

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1786 OF 2002

Rupa Rani Rakshit & Ors.

... Appellants

Vs.

Jharkhand Gramin Bank & Ors.

... Respondents

WITH

CA Nos.1787-1788 & 1789 of 2002

J U D G M E N T

R.V.RAVEENDRAN, J.

The appellants in these appeals are the employees of the first respondent-Bank - Ranchi Kshetriya Gramin Bank - now known as Jharkhand Gramin Bank. The appellants were working as clerks-cum-cashiers or equivalent posts in different branches of the first respondent-Bank. The Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988 (for short 'the Rules') made by the Central Government in exercise of powers conferred under the Provincial Rural Banks Act,

1976 governed the appointment and promotion of employees of the Bank. Rule 5 provided that all vacancies shall be filled in accordance with the provisions of the Second Schedule to the Rules. Entry (5) of Second Schedule to the Rules related to filling of posts of Field Supervisors (subsequently merged with the post of officers). Clause (a) thereof provided that 50% of the posts shall be filled by promotion from amongst the confirmed senior and junior clerks-cum-cashiers or clerks-cum-typists or stenographers or steno-typists on the basis of seniority-cum-merit (the remaining 50% to be filled by direct recruitment which is not relevant for these appeals). Clause (b) of Entry (5) prescribed the educational qualifications and the eligibility (minimum number of years of service in the feeder post) for promotion. Clause (e) of Entry (5) prescribed the mode of selection for promotion as "interviews and assessment of performance reports for preceding three years period".

2. The first respondent Bank drew up a common seniority list of all the eligible candidates (candidates possessing the prescribed educational qualifications who have put in the prescribed period of service) from the feeder grades. Then the eligible candidates were subjected to a comparative assessment based on marks secured with reference to four parameters adopted by the

Board of Directors of the first respondent-Bank at its 58th Meeting, on the basis of the norms prescribed by the National Bank for Agricultural and Rural Development (for short 'NABARD'). The four parameters and maximum marks allocated to each of them were as under:

Sl.N o.	Particulars	Maximum Marks
(i)	Seniority (one mark for each completed quarter of service)	40
(ii)	Educational Qualifications : [for possessing graduate degree : 3 marks; post-graduate degree : 2 marks and Doctorate : 1 mark]	6
(iii)	Performance-appraisal : [for Very Good (A) - 8 marks; for Good (B) - 6 marks; for Average (C) - 5 marks; and for Poor (D) - 0 marks]	24
(iv)	Interview : [Minimum qualifying marks for interview : 10 marks]	30
	TOTAL	100

A list of the candidates who secured the minimum qualifying marks in the interview was prepared in the order of merit with reference to the marks secured by them on such assessment. Therefore, 31 candidates were promoted from among the said list of clerical cadre to

the post of Field Supervisors in the order of merit, vide notification dated 20.11.1990.

3. Feeling aggrieved, the third respondent herein filed a writ petition before the High Court, contending that in making the promotions, the Bank had ignored the principle of seniority-cum-merit prescribed under the Rules and had followed the principle of merit-cum-seniority. It was also contended that contrary to the provisions of the Rules which required that the mode of selection would be only by interviews and assessment of performance reports for preceding three years, the Bank had adopted the method of assessment with reference to four parameters, that is, years of service (seniority), educational qualifications, in addition to performance appraisal and interview.

4. By the time the said writ petition came up for consideration, a Full Bench of the Patna High Court had rendered its judgment in *Ranchi Kshetriya Gramin Bank vs. D.P. Singh* [2000 (1) PLJR 251], holding that promotion of persons with reference to merit, that is, promoting those who secured highest marks in the list of eligible candidates was contrary to the principle of seniority-cum-merit. A learned Single Judge of the High Court, therefore, allowed the writ petition filed by third

respondent, by order dated 10.1.2001 and set aside the promotions. He held that the promotions effected as per the order dated 20.11.1990 without following the principle of seniority-cum-merit, but on a comparative assessment of merit which was based on marks for academic qualifications, interview etc. were illegal. Consequently, he directed as follows :

“While considering the cases all the eligible candidates, it shall be open to the respondent to fix marks for assessment of performance of proceeding three years prior to the date such promotion as were considered originally. This clearly means the three proceeding years from the date of original consideration which was the subject matter of the writ application. It shall be open to the Bank to allocate marks at the minimum level for the interview/viva voce test in addition to assessment of performance, to determine the standard of candidate in the interest of administration. Once it is done, seniority shall have precedence over everything else.

x x x x x

Till order of promotion is issued based on the aforesaid directions the respondents No.3 to 7 and the intervener(s) will continue to hold the post(s) as presently held by them and not to be disturbed till the final order(s) are passed in the matter of promotion. If, however, any contesting respondent(s) or intervener(s) or one or other fail to get promotion they shall be deemed to be reverted to the post as originally held by them before issuance of the impugned order of promotion, which has been set aside.

It is also made clear that contesting respondents no.3 to 7 or the interveners if allowed promotion on such consideration, they will not get benefit in pursuance of earlier

notification dated 19th Nov. 1990, which has been set aside by this Court."

