taken into consideration in adjudging the suitability of the officer for performing the duties of the higher post.

40. There is another very good reason for not accepting the submissions made by Mr. Dhruv Mehta. Different rules/regulations of the banks provide specific punishments such as “withholding of promotion, reduction in rank, lowering in

ranks/pay scales”. However, there is another range of penalty such as censure, reprimand, withholding of increments etc. which are also prescribed under various staff regulations. To debar such an employee from being considered for promotion would tantamount to also inflicting on such employee, the punishment of withholding of promotion. In such circumstances, a punishment of censure/reprimand would, in fact, read as censure/reprimand + 5 years debarment from promotion. Thus the circulars issued by the bank debarring such employees from being considered would be clearly contrary to the statutory rules. The circulars clearly do not fall within the ratio in Sant Ram’s case (supra).

41. In our opinion, the observations made by this Court in the case of Ram Ashish Dixit (supra) are a complete answer to the submissions made by the learned counsel for the appellants, Mr. Dhruv Mehta. Therefore the High Court, in our opinion, has rightly quashed the aforesaid two Circulars and directed that the respondent be considered for promotion in accordance with the applicable rules.

42. We, therefore find no merit in the civil appeals filed by the appellant-bank, and are accordingly dismissed. No costs.

- [1] (1998) 6 SCC 720
- [2] (1968) 1 SCR 111
- [3] (2010) 1 SCC 335
- [4] AIR 1968 SC 1113
- [5] (2011) 3 SCC 422
- [6] (1991) 4 SCC 109
- [7] (1995) 3 SCC 273
- [8] (1996) 8 SCC 246
- [9] (1995) 3 SCC 273