

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1273 OF 2004

Balbir Singh Bedi

...Appellant

Versus

State of Punjab & Ors.

...Respondents

JUDGMENT

Dr. B. S. CHAUHAN, J.

1. This appeal has been preferred against the impugned judgment and order dated 9.10.2003 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 15672 of 2003 by way of which the claim of the appellant for promotion has been rejected.

2. The facts and circumstances giving rise to this case are that:

A. The appellant was appointed as Civil Defence Instructor in the year 1964, and was promoted as Company Commander in October 1968. He was later promoted to the post of District Commander in July 1989. He, then claimed to have become eligible for substantive promotion to the post of Battalion Commander as per the rules applicable.

B. The case of the appellant was considered alongwith other eligible candidates, and vide order dated 30.1.2001, a person junior to him (Respondent No. 5), was promoted to the said post after considering his past five years' Annual Confidential Reports (hereinafter referred to as 'ACR') and other records.

C. The appellant made repeated representations in this regard, but the same were not considered. Employees of the other department governed by the same rules, filed Civil Writ Petition Nos. 4491 and 11011 of 2001 in the Punjab and Haryana High Court contending that their cases for promotion were not to be considered in the light of executive instructions dated 29.12.2000, as the vacancies on promotional posts had occurred much before the issuance of said executive instructions. The said writ petitions were disposed of by the High Court vide judgment and order dated 14.1.2003, by which the

High Court directed the authorities to consider the promotion of the parties therein, ignoring the instructions dated 29.12.2000.

D. The appellant retired on 31.12.2001 and filed Civil Writ Petition No. 15672 of 2003, seeking promotion and quashing of executive instructions issued on 29.12.2000 as well as on 6.9.2001. However, the High Court dismissed the said Civil Writ Petition vide impugned judgment and order dated 9.10.2003.

Hence, this appeal.

3. Shri P.S. Patwalia, learned senior counsel appearing on behalf of the appellant, has submitted that if the criteria for promotion is “seniority-cum-merit”, the question of ignoring the seniority does not arise. Additionally, recruitment to the post of Battalion Commander is governed by Rule 8 of the Punjab Home Guard, Class-I Rules, 1988 (hereinafter referred to as the ‘1988 Rules’), which provides that 75 per cent posts of this cadre would be filled up by promotion from the Battalion 2nd-in-Command consisting of District Commanders, the Chief Instructor, and Junior Officers at the State Headquarters, working under the control of the Commandant General, Punjab, all having a minimum work experience of 8 years. However, it

prescribes that selection to the post must be made on the principle of “seniority-cum-merit”. The High Court committed an error by not giving weightage to seniority. Furthermore, as the executive instructions followed therein were issued subsequent to the date on which the vacancy occurred, the said instructions must not be applied to the present case. Appellant was given officiating charge of the post, and he performed the duties and functions on the said post, he could not be found unfit for any reason whatsoever, at a later stage. Therefore, the judgment and order impugned is liable to be set aside.

4. On the other hand, Shri Jagjit Singh Chhabra, learned counsel appearing on behalf of Respondent Nos. 1 to 4, has submitted that the aforementioned rule provides for promotion only on the basis of “seniority-cum-merit”. Therefore, the State, even in the absence of any executive instructions, could fix the required benchmark. The same, however, must be fixed prior to considering a case for promotion, as once the process of promotion begins, it would not be fair to change the rules of the game. The fixing of such a benchmark is completely unrelated to the date on which the vacancy occurred. Appellant, vide order dated 13.5.1997, was authorised only to sign

bills and vouchers relating to the office, which could not confer any right to the appellant. Moreover, at the relevant point of time, appellant was facing criminal prosecution under the provisions of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act') as well as for the offences under the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'). In view thereof, no fault can be found with respect to the judgment of the High Court. The appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. A Seven Judge Bench of this Court in **State of Kerala & Anr. v. N.M. Thomas & Ors.**, AIR 1976 SC 490, held:

“Seniority cum merit’ means that given the minimum necessary merit requisite for efficiency of administration, the senior, though less meritorious, shall have priority. This will not violate Articles 14, 16 (1) and 16 (2) of the Constitution of India.”

Thus, it is apparent that this Court has provided for giving weightage to seniority, without any compromise being made with respect to merit, as the candidate must possess minimum requisite

merit. Efficiency of administration is of paramount importance, and therefore, whilst adequate weightage is given to seniority, merit must also be duly considered.

7. In **Sr. Jagathigowda C.N. & Ors. v. Chairman, Cauvery Gramin Bank & Ors.**, AIR 1996 SC 2733, this Court has observed as under:—

“It is settled proposition of law even while making promotion on the basis of seniority cum merit, the totality of the service record of the officer concerned has to be taken into consideration. The Performance Appraisal Forms are maintained primarily for the purpose that the same are taken into consideration when the person concerned is considered for promotion to the higher rank.”

