

CASE NO.:
Appeal (civil) 7280 of 2003

PETITIONER:
K. SAMANTARAY

RESPONDENT:
NATIONAL INSURANCE CO. LTD.

DATE OF JUDGMENT: 12/09/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

2003 Supp(3) SCR 669

The Judgment of the Court was delivered by ARIJIT PASAYAT, J. : Leave granted.

Whether promotion has been rightly denied and what is the conceptual difference between the principles of merit-cum-seniority vis-a-vis seniority-cum-merit has been the subject matter of controversy in large number of cases. It is not unusual that a person entering into a particular service has an expectation that he will go higher in the hierarchy and denial thereof results invariably in litigation. The case at hand is no exception.

At the threshold of the litigious history, appellant was working as an Administrative Officer of the National Insurance Company Limited (hereinafter referred to as 'the employer'). A promotional policy was formulated on 14.2.1990 and is called "Promotion Policy for Officers". It was indicated in clause 3.1 that provisions of this policy are applicable to promotion of Officers up to and including the cadre of General Manager. Appellant was not found suitable for promotion of the relevant periods i.e. 1991-92 and 1992-93. As he was not granted promotion, he filed a representation to the Chairman of the Managing Committee of the employer-company indicating that many of his juniors in the cadre of Administrative Officer/Branch Manager had been given promotion which was denied to him. When the representation was rejected for the period 1991-92, and same was the fate for 1992-93, the appellant filed writ petition before the Orissa High Court. The basic stand in the writ petition was that the appellant had been wrongly denied promotion. During course of hearing of the writ petition, it was contended that the stipulations in clause in para 7.1 of the policy are in variance with those in para 1.2. It was highlighted that promotion was to be granted on the basis of seniority-cum-merit. As 42 marks out of 100 were earmarked for seniority, the principle of seniority-cum-merit was given a go-by and undue stress was placed on merit. Strong reliance was placed in the judgment of learned Judge of Rajasthan High Court in Umesh Chand Pandya v. The New India Assurance Co. and Ors. and Upendra Kumar Pradhan v. The New India Assurance Co. and Ors. delivered on 29.5.1997 consisting identical provision in the policy of the New India Assurance Company. The employer resisted the claim on the ground that on a reading of the promotional policy and object underlying the same, it is clear that there has been no infraction. It was submitted that basis for promotion was not seniority alone but seniority-cum-merit and other relevant aspects, which are clearly linked and connected with the process of selection for promotion. The High Court by the impugned judgment held that the appellant was not entitled to any relief and there was no illegality in the decision-making process of the employer in denying promotion.

Learned counsel for the appellant submitted that para 1.2 makes it clear

that the basis for promotion is seniority-cum-merit alone and by allotting 42 marks out of 100, such policy has been overlooked by attaching undue importance to so-called merit. A decision of this Court in *B. V. Sivaiah and Ors. v. K. Addanki Babu and Ors.*, [1998] 6 SCC 720 was referred to in order to substantiate the plea.

In response, Mr. Mukul Rohtagi, learned Additional solicitor General submitted that on a reading of the whole policy it is clear that seniority-cum-merit is not the only criteria for granting promotion. Para 7.2 itself makes it clear that as one goes higher in the hierarchy of posts seniority has lesser importance, and merit has overriding importance. A reference was made to *Syndicate Bank Scheduled Castes and Scheduled Tribes Employees Association (Regd.)*, through its General Secretary, *K.S. Badlia and Ors. v. Union of India*, through its Additional Secretary, Ministry of Finance (Deptt. of Economic Affairs), *Banking Division and Ors* [1990] Supp. SCC 350 to contend that were seniority-cum-merit and all other relevant aspects have been duly taken note of, there is no scope for making a grievance. It pointed out that in the writ petition there was no challenge to the policy or its efficacy and, only during argument probably sustenance was drawn from the *Rajasthan High Court's* judgment and plea regarding the legality of para 7.2 was raised. It is also highlighted that the policy is in operation of more than a decade, and even without impleading a single officer who has been promoted on the basis of para 7.2, the writ petition was misconceived.

In all services, whether public or private there is invariably a hierarchy of posts comprising of higher posts and lower posts. Promotion, as understood under the *Service Law Jurisprudence*, is advancement in rank, grade or both and no employee has right to be promoted, but has a right to be considered for promotion. The following observations in *Sant Ram Sharma v. State of Rajasthan and Ors.*, AIR (1967) SC 1910 are significant :

"The question of a proper promotion policy depends on various conflicting factors. It is obvious that the only method in which absolute objectivity can be ensured is for all promotions to be made entirely on grounds of seniority. That means that if a post falls vacant it is filled by the person who has served longest in the post immediately below. But the trouble with the seniority system is that it is so objective that it fails to take any account of personal merit. As a system it is fair to every official except the best ones; an official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. But, though the system is fair to the officials concerned, it is a heavy burden on the public and a great strain on the efficient handling of public business. The problem, therefore, is how to ensure reasonable prospect of advancement to all officials and at the same time to protect the public interest in having posts filled by the most able man? In other words, the question is how to find a correct balance between seniority and merit in a proper promotion-policy."

