

A SHRIRAM TOMAR AND ANOTHER ETC.

v.

PRAVEEN KUMAR JAGGI AND OTHERS

(Civil Appeal Nos. 3603-07 of 2019)

B APRIL 09, 2019

[L.NAGESWARA RAO AND M.R. SHAH, JJ.]

- Service Law: Promotion – Post of Junior Management Scale II – Criteria for promotion – Seniority-cum-merit – Mode of selection based on written test, interview and assessment of performance appraisal reports for preceding five years as officer in Scale I – The candidates were to appear in written test comprising of two parts – As per the Rules, those candidates who secured minimum 40% of marks in each part were to be called for interview – As regards interview and performance appraisal reports for preceding five years service, under the rules, no minimum qualifying marks were provided – However, Selection Committee fixed bench mark of minimum 12 marks to be secured in the interview as well as performance appraisal (each) and decided that only those candidates who secured in all 24 marks in minimum in the interview as well as the performance appraisal would be considered for promotion – Accordingly, based on this criteria promotion order was made – Writ petitioners challenged the same on the ground that the three successful candidates were junior to them and since writ petitioners obtained more than 40% marks in the written test and were senior, they ought to have been promoted to the post of Scale II – The promotions were also challenged on the ground that further fixing the qualifying marks to be obtained in the interview and the performance appraisal reports, viz., 12 minimum marks each to be obtained in the interview and the performance appraisal reports and fixing such a benchmark would violate the principle of seniority-cum-merit – The Single Judge of High Court held that fixing the qualifying marks/benchmark to obtain minimum 12 marks in the interview and the performance appraisal was not permissible and it defeated the principle of seniority-cum-merit and, therefore, directed to prepare a fresh promotion list by prescribing the minimum necessary cut off merit marks out of 100 so that the rule of seniority-cum-merit could be made applicable – The Division Bench, not only*

dismissed the appeals, but also set aside the directions issued by the Single Judge and directed the establishment to conduct fresh exercise for promotion – Hence the instant appeal – Held: The Single Judge as well as the Division Bench erred in holding that fixing the qualifying marks to be obtained in the interview and the performance appraisal reports would violate the principle of seniority-cum-merit – As the promotion to the post of Junior Management Scale II is to be made on the basis of seniority-cum-merit, the only requirement is that after it is found that the candidates have possessed the minimum necessary merit, namely, minimum 40% qualifying marks in the written test and minimum 12 marks each out of 20 marks each in interview and the performance appraisal reports respectively, the candidates would be promoted in the order of seniority, irrespective of anyone among them having obtained more marks – In view of this, orders of Single Judge and Division Bench of High Court are quashed and respondent-authority is directed to prepare a fresh select list for promotion accordingly – Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998.

Allowing the appeals, the Court

HELD: The Single Judge as well as the Division Bench erred in holding that further fixing the qualifying marks to be obtained in the interview and the performance appraisal reports, viz., 12 minimum marks each to be obtained in interview and the performance appraisal reports and fixing such a benchmark would violate the principle of seniority-cum-merit. Further fixing the qualifying marks in the written test, performance appraisal reports and the interview has not violated the principle of seniority-cum-merit. It is further held 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. The judgments and orders passed by the single judge of High Court and Division Bench of High Court are set aside. The authority is directed to prepare a fresh select list for promotion and to consider the case of those candidates who crossed the benchmark of having obtained minimum 40% qualifying marks in the written test and having obtained minimum 12 marks each out of 20 marks each for interview and performance appraisal reports respectively and

- A **those candidates be promoted in the order of seniority, irrespective of anyone among them having obtained more marks.**
[Paras 12, 13][600-B-G]

Chairman, Rushikulya Gramya Bank v. Bisawamber Patro (2013) 4 SCC 376 : [2013] 4 SCR 239; Rajendra

- B *Kumar Srivastava v. Samyut Kshetriya Gramin Bank (2010) 1 SCC 335 : [2009] 15 SCR 936 – relied on.*

Case Law Reference

[2013] 4 SCR 239	relied on	Para 7.3
C [2009] 15 SCR 936	relied on	Para 7.4

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.3603-3607 of 2019

- D From the Judgment and Order dated 24.09.2008 of the High Court of Judicature at Jabalpur in Writ Appeal Nos. 1508, 1509, 1510, 1511 and 1535 of 2007.