8. In **Union of India & Ors. v. Lt. Gen Rajendra Singh Kadyan & Anr.**, AIR 2000 SC 2513, it was observed as under:—

“Seniority-cum-merit” postulates the requirement 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-merit.”

The said principle has also been approved, reiterated and followed by this Court in **Syndicate Bank Scheduled Castes and**

Scheduled Tribes Employees Association (Regd.) & Ors. v. Union of India & Ors., 1990 Supp. SCC 350; **Govind Ram Purohit & Anr. v. Jagjiwan Chandra & Ors.**, 1999 SCC (L&S) 788; **The Central Council for Research in Ayurveda & Siddha & Anr. v. Dr. K. Santhakumari**, (2001) 5 SCC 60; and **Bibhudatta Mohanty v. Union of India & Ors.**, (2002) 4 SCC 16.

In view of the aforesaid judgments of this Court, it is evident that even if a promotion is to be made on the basis of “seniority-cum-merit”, a person who is lower in the seniority list, can in fact be promoted, ignoring the claim of the senior person, who failed to achieve the benchmark i.e. minimum requisite merit.

9. In **K. Samantaray v. National Insurance Co Ltd.**, AIR 2003 SC 4422, this Court explained the difference between the principles of “merit-cum-seniority”, and “seniority-cum-merit”, while placing reliance upon its earlier judgments, and held that for the purpose of promotion, even on a “seniority-cum-merit” basis, weightage in terms of numerical marks for various categories is given, and the authority is permitted to work out the marks for individual as occurring under each head, otherwise the word ‘merit’ would lose its sanctity. (See also: **State of U.P. v. Jalal Uddin & Ors.**, (2005) 1 SCC 169; and

Bhagwandas Tiwari & Ors. v. Dewas Shajapur Kshetriya Gramin Bank & Ors., AIR 2007 SC 994).

10. This Court in **Harigovind Yadav v. Rewa Sidhi Gramin Bank & Ors.**, AIR 2006 SC 3596, held that promotion, if to be made on the criterion of “seniority-cum-merit”, must not be made exclusively on the basis of merit. The Court negated the idea of selecting the more meritorious where Rules provided for the criterion of “seniority-cum-merit”, but did not rule out the laying down of criteria for fixing a minimum benchmark. In paragraph 17 of the said judgment, the Court has observed as under:—

“Interviews can be held and assessment of performance can be made by the Bank in connection with promotions. But that can be only to assess the minimum necessary merit.”

11. The principle of “seniority-cum-merit” and “merit-cum-seniority” are conceptually different, as in the case of the former, there is greater emphasis upon seniority even though the same is not the deciding factor, while the case of the latter, merit is the deciding factor.

12. In **Rajendra Kumar Srivastava & Ors. v. Samyut Kshetriya Gramin Bank & Ors.**, AIR 2010 SC 699, while considering the aforementioned issue, this Court held that when a promotion is to be made on the principle of “seniority-cum-merit”, then the said promotion must be made only after assessing the minimum necessary merit for such promotion. This must be done on the basis of seniority among the candidates possessing such minimum necessary merit, additionally, it must be ensured that the benchmark fixed is bonafide and reasonable. Fixing the benchmark cannot be challenged as being opposed to the principle of “seniority-cum-merit” and further, cannot be held to be violative of the concept of promotion by “seniority-cum-merit” considering the nature of duties and functions to be performed on the promotional post. The criteria for selection is not subject to challenge generally as it falls within the area of policy making. Therefore, the criteria for adjudging claims on the basis of the principle of “seniority-cum-merit”, depends upon various factors which the employer may determine depending upon the class, category and nature of posts in the hierarchy of administration, and the requirements of efficiency for the posts.

13. In **Rupa Rani Rakshit & Ors. v. Jharkhand Gramin Bank & Ors.**, AIR 2010 SC 787, this Court while considering the earlier judgments of this Court, held that where promotion is made on the principle of “seniority-cum-merit”, such promotion cannot be made on the basis of seniority alone. Merit also plays some role. The standard method adopted by the principle of “seniority-cum-merit”, is to subject all eligible candidates in the feeder cadre to a process of assessment of a specified level of minimum necessary merit, and then to promote candidates, who are found to possess the minimum necessary merit, strictly in order of seniority. The minimum merit necessary for promotion to the said post may be assessed either by subjecting 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 of the above, or of all the aforesaid methods. There cannot be any hard and fast rule with respect to how minimum merit should be ascertained. For the purpose of assessing the merit of employees, the employer may proceed with reference to four criteria (Period of service, educational qualifications, performance during last three years and interview) allocating separate maximum marks as regards each of the aforesaid counts.

14. In **Haryana State Warehousing Corporation & Ors. v. Jagat Ram & Anr.**, (2011) 3 SCC 422, this Court considered a similar issue and reiterated a similar view. The Court also observed that, for the purpose of according promotion on the principle of “seniority-cum-merit”, a comparative assessment of all eligible candidates is not permissible. Once a person has secured minimum marks with respect to merit, his seniority would play a significant role. Thus, in the event that an employee is found to possess minimum requisite merit, he is entitled to be considered for promotion on the basis of his seniority.

15. In view of the above, the law as regards this point can be summarised to the effect that, where a promotion is to be given on the principle of “seniority-cum-merit”, such promotion will not automatically be granted on the basis of seniority alone. Efficiency of administration cannot be compromised with at any cost. Thus, in order to meet said requirements, all eligible candidates in the feeder cadre must be subject to a process of assessment to determine whether or not an individual in fact possesses the specified minimum necessary merit, and in the event that he does possess the same, his case must be considered giving due weightage to his seniority. Furthermore, the

statutory authority must adopt a bonafide and reasonable method to determine the minimum necessary merit, as is required to be possessed by the eligible candidate. It must also take into account his period of service, educational qualifications, his performance during his past service for a particular period, his written test, interview, etc. The authority must further be competent to allocate separate maximum marks on each of the aforesaid counts. Fixing such criteria, or providing for minimum necessary merit, falls within the exclusive domain of policy making. Thus, it cannot be interfered with by courts in the exercise of their judicial powers, unless the same is found to be off the mark, unreasonable, or malafide.

16. The relevant portions of the executive instructions dated 29.12.2000 read as under:

“(iii) In the case of promotion to posts with pay scales less than Rs.12000-16350, the benchmark will be ‘Good’. This benchmark will determine the fitness of the officer and person graded ‘Very Good’ or ‘Outstanding’ will not supersede persons graded ‘Good’.

(iv) Henceforth each Annual Confidential Report will be evaluated as under:-

Outstanding : +A4 Marks

Very Good : A3 Marks

Good : +B2 Marks

Average : B1 Mark

ACRs for 5 years are taken into consideration for promotion. Out of a total of 20 marks, officers earning 0 to 14 marks will be graded overall 'Good' and those earning 15 to 17 marks will be graded overall 'Very Good'. Those earning 18 to 20 marks will be graded as 'Outstanding'. Departmental which are 'Outstanding' must have been out of the ordinary and reasons for giving grading must be cogent and well spelt out, to be accepted and outstanding. If the ACR does not fulfill the above criteria, the entry of the 'Outstanding' should be read as 'Very Good' only. An officer will not be fit for promotion if he is rated 'below average' in any of the 5 years."

17. Similarly, the executive instructions dated 6.9.2001 so far as applicable in the instant case, read as under:

"3. In the case of promotion to posts falling in Group 'B' the minimum benchmark will be 'Good' and there would be no supercession i.e. promotions would be made strictly on seniority-cum-merit.

4. For making promotion in all the categories there should not be any adverse remarks in the ACRs under consideration."

18. If, the instant case is examined in light of the aforesaid settled legal propositions, it becomes evident that even in the absence of the executive instructions, the State/employer has the right to adopt any reasonable and bonafide criteria to assess the merit, for the purpose of

promotion on the principle of “seniority-cum-merit”. The aforesaid executive instructions are nothing but codification of directions issued by this Court in the cases referred to hereinabove. Therefore, a challenge made to the executive instructions on the ground that they were issued at a date subsequent to the date on which the vacancy arose, is meaningless. The present case is not the one where, Respondent No. 5 was found to be more meritorious, in fact, the same is admittedly a case, where the appellant was unable to achieve the benchmark set, as it is evident from the record that his ACRs were average, and the benchmark fixed by the State was ‘Good’.

19. It is evident from the material on record i.e. from the counter-affidavit filed by the State that appellant faced criminal prosecution as FIR No. 25 dated 12.4.1996 had been lodged against him under Sections 7 & 13(ii) of the PC Act, 1988 and Sections 467/468/471/120-B IPC, at Police Station: Vigilance Bureau, Patiala, wherein the appellant faced trial though, acquitted as is evident from the judgment and order dated 2.5.2006 passed in Sessions Case No. 5 of 10.5.2001. His acquittal took place after five years to his retirement.

Be that as it may, for the reason best known to the appellant, this fact was not disclosed by him either before the High Court or before this Court. It is another matter as what could have been the effect of pendency of the said criminal case so far as this case is concerned. Thus, we are of the view that the appellant did not approach the court with clean hands, clean mind and clean objective.

20. In view of the aforesaid settled legal proposition, in the facts of this case, we have no hesitation in holding that no fault can be found with the High Court's judgment impugned before us. The appeal lacks merit and is, accordingly, dismissed.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(V. GOPALA GOWDA)

New Delhi,
February 11, 2013