The appeals filed by the appellants (candidates promoted on 20.11.1990) against the said judgment were dismissed by the Division Bench, holding by a short order that the judgment of the learned Single Judge did not call for interference. The said judgment is challenged in these appeals by special leave.

5. The first contention urged by the appellants is that the promotions made on dated 20.11.1990 were lawful and valid. It was submitted that the Bank had effected promotions by giving primacy to seniority as it allotted maximum marks of 40 out of 100, for the period of service (at the rate of one mark for every quarter of service). It was pointed out that marks allotted to other parameters were less - 30 marks for interview, 24 marks for performance-appraisal in regard to three years service and 6 marks for educational qualifications. It was contended that when primacy was accorded to seniority (period of service) in the assessment process, the promotion should be treated as on the principle of seniority-cum-merit.

6. The principle of seniority-cum-merit is well-settled. In *Rajendra Kumar Srivastava & Ors. v. Samyut Kshetriya Gramin Bank & Ors.* [C.A. No.6691 of 2001 decided on 17.11.2009], this Court observed as follows :

"8. It is also well settled that the principle of seniority-cum-merit, for promotion, is different from the principle of 'seniority' and principle of 'merit-cum-seniority'. Where promotion is on the basis of seniority alone, merit will not play any part at all. But where promotion is on the principle of seniority-cum-merit, promotion is not automatic with reference to seniority alone. Merit will also play a significant role. The standard method of seniority-cum-merit is to subject all the eligible candidates in the feeder grade (possessing the prescribed educational qualification and period of service) to a process of assessment of a specified minimum necessary merit and then promote the candidates who are found to possess the minimum necessary merit strictly in the order of seniority. The minimum merit necessary for the post may be assessed either by subjecting the 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 two or all the three of the aforesaid methods. There is no hard and fast rule as to how the minimum merit is to be ascertained. *So long as the ultimate promotions are based on seniority, any process for ascertaining the minimum necessary merit, as a basic requirement, will not militate against the principle of seniority-cum-merit.*

x x x x x

10. Thus it is clear that a process whereby eligible candidates possessing the minimum necessary merit in the feeder posts is first ascertained and thereafter, promotions are made strictly in accordance with seniority, from among those who possess the minimum necessary merit is recognised and accepted as complying with the principle of 'seniority-

cum-merit'. What would offend the rule of seniority-cum-merit is a process where after assessing the minimum necessary merit, promotions are made on the basis of merit (instead of seniority) from among the candidates possessing the minimum necessary merit. If the criteria adopted for assessment of minimum necessary merit is bona fide and not unreasonable, it is not open to challenge, as being opposed to the principle of seniority-cum-merit. We accordingly hold 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."

(emphasis supplied)

7. In this case, the bank did not subject the eligible candidates to any process of assessment to ascertain any specified minimum merit, for the purpose of promoting the candidates who possessed the minimum merit, on the basis seniority. On the other hand, the Bank proceeded to assess their inter-se-merit with reference to four criteria (period of service, educational qualification, performance during three years, and interview) by allocating respectively maximum marks of 40, 6, 24 and 30 (out of a total 100 marks) and then proceeded to promote those who had secured the highest marks in the order of merit. Thus there were two violations of the relevant rules: (i) promoting candidates on merit-cum-seniority and not on seniority-cum-merit; and (ii) assessing inter-se merit, *inter alia* with reference to marks allocated to

different educational qualifications. It cannot, therefore, be said that the promotions made on 20.11.1990 were on the basis of seniority-cum-merit. Though the period of service was also considered as one of the factors for assessment of comparative merit, the procedure adopted for promotion was merit-cum-seniority. The High Court was, therefore, justified in interfering with the promotions. The directions given by the High Court for fresh process of promotion were in consonance with the Rules and principles of seniority-cum-merit. The appeals, therefore, have no merit.

8. The appellants submitted that they were promoted in November 1990, that they had worked in the higher post of Field Superiors for more than ten years and therefore, even if there was some procedural irregularity, their promotions ought not to have been interfered with, in the year 2001. The submission is misleading. Though the promotions of appellants were in November, 1990, it was challenged before the High Court by the third respondent by filing a writ petition, without any delay, that is, in less than three months. The fact that the writ petition was pending for a considerable time will not therefore create any equities in favour of the appellants.

9. The appellants in C.A. No.1789 of 2002 have an additional grievance. The three appellants in that appeal were originally promoted on 20.11.1990. When the High Court set aside the said promotions and directed a fresh process of promotions by adopting the principle of seniority-cum-merit, the Bank accordingly made fresh promotions by order dated 24.4.2001 and these three appellants were again promoted with effect from 9.4.2001. But their seniority in the post of Field Supervisor was reckoned from the date of their fresh promotion i.e. 9.4.2001 and the previous period of service as Field Supervisor from 1990 to 2001 was ignored. They contend that their service as Field Supervisors between 1990 and 2001 should also be counted for the purpose of their seniority in the post of Field Supervisors, further promotions and other benefits.

10. It is now well-settled that if an appointment or promotion is made without considering the claims of all the available eligible candidates and/or without following the relevant rules, the service rendered in pursuance of such illegal appointment or promotion cannot be equated to service rendered in pursuance of an appointment or promotion validly and lawