Binda Sah and ors. Vs. Vijay Nandan Prasad and ors.

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Court : Patna

Decided On : Nov-07-2001

Judge : Nagendra Rai, J.

Appeal No. : L.P.A. Nos. 342, 380, 381, 383 and 385 of 2001

Appellant : Binda Sah and ors.

Respondent : Vijay Nandan Prasad and ors.

Disposition : Appeal Dismissed

Judgement :

Nagendra Rai, J.

1. Five writ applications being CWJC Nos. 4016, 9520, 3077, 7509 and 4239 of 1998 were filed by the officers of Sale I of the Saran Kshetriya Gramin Bank challenging the promotion of 12 private respondents to the writ application (appellants) in Scale II (Area Manager/Senior Manager) on the ground that while considering the promotion matter, relevant criteria for promotion was not applied. All the writ applications were heard together and were allowed and the promotion given to all the private respondents to the writ applications (appellants) were quashed by the learned Single Judge by order dead 15th March, 2001 with a direction to the Bank in question to consider the cases of all eligible candidates following the principles of seniority-cum-merit. However, the said promotion will be

subject to final result of this Court in CWJC No. 4533 of 1996 wherein promotion policy adopted by the Bank itself was under challenge. The appellants aggrieved by the aforesaid order have preferred the aforesaid five appeals.

2. Before adverting to the stand of the parties to the respective cases, it is relevant to state in brief the provisions having relevancy with regard to matter in controversy. The parliament enacted the Regional Rural Banks Act, 1976 (hereinafter referred to as the Act). Under the aforesaid provision, Regional Rural Banks have been established and Saran Kshetriya Gramin Bank is one such Banks. Section 17 of the Act empowers the Bank to appoint officers and determine their terms and conditions of appointment and service. Section 24 of the Act empowers the Central Government to issue directions in regard to matters of policy involving public interest after consultation with the National Bank for Agricultural and Rural Development (hereinafter referred to as the NABARD). Section 29 of the Act empowers the Central Government to make rules inter alia with regard to manner in which the officers and other employees of the Bank shall be appointed.

3. The Central Government in exercise of power under Section 29 read with Section 17 framed Rules on 28-9-1988, a copy of which has been annexed as Annexure-A to the counter-affidavit filed by the Bank in CWJC No. 7509 of 1998. The said rules contain provision with regard to mode of appointment by deputation, promotion and direct recruitment. According to Rule 5, all vacancies determined under the rule by the Board shall be filled up by deputation, promotion or direct recruitment in accordance with the provision contained in the Second Schedule. With regard to appointment to the post of Area Managers or Senior Managers the provision made in the Second Schedule is as follows.

Area Managers or Senior Managers:

(a) Source of recruitment Hundred per cent

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 filed

by taking temporarily officers

of the sponsor Banks and

other banks or organisations

on deputation.

(b) Qualifications and (i) A graduate of recognsed

eligibility University or any equivalent

qualifications recognised as

such by Government of India,

preference being given to

Agriculture or Commerce

or Economics Graduates.

(ii) Eight years service as

an officer in the

regional Rural Bank

concerned: Provided that

the Board may, with the

prior approval of National

Bank, relax the period of

service by a period not

experience two yeas, if

suitable candidates of,

requisite experience are

not available.

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

(c) Mode of Selection Interview and assessment

of performance reports

for the proceeding three

years period as officer

for promotion

4. Before framing of the aforesaid Rules by the Central Government, the Central Government as well as the NABARD had issued circulars containing provision regarding promotion, etc. The Central Government issued circular on 10-10-1987 and in accordance with the same, the NABARD issued circular on 1-12-1987 and according to which for promotion to the post of Area Managers/Senior Managers, non-selection rule of seniority-cum-merit has to be applied which envisages

promotion by seniority with due consideration to the minimum merit/fitness prescribed. It was provided that if the Manager satisfies the qualifications and eligibility criteria and there is nothing adverse against him, his due promotion should not be denied to him. Thereafter, the Sponsor Bank, namely, the Central Bank of India framed a model promotion policy dated 23-6-1995 based upon the promotion policy as contained in the Rules framed by the Central Government as mentioned above and the said draft policy was adopted by the Board of Directors of the Bank in question on 25-8-1995. A copy of the same has been annexed as Annexure-C to the counter-affidavit filed in the aforesaid writ application. The relevant policy decision contained in Para 05 is as follows.

05. Promotion will be made giving weightage on the following factors.

(A) Seniority 40 marks

(B) Performance 40 marks

(C) Interview 20 marks

Procedure of awarding and aggregating marks:

(A) Seniority.-Every officer will get 4 marks for every completed years of service over & above the minimum 8 years required service with a maximum of 40 marks.

(B) Performance:

(01) For the purpose of assessing the performance of the individual officer a performance appraisal system has been introduced.

