

Calcutta High Court

Uttar Banga Kshetriya Gramin Bank ... vs Jayanta Choudhury And Ors. on 12 March, 2007

Equivalent citations: (2007) 2 CALLT 620 HC

Author: S S Nijjar

Bench: S S Nijjar, P C Ghose

JUDGMENT Surinder Singh Nijjar, C.J.

1. This appeal has been filed by the Uttar Banga Kshetriya Gramin Bank (hereinafter referred to as 'Bank') against the Judgment of the learned single Judge of this Court in W.P. 1151 (W) of 1999. It is stated that the learned single Judge should not have allowed the writ application by quashing and setting aside the circular dated 22nd June, 1998 and also should not have passed the direction upon the private respondents to be reverted back to their original post.

2. It is further pleaded that the learned single Judge should not have allowed the writ application and should not have passed the directions upon the respondents/appellants herein, to immediately initiate the selection process for giving promotion in the post of 'MMG-II'. The Bank is also aggrieved against the following directions:

This will, however, not preclude the Bank to retain the promotions being the private respondents in their respective promoted posts, if any, so want in such event the writ petitioner must be given appropriate pay protection respectively from the date of promotion of the private respondents and would be accommodated in MMG Scale II as and when vacancy would arise with retrospective effect from 1998, when the private respondents were promoted.

3. It is also pleaded by the Bank that the learned single Judge has failed to appreciate 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 performance appraisal, on the basis of service records and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of 'Seniority-cum-Merit'.

4. It is further pleaded that the Judgment of the learned single Judge is not clear as to what was suggested by the Supreme Court of India, on the basis of which the selection process is to be conducted. It is also pleaded that the writ petition suffers from vice of estoppel by acquiescence inasmuch as the writ petitioner had participated in an earlier selection process. Having participated in the earlier selection process, the petitioner cannot now challenge the selection process. The petitioner never preferred an appeal to the management against his earlier non-selection.

5. We have heard the learned Counsel for the parties at length.

6. From the pleadings of the parties it emerges that the respondent is an employee of the appellant/Bank and is working as (Officer in Junior Management) also called Officers Scale-I. The Bank has framed Uttarbanga Kshetriya Gramin Bank (Staff) I Service Regulation, 1980 under Section 30 of the Regional Rural Bank Act, 1976, which came into force on 7th October, 1980. The Bank has also framed Regional Rural Banks (Appointment and Promotion of Officer's and Employee's) Rules, 1988 which were published on 28th September, 1988. Rule 7 of the aforesaid Rules lays down the criteria for promotion of Area Manager or Senior Manager. The aforesaid rule is as follows:

7. Area Manager or Senior Manager

(a) Source of Recruitment Hundred percent by promotion from amongst confirmed officers working in the bank Promotions will be on the basis of seniority-cum-merit. If suitable officers are not available internally, these posts could be filled by taking temporarily officers of the sponsor bank and other banks or organizations on deputation.

(b) Qualifications and Eligibility (1) A graduate of recognised University of any equivalent qualifications recognized as such by Government of India, preference being given to Agriculture or Commerce or Economics graduates.

(2) Eight years service as an officer in Regional Rural Bank concerned provided that the Board may, with the prior approval of the National Bank, relax the period of service by the period not exceeding two years, if suitable candidates of requisite experience are not available.

Note: The post of Area Managers and Senior Managers will be equivalent in rank and will be interchangeable.

Mode of Selection: Interview and assessment performance report for the preceding three years period as officer for promotion.

7. On the basis of 1988 Rules, the appellant/Bank has initiated promotional process in the year 1991, 1994 and 1996. The criteria adopted at all time for selection of the candidates was 'Seniority-cum-Merit'. However, the appellant issued a circular being No. C/086/21/9073/PRS-I dated 4th October, 1997. Thereafter the appellant issued another circular being No. C/062/22/2515/PRS-I dated 22nd June, 1998 laying down the criteria for promotion as approved by the competent authority. Through this circular, the respondents adopted a marks system for assessing the suitability of the candidates. This circular was challenged by the writ petitioner.

8. The respondents-Bank have filed the affidavit-in-opposition.

9. After hearing the learned Counsel for the parties, the learned single Judge allowed the writ petition by Judgment dated 19th July, 2002. It is held that the promotional process resulting from the circular dated 22nd June, 1998 is quashed and set aside.

10. The criteria to be adopted by the appellant/Bank for filling up the vacancies by promotion of Scale-I to Scale-II is contained in Clause 3 of the notification dated 22nd June, 1998 which is as under:

Basis of Selection:

Selection will be made on 'SENIORITY-CUM-MERIT' basis and candidates will be numerically evaluated on 100 points basis as under:

i) Seniority	:	50
ii) Performance appraisal	:	30
iii) Interview	:	20

11. The learned single Judge has come to the conclusion that the identical issue has been decided by the same Court in a writ petition being WP 13951 (W) of 1998 by a Judgment and order dated 14th June, 2002. However, the learned Counsel for the appellants had submitted that the aforesaid Judgment would not be applicable to the facts and circumstances of this case in view of law laid down by the Supreme Court of India in the case of Sher Singh and Ors. v. Surinder Khanna and Ors. reported in 1998 (7) SCALE, page 447.