R. S. Hegde, Farhat Jahan Rehmani, Rajeev Singh, Advs. for the Appellants.

- E Kunal Verma, Mrs. Yugandhara Pawar Jha, Piyush Bhardwaj, M. C. Dhingra, Vishal Prasad, K. P. Prasad, Ritika Sethi, Satish Vig, Shiv Sagar Tiwari, Ms. Babita Jha, S. K. Dey, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J. 1. Leave granted.

- F 2. As common question of law and facts arise in this group of appeals, and as such they arise out of the impugned common judgment and order passed by the High Court, all these appeals are being decided and disposed of by this common judgment and order.

- G 2.1 All these appeals arise out of the impugned common judgment passed by the Division Bench of the High Court of Judicature at Jabalpur (Madhya Pradesh) passed in Writ Appeal Nos. 1510/2007, 1509/2007, 1508/2007, 1511/2007 and 1535/2007, by which the Division Bench of the High Court dismissed the said appeals, however, while dismissing the said appeals, modified the order passed by the learned Single Judge H and directed that instead of preparing a fresh select list, the establishment

would conduct the fresh exercise for promotion, and further directed that the establishment would be obliged to prescribe minimum necessary cut off merit marks out of 100 so that the rule of seniority-cum-merit is made applicable.

3. The facts leading to the present appeals in nutshell are as under:

The dispute is with respect to promotion to the post of Junior Management Scale II in the Mahakoshal Kshetriya Bank. That in exercise of powers conferred under Section 29 of the Regional Rural Banks Act, 1976, the Central Government, in consultation with National Bank and the Sponsor Bank, i.e., the UCO Bank, formulated the Rules called Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998 (hereinafter referred to as the 'Rules'). That the said Rules were notified in the gazette on 29.07.1998. Third Schedule of the aforesaid Rules, inter alia, provides for appointment of two different categories of officers. It also provides for eligibility as well as mode of selection in respect thereto. As regards Scale II officers, it was specifically provided that the source of appointment shall be 100% by promotion and the criterion for promotion shall be on the basis of seniority-cum-merit. That mode of selection was that the candidate shall be selected by a committee on the basis of written test, interview and the assessment of 'performance appraisal reports' for the preceding five years as officer in Scale I/Field Supervisor. The division of marks was as follows:

Written Test	60 marks
Interview	20 marks
<u>Performance appraisal</u>	<u>20 marks</u>
<u>Total</u>	<u>100 marks</u>

3.1 As regards written test, it provided that the candidate shall be required to appear for written test comprising of two parts, viz., Part 'A' and Part 'B'. The 60 marks allotted to written test were further divided as :

Part 'A'	30 marks
Part 'B'	30 marks

3.2 As per the aforesaid rules, a list of only those candidates who secure minimum 40% of marks in each part (Part 'A' & Part 'B') shall

- A be prepared and shall be called for interview. As regards interview and ‘performance appraisal reports’ for preceding five years’ service, under the rules, no minimum qualifying marks were provided.
 - 3.3 The respondent-bank for the purpose of promotion from Scale I to Scale II issued a memo dated 30.03.2004 and informed all the Branch Managers and all the departments of the Head Office to submit ‘performance appraisal reports’ of preceding five years’ of Scale I officers. The bank also issued guidelines in consonance with the Rules, vide guidelines dated 12.04.2004.
 - 3.4 For promotion of Scale I officers to the available 16 posts of Scale II, the Bank called 64 candidates/officers in the ratio of 1:4. The written test was conducted on 16.04.2004 and 32 candidates out of 64 were declared qualified in the written test, as it was found that they secured more than 40% marks in the written examination. That thereafter, the appellants along with other eligible candidates (32 in numbers) appeared in the interview conducted on 18/19.09.2004. That vide memo dated 09.10.2004, the bank published the results of successful officers/candidates shown to have been promoted to Scale II posts. That the appellants herein who were also placed in the seniority list came to be promoted, by virtue of their seniority, having secured more than minimum marks in the written test and having passed the interview and performance appraisals. However, it appears that three persons, namely, Sunil Kumar Gupta, Gopal Singh Raj and Rajesh Kumar Jain (respondents herein), though much junior in the seniority list of Scale I officers, were also included in the list of promoted officers, issued vide memo dated 9.10.2004 and three senior persons were ignored, namely, Anil Kumar Singh, K.C. Soni and N.K. Sharma. Therefore, the aforesaid three persons, namely, Anil Kumar Singh, K.C. Soni and N.K. Sharma and one another, namely, Praveen K. Jaggi filed Writ Petition Nos. 12127/2004, 12125/2004, 12126/2004 and 11005/2004 challenging the order dated 09.10.2004 whereby the aforesaid three persons, namely, Sunil Kumar Gupta, Gopal Singh Raj and Rajesh Kumar Jain were placed below Anil Kumar Singh, K.C. Soni and N.K. Sharma in the seniority list. Before the learned single Judge, it was the case on behalf of the original writ petitioners that promotions to the post of Scale II were solely on the basis of seniority-cum-merit and the rules provide that only those candidates who secure minimum 40% marks in the written test shall be called for interview and there being no minimum qualifying marks provided so far as marks obtained in interview and performance appraisal reports

and therefore the original writ petitioners being senior and they obtained more than 40% marks in the written test, they ought to have been promoted to the post of Scale II.

3.5 However, it was the case on behalf of the bank that as per the administrative instructions, a conscious decision was taken by the Selection Committee fixing the bench mark of minimum 12 marks to be secured in the interview as well as performance appraisals (each) and only those candidates who secured in all 24 marks in minimum in the interview as well as the performance appraisals were required to be considered for promotion and accordingly those candidates who secured 24 marks minimum in the interview as well as the performance appraisals were promoted.

4. The learned Single Judge of the High Court did not accept the same and observed that such a procedure and insisting securing 24 marks minimum in the interview and the performance appraisals was not provided under the rules and therefore such a procedure was not permissible by administrative instructions. The learned Single Judge also observed that the aforesaid criteria would violate the principle of seniority-cum-merit and by such a criteria the principle of merit-cum-seniority is applied, which is contrary to the rules. Therefore, while allowing the aforesaid writ petitions and quashing and setting aside the list dated 9.10.2004, the learned Single Judge directed to prepare a fresh selection list by prescribing the minimum necessary cut off marks out of 100 so that the rule of seniority-cum-merit should be made applicable and thereafter may proceed to prepare a fresh selection list and after prescribing the necessary minimum/cut off marks the persons who secure the minimum merit marks on the basis of their seniority shall be rearranged and accordingly a fresh order of promotion shall be passed by the bank.

5. Feeling aggrieved and dissatisfied with the common impugned judgment and order passed by the learned Single Judge of the High Court, the bank as well as the appellants herein – original respondents before the learned single Judge preferred writ appeals before the Division Bench of the High Court. By common impugned judgment and order, the Division Bench has not only dismissed the appeals, but while dismissing the appeals has set aside the direction issued by the learned Single Judge to prepare a fresh merit list and has further directed that instead of preparing a fresh selection list by prescribing the minimum necessary cut off merit marks out of 100, the bank shall conduct the fresh exercise

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- A for promotion. The Division Bench also observed that the bank would be obliged to prescribe minimum necessary cut off merit marks out of 100 so that the rule of seniority-cum-merit is made applicable.

6. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the Division Bench of the High Court B dismissing the appeals and further directing to conduct the fresh exercise for promotion, the original appellants before the Division Bench of the High Court (those who were promoted pursuant to the list/order dated 09.10.2004) have preferred the present appeals.

7. Shri R.S. Hegde, learned advocate appearing on behalf of the C appellants has vehemently submitted that in the facts and circumstances of the case, the Division Bench has committed a grave error of law and facts while quashing the entire selection test/list and ordering fresh exercise of promotion.

7.1 It is vehemently submitted by the learned counsel appearing D on behalf of the appellants that in an appeal against the judgment and order passed by the learned Single Judge ordering fresh exercise of promotion and when it was nobody's case before the Division Bench that the entire selection test has been vitiated and even that was not the observation made by the learned Single Judge, the Division Bench could not have/ought not to have set aside the entire selection test and/or not E to have ordered the fresh exercise of promotion.

7.2 It is further submitted by the learned counsel appearing on behalf of the appellants that even otherwise both, the learned Single Judge as well as the Division Bench have materially erred in observing and holding that by prescribing minimum 12 marks each to obtain in the F oral interview as well as performance appraisal reports, the principle of seniority-cum-merit has been given go by.

7.3 Relying upon the decision of this Court in the case of *Chairman, Rushikulya Gramya Bank v. Bisawamber Patro reported in (2013) 4 SCC 376*, it is submitted by the learned counsel appearing G on behalf of the appellants that prescription of benchmark merit criterion based on aggregate performance in written test, interview and performance appraisal report, besides criteria fixed by rules for grant of promotion on seniority-cum-merit basis is permissible.

7.4 It is further submitted by the learned counsel appearing on H behalf of the appellants that in the case of *Rajendra Kumar Srivastava*

v. *Samyut Kshetriya Gramin Bank reported in (2010) 1 SCC 335*, it is held by this Court 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.

7.5 Making the above submissions and relying upon the above two decisions of this Court, it is vehemently submitted by the learned counsel appearing on behalf of the appellants that in the present case both, the learned Single Judge as well as the Division Bench erred in holding that prescribing the benchmark to obtain 12 marks each in the interview and performance appraisal reports shall be defeating the principle of seniority-cum-merit and as such the same is contrary to the law laid down by this Court in the aforesaid two decisions.

7.6 It is further submitted by the learned counsel appearing on behalf of the appellants that even otherwise it is required to be noted that out of 16 candidates promoted, 13 candidates were as such above the original writ petitioners in the seniority list and the objection was only with respect to three persons who were promoted and who were junior to the original writ petitioners. It is submitted that therefore at the most the learned Single Judge could have set aside the promotion with respect to only those three promotes who were junior to the original writ petitioners. However, learned advocate appearing on behalf of the appellants herein has fairly conceded that after all those candidates who crossed the benchmark even in interview and the performance appraisal reports, thereafter the promotions are to be made on the basis of seniority-cum-merit.

8. Learned advocate(s) appearing on behalf of the original writ petitioners has supported the order passed by the learned Single Judge and has/have submitted that as rightly observed by the learned Single Judge and to that extent the learned Division Bench that by prescribing the benchmark of obtaining 12 marks each in interview and performance appraisal reports, the principal of seniority-cum-merit has been given go by.

8.1 It is submitted by the learned advocate(s) on behalf of the original writ petitioners that as such in the advertisement, the only eligibility criteria was that a candidate shall have to obtain minimum 40% marks in the written test and no minimum marks were prescribed for the interview and the performance appraisal reports.

- A 8.2 Relying upon the decision of this Court in the case of *B.V.Sivaiah v. K. Addanki Babu reported in (1998) 6 SCC 720*, and another decision of this Court in the case of *Sarva U.P.Gramin Bank v. Manoj Kumar Chak reported in (2013) 6 SCC 287*, it is prayed to dismiss the present appeals.
- B 9. We have heard learned counsel for the respective parties at length.

At the outset, it is required to be noted that the promotion to the post of Junior Management Scale II is governed by the principle of seniority-cum-merit. It is true that as per the rule and as per the eligibility

- C criteria mentioned in the rule, the selection shall be on the basis of performance in the written test, interview and performance appraisal reports for preceding five years. As per the rules, 60 marks are allotted for written test, 20 marks for interview and 20 marks for performance appraisal reports. The rule further provides that a candidate shall be required to appear in the written test comprising of two parts, viz, Part 'A' and Part 'B'. 60 marks allotted for written test are further divided as under:

Part 'A'	30 marks
Part 'B'	30 marks

- E The rule further provides that a list of only those candidates who secure minimum 40% marks in each part shall be prepared and such candidates shall be called for interview. It is true that the rule do not provide any minimum qualifying marks for interview as well as performance appraisal. However, at the same time, the authority/ Selection Committee took a conscious decision to fix the benchmark of having 12 marks each out of 20 marks each in interview as well as performance appraisal reports. Both the learned Single Judge as well as the Division Bench found fault with the same and observed and held that further fixing the qualifying marks/benchmark to obtain minimum 12 marks in the interview and the performance appraisal was not permissible and that it would defeat the principle of seniority-cum-merit. The learned Single Judge therefore directed to prepare the fresh promotion list by prescribing the minimum necessary cut off merit marks out of 100 so that the rule of seniority-cum-merit could be made applicable.
- F 10. When the aforesaid order passed by the learned Single Judge
- H was challenged before the Division Bench, the Division Bench, by the

impugned judgment and order, not only dismissed the appeals, but also set aside the directions issued by the learned Single Judge to prepare a fresh select list by prescribing the minimum necessary cut off merit marks out of 100 and directed the establishment to conduct the fresh exercise for promotion, meaning thereby, the Division Bench set aside the entire select list. In the absence of any finding by the learned Single Judge that the select list was vitiated on account of any irregularity, the Division Bench was not justified in setting aside the entire select list and ordering fresh exercise for promotion.

11. Now so far as the finding recorded by the learned Single Judge and the Division Bench that further fixing the qualifying marks/benchmark of obtaining minimum 12 marks each in the interview and the performance appraisal reports is not permissible and it would defeat the principle of seniority-cum-merit is concerned, as observed and held by this Court in the case of *Bisawamber Patro (supra)*, the same is permissible. This Court was considering a similar situation and the similar rules governing promotions from Junior Management Scale I to Middle Management Scale II. In the case before this Court, the rule was similar to the rule in the present case. In the rule before this Court, also there was no minimum qualifying marks for the interview provided. However, the bank in addition to the requirement of 40% qualifying marks in the written test further fixed the qualifying marks of 60% for general candidates and 55% marks for SC/ST candidates on the aggregate marks comprising written test, performance appraisal reports and interview. That thereafter the names of all the candidates who got 60% or above in the aggregate were put in the list for promotion strictly as per their seniority. All candidates were promoted in the order of seniority, irrespective of anyone among them having got marks in excess of 60% in the aggregate. The candidates unsuccessful in getting promotion challenged the select list on the similar grounds on which the select list in the present case was challenged. The High Court allowed the writ petition holding that prescription of the benchmark of 60% marks in the aggregate was in violation of the promotion policy and the rules governing the field. Consequently, the High Court allowed the writ petition and directed the bank to make fresh selection in accordance with the rules. Reversing the order passed by the High Court, and even after considering the decision of this Court in the case of *B. V. Sivaiah (supra)* (the judgment which has been relied upon by the High Court), this Court observed that the procedure adopted by the bank to further fixing the qualifying marks

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- A in the written test, performance appraisal reports and the interview has not violated the principle of seniority-cum-merit. While observing so, this Court took into consideration the observations made by this Court in para 13 of another decision of this Court in the case of *Rajendra Kumar Srivastava (supra)*.
- B 12. Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case on hand, we are of the opinion that both, the learned Single Judge as well as the Division Bench erred in holding that further fixing the qualifying marks to be obtained in the interview and the performance appraisal reports, viz., 12 minimum marks each to be obtained in interview and the performance appraisal reports and fixing such a benchmark would violate the principle of seniority-cum-merit. As the promotion to the post of Junior Management Scale II shall be made on the basis of seniority-cum-merit, the only requirement would be that after it is found that the candidates have possessed the minimum necessary merit, namely, minimum 40% qualifying marks in the written test and minimum 12 marks each out of 20 marks each in interview and the performance appraisal reports respectively, thereafter the candidates are required to be promoted in the order of seniority, irrespective of anyone among them having obtained more marks.
- C 13. In view of the above and for the reasons stated above, the present appeals are allowed. The judgment and order passed by the learned Single Judge of the High Court as well as the impugned judgment and order passed by the Division Bench are hereby quashed and set aside. It is directed that the respondent-authority shall prepare a fresh select list for promotion to the post of Junior Management Scale II and to consider the case of those candidates who crossed the benchmark of having obtained minimum 40% qualifying marks in the written test and having obtained minimum 12 marks each out of 20 marks each for interview and performance appraisal reports respectively and those candidates be promoted in the order of seniority, irrespective of anyone among them having obtained more marks.
- D 14. The present appeals are allowed to the aforesaid extent. No order as to costs.