(02) Marks will be awarded for performance on the basis of the overall rating for the last 3 years which will be done on a 5 point scale as under:

RATING MARKS WEIGHT AGE MARKS

Excellent 100 40

Very Good 80 32

Good 60 24

Average 40 16

Below average 20 08

(03) Officers who get below average rating will not be called for interview. (C) INTERVIEW:

(01) Interview panel for assessment of potential will be constituted by the management associating the Chairman, a director nominated by the Reserve Bank of India, a director nominated by NABARD and a member nominated by the sponsor Bank & a SC/ST officer in the Bank of Sale-Ill or above. The Chairman of the Bank will be the Chairman of the interview committee. However the member may be substituted by the approval of the Board of Directors depending upon their availability.

(02) Rating will be given by the interviewing committee on 7 points scale and marks will be awarded as per following:

A+ (20 Marks)

A (15 Marks)

A- (12 Marks)

B+ (10 Marks)

B (08 Marks)

B- (05 Marks)

C (01 Marks)

(03) The pass mark in the Interview is 8 & Officers who secure less than 8 marks in the interview will be considered unsuitable for promotion & their names will not be included in the final merit list.

(06) Final preparation of Merit List:

(a) The marks obtained by the Offices on various factors on which they are being judged will be aggregated after being adjusted in the manner described as above & a list will be prepared in the order of the aggregate marks.

(b) From the merit list, a list of selected candidates to the extent of the estimated vacancies will be prepared subject however, to an appropriate cut-off point (marks) to be determined by the Bank.

(c) The list of selected candidates will be arranged strictly in the order of the seniority in the scale and the promotion will be made out of the list.

Board of Directors of the Bank can amend, substitute review and delete any of the clause of the promotion policy which will be final.

5. According to the policy decision, while considering the case of promotion, 40 marks has to be allotted to seniority, 40 marks for performance and 20 marks for interview, and procedure for awarding and aggregating marks with regard to seniority, performance and interview has been mentioned therein. A merit list has to be prepared of selected candidates to the extent of estimated vacancies subject to appropriate cut-off point to be determined by the Bank and thereafter, selected candidates have to be arranged in order of seniority and promotion has to be made out of the said list. It further appears that the Board of Directors of the Bank in question in a meeting held on 18-3-1998 fixed 60 marks as a cut-off marks for the purpose of declaring the candidate as successful after the interview. A copy of the said decision has been annexed as Annexure-2 to LPA No. 342 of 2001.

6. There were 12 vacancies in Scale-II and steps were taken for promotion in terms of the policy of the Bank as stated above and writ petitioners and the appellants all appeared at the interview. There is no dispute that a gradation list of officers of Sale I was prepared and 12 private respondents to the writ application were promoted to Scale-II who were at Serial Nos. 2, 3,4, 5, 7, 9, 10, 11, 15, 20, 34 and 36 of the gradation list of Scale-I officers.

7. The writ petitioners-respondents challenged the aforesaid promotion as stated above by filing five writ applications. They relied upon the circular of the NABARD dated 1-12-1987 as mentioned above. Their case was that according to the circular of the NABARD dated 1-12-1987, the promotion has to be granted strictly on the basis of seniority with due consideration to minimum merit/fitness, if the officer in Scale-I satisfies the qualifications and eligibility criteria and there is nothing adverse against him, the promotion cannot be denied to him. The procedure adopted for the comparative assessment of merit by the Bank was not permissible.

8. The stand of the Bank as appears from the counter-affidavit filed in CWJC No. 7509 of 1998 is that the Bank adopted the promotion policy in the light of the Rules framed by the Central Government and the model policy decision of the sponsor Bank and according to which cases of the candidates for promotion were considered. Further stand of the Bank is that the promotion is not an automatic and the same is subject to required merit and comparative assessment of the candidates and their suitability to the post of which they are to be promoted, NABARD has clarified its circular dated 1-12-1987 by instruction dated 10-2-1888 wherein it has been stated that the circular dated 1-12-1687 cannot be interpreted to mean that the promotion would be automatic without any screening whit

so ever. The management of the bank are not precluded from making objective assessment of the officers employees potential for considering their suitability for promotion. A system of objectives assessment of the performance of the staff should be evolved and the potential for shouldering higher responsibilities should specifically be regarded in every performance appraisal so as to ensure that only efficient staffs are eligible for promotion. It was stated in Paragraph 16 of the counter-affidavit that since the promotion was to be given on the basis of seniority-cum-merit, the Board of Directors is wholly within its competence to make overall assessment of the officers for their promotion from Scale-I to Scale-II. As per promotion policy, the cut-off mark was fixed by the Board of Directors and the promotion was made strictly on the basis of the said policy.

9. The learned Counsel appearing for the appellants submitted that according to Rules framed by the Central Government, the seniority-cum-merit criteria has to be followed and in terms of the said Rules, the sponsor Bank issued model promotion policy which has also been adopted by the Bank in question and the cases of all the candidates were considered in accordance with the said promotion policy and statement to that effect was also made in the counter-affidavit filed on behalf of the Bank and the learned Single Judge wrongly held that no such plea was taken in the counter-affidavit.

10. Learned Counsel appearing for the writ petitioner/respondents on the other hand contended that while preparing a list of successful candidates, the criteria of seniority-cum-merit was not followed, on the other hand comparative merit was judge and thereafter, promotion was given and the learned Single Judge rightly quashed the promotion and directed to consider the cases of all eligible candidates according to law.

11. There is no dispute between the parties that the promotion to the post from Scale-I to Scale-II has to be made on the basis of seniority-cum-merit. In a case of seniority-cum-merit, the seniority has an important role to play and the merit is tested only to find out to the fitness of the candidates to discharge the duty of the post for which promotion has to be made. In other words, the comparative merit of the candidate is not tested to decide the question of promotion which is done in the case of merit-cum-seniority. For assessing minimum necessary merit, the authority can prescribe the mode of assessment of the candidates eligible for promotion. The assessment has to be made for appraisal of performance on the basis of service record as well as interview and minimum mark has to be prescribed which the concerned employee has to obtain before he is promoted on the basis of principles of seniority-cum-merit. The question involved in this case is n longer res

integral and the same has been decided by the Supreme Court in the case of B.V. Sivaiah and

Ors. v. K. Addanki Babu and Ors. : (1999)ILLJ754SC . It has been held in Paragraph 18 of the judgment as follows:

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.

12. The point for consideration is as to whether the Bank has considered the case of promotion in terms of the law settled by the Apex Court'

13. From perusal of the policy decision, it appears that only 40 marks has been fixed for seniority and 40 marks has been fixed for performance and 20 for interview. The procedure for determining seniority, performance and interview has also been mentioned as indicated above and thereafter, the merit list has to be prepared and from the said list, promotion has to be made on the basis of seniority. The minimum standard or cut-off point was not prescribed for assessing the minimum merit of the candidate for the purpose of selection on the basis of seniority. On the other hand, the cut-off mark was fixed with reference to seniority, assessment of performance and interview. If the Bank would have adopted a mode of selection and had fixed a cut-off mark for judging the minimum merit by awarding marks on the basis of appraisal of performance and interview and then would have appointed the persons on the basis of seniority who have crossed the cut-off mark then it could have been said that the principles of seniority-cum-merit was followed but the same has not been followed in the case. The marks were allotted for seniority also merit list was prepared after considering the seniority, performance and interview. With regard to the same, the cut-off mark was fixed and the persons thereafter, were promoted on the basis of seniority. The learned Counsel for the appellant relying upon the aforesaid decision of the Supreme Court submitted that the mode of selection in this case is the same as was in the

case of Chindwara-Seoni Kshetriya Gramin Bank in which case the grant of the promotion is Scale-II was found valid by the Apex Court. From perusal of Paragraphs 36 and 37 of the judgment of the Apex Court, it is clear that in that case 50 marks out of 100 marks were prescribed as the minimum qualifying marks for interview and only those who had obtained the qualifying marks in the interview were selected for promotion on the basis of seniority. The Apex Court in that situation held that was 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. Such is not the case here. No minimum standard was fixed for assessing the merit of the candidate. On the other hand, cut-off mark was fixed with reference to marks obtained by the candidates after considering the seniority/performance and interview.

14. Thus, the case of the appellant is not similar to the case of Chindwara-Seoni Kshetriya Gramin Bank. On the other hand, comparative assessment of merit has been made by the Bank of all the candidates and thereafter merit list was prepared, minimum cut-off mark was fixed with regard to marks allotted after consideration of seniority, etc. as stated above and thereafter promotions have been made. In other words, the seniority-cum-merit formula has not been followed in granting promotions to the appellants. No doubt, the learned Single Judge was not right in saying that the Bank has not taken the plea in the counter-affidavit that minimum cut mark was fixed and seniority-cum-merit was followed, but that does not make any difference for the reason that the Bank has taken inconsistent plea in the counter-affidavit as stated above. At one place in Paragraph 7 of the counter-affidavit, it was stated that the required merit and comparative assessment of the candidates and their suitability has to be judged while considering the promotion and at other place in Paragraphs 16 and 17 of the counter-affidavit, it was stated that the promotion has to be made on the basis of seniority-cum-merit.

15. Be that as it may, as I have come to the conclusion that seniority-cum-merit criteria has not been followed in this case, the order dated 3-4-1998 granting promotion to Scale-II is not valid.

16. Accordingly, there is no merit in these appeals and the same are dismissed. The Bank should consider the promotion in terms of the law settled by the Apex Court.

P.N. Yadav, J.

17. I agree.