12. The learned single Judge has noted the submissions made by the learned Counsel for the respondents. The following decisions were cited by the learned Counsel for the appellants before the learned single Judge, which have also been relied upon before this Bench:

i) Sher Singh and Ors. v. Surinder Khanna and Ors. ;

ii) B.V. Sivaiah and Ors. v. K. Addanki Babu and Ors. ;

iii) Rajesh Nath and Ors. v. Kolaghat Thermal Power Station and Ors. reported in 1998 (1) Calcutta Law Times, Page 391;

iv) State of Mysore v. C.R. Seshadri and Ors. ;

v) Sr. Jagathigowda and Ors. v. Chairman, Cauvery Gramin Bank and Ors. reported in AIR 1996, Supreme Court, Page 2733.

13. The learned single Judge has, however, come to the conclusion that the law has been settled by the Supreme Court in the case of B.V. Sivalah (supra) wherein it has been held:

'Seniority-cum-Merit' as defined by the Apex Court, means that a particular mark is fixed which makes concerned candidate eligible for promotion and a list is accordingly prepared for the successful candidates who could cross such making and then promotion is given on the basis of seniority irrespective of the marks obtained by the concerned candidates. Whereas 'Merit-cum

Seniority' means that a particular group of employees on the basis of seniority are taken within the zone of consideration and as soon as they come within the zone of consideration the promotion is given in accordance with the merit i.e. according to the marks obtained by those persons.

Thereafter it has been observed by the learned single Judge:

The preceding paragraph is my understanding of the phrase 'Seniority-cum-Merit' in the light of the various decisions of the Apex Court.

14. Relying on the aforesaid decisions, the learned single Judge has come to the conclusion that the entire selection is vitiated as the appellant had adopted a procedure of selection which is not provided under the statutory rule.

15. Mr. Arunava Ghosh, learned Counsel appearing for the appellants has submitted that the learned single Judge has erred in law in holding that the appellants have followed the criteria of Merit-cum-Seniority. Under the circular dated 22nd June, 1998 the appellants/Bank had merely provided a bare minimum eligibility criteria of the candidates. In case it is to be held that the selection procedure is invalid, the promotion would have to be made purely on the basis of Seniority. In that case performance of the candidates in the Written Test, Performance Appraisal and Interview of the officers would be rendered wholly irrelevant. Learned Counsel also submitted that the petitioner was estopped from filing the writ petition as he had participated in the earlier selection process and had not challenged the same.

16. We have considered the submissions made by the learned Counsel for the parties, we are of the opinion that the Judgment of the learned single Judge is in consonance with the law laid down by the Supreme Court of India in the case of B.V. Sivaiah (supra). The observations produced above leave no manner of doubt that the promotions when have to be made on the basis of Seniority-cum-Merit, the same had to be made irrespective of marks to be obtained by the concerned candidate in the "Selection Process". The performance of an employee would only be relevant in case the selection is to be made on the basis of Merit-cum-Seniority. Much emphasis was placed by the learned Counsel for the Bank, on the proposition that the Bank is entitled to provide a Bench Mark. There is no dispute with the aforesaid proposition of law. An employer is certainly entitled to lay down a bare minimum eligibility criterion, which a candidate must possess. But once the candidate crosses the Bench Mark, the promotion has to be on the basis of the seniority of the candidate irrespective of the better merit of the junior. It is an admitted fact that the 'Selection Process' is not the Bench Mark. It is undisputed that the promotions have been made on the basis of the marks obtained by the candidates in the 'Selection Process'. Clearly, therefore, promotions have been made on the basis of 'Merit-cum-Seniority', which is contrary to the statutory rules. The meaning of the term 'Seniority-cum-Merit' has been succinctly set out in the case of State of Kerala v. N.M. Thomas reported in 1976 (1) SLR 805 (SC) as follows:

The principle of equality is applicable to employment at all stages and in all respects namely, initial recruitment promotion, retirement, payment of pension and gratuity. With regard to promotion the normal principles are either merit-cum-seniority or seniority-cum-merit. Seniority-cum-merit

means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority. This will not violate Articles 14, 16(1) and 16(2). A rule which provides that given the necessary requisite merit, a member of the backward class shall get priority to ensure adequate representation will not similarly violate Article 14 or Articles 16(1) & (2). The relevant touchstone of validity is to find out whether the rule of preference secures adequate representation for the unrepresented backward community or goes beyond it.

17. Similar observations have been made by the Supreme Court in the case of Union of India v. Lt. Gen Rqjendra Singh Kadyan wherein it has been held:

Wherever fitness is stipulated as the basis of selection, it is regarded as a non-selection post to be filled on the basis of seniority subject to rejection of the unfit. Fitness means fitness in all respects. 'Seniority-cum-merit' postulates the requirements of certain minimum merit or satisfying a benchmark previously fixed. Subject to fulfilling this requirement the promotion is based on seniority. There is no requirement of assessment of comparative merit both in the case of Seniority-cum-fitness and seniority-cum-merit. Merit-cum-suitability with due regard to seniority as prescribed in the case of promotion to All India Services necessarily involves assessment of comparative merit of all eligible candidates, and selecting the best out of them.

18. We, therefore, find no substance in the submissions made by the learned Counsel for the appellants. We are not satisfied that the petitioner should have been non-suited on the ground of estoppel, merely because he had participated in the earlier selection process which was similar to the present selection process.

With the above observations, the appeal is dismissed.

There will, however, be no order as to costs.

Pinaki Chandra Ghose, J.

19. I agree.