The principles of seniority-cum-merit and merit-cum-seniority are conceptually different. For the former, greater emphasis is laid in seniority, though it is not the determinative factor, while in the latter merit is the determinative factor. In *The State of Mysore and Anr. v. Syed Mohamood and Ors.*, AIR (1968) SC 1113, it was observed that in the background of Rule 4(3)(b) of the *Mysore State Civil Services (General Recruitment) Rules, 1957* which required promotion to be made by selection on the basis of Seniority-cum-merit, that the rule required promotion to be made by selection on the basis of "Seniority subject to fitness of the candidate to discharge the duties of the post from among persons eligible for promotion". It was pointed out that where the promotion is based on seniority-cum-merit the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted. But these are not the only modes for deciding whether promotion is to be granted or not.

Before we analyse the legal position further, it would be appropriate to extract some of the relevant paragraphs of the promotion policy.

"1.1 The main objective is to rationalise and codify the existing guidelines relating to promotions within the Officers cadre (Class-I) and to formulate a well defined promotion policy with built in motivation, providing therein reasonable opportunities to officers to move up in hierarchy, keeping in view the legitimate aspirations of the Officers to shoulder higher responsibilities.

1.2. This is aimed to be achieved by providing for promotion of officers through a process of selection on the basis of their seniority-cum-merit. While seniority is a known fact depending upon the number of years of service put in, merit, would inter-alia comprise of job knowledge, past performance, suitability and growth potential. These are to be assessed on the basis of performance appraisal system. Suitability and growth potential can be assessed from recommendations and remarks of Officers in the appraisals and interviews, were applicable.

7. CRITERIA FOR PROMOTION AND WEIGHTAGE :

7.1 Selection for promotion shall be based on seniority, insurance qualifications and merit-cum-seniority potential, as brought out in performance appraisals. In addition, for promotion to the cadre of Manager there shall be interview before selection. In assessment, maximum weightage in terms of numerical marks for various criteria shall be worked out as under :

	A.A.O. TO A.O.	A.O. TO A.M.	A.M. TO DY.M.	Dy. MANAGER TO MANAGER	
(a) Seniority	60	42	30	20	
(b) Insurance Qualification			10	8	-
(c) C.R. FORM					
(i) Traits in C.R.		10	15	20	15
(ii) Performance		10	15	25	25
(iii) Growth potential		10	20	25	25
(d) Interview	-	-	15		
Total	100	100	100	100	

NOTE : Marks for Insurance Qualification shall come into effect for promotion exercise for 1992 and onwards. Till then Total marks for A.A.O. to A.O. and A.O. to A.M. shall be 90 to 92 respectively."

As the figurative data extracted from the policy goes to show the service structure is like a pyramid. The higher one goes in the ladder of promotional posts remarkably the seniority loses importance, and merit gets primacy.

In Syndicate Bank case (supra) observations in para 14 throw considerable light on the controversy. The third mode (apart from seniority-cum-merit and merit-cum-seniority modes) has been recognized. It has been described as a "hybrid mode of promotion". In other words, there is a third category of cases where seniority is duly respected and merit is appropriately recognized.

While laying down the promotion policy or rule, it is always open to the employer to specify area and parameter of weightage to be given in respect of merit and seniority separately so long as policy is not colourable exercise of power, nor has the effect of violating of any statutory scope of interference and other relatable matters. The decision in B. V. Sivaiah case (supra) is clearly distinguishable on facts and in law. That was a case where statutory rules governed the field. This Court, inter alia, held that fixing terms which are at variance with the statutory rules is impermissible. In the case at hand, prior to the formulation of policy in February, 1990, there were no codified prescriptions. It was the stand of the respondent-employer that prior to the formulation of the policy, certain guidelines existed and the objectives of the policy were to rationalize and codify the existing guidelines relating to promotions within officers cadre. There is no statutory rule operating. It is for the employer to stipulate the criteria for promotion, the same pertaining really to the area of policy making. It was, therefore, permissible for the respondent to have their own criteria for adjudging claims on the principle of seniority-cum-merit giving primacy to merit as well, depending upon the class, category and nature of posts in the hierarchy of administration and the requirements of efficiency for such posts.

Reading of the whole policy reveals that stress was not on seniority alone and weightage was sought to be imposed on merit and other relevant aspects also. In view of this conclusion it is not necessary to go into the question of fence-sitting stand adopted by the appellant and non-impletion of affected persons. There is no scope for interference in this appeal, which is accordingly dismissed. Costs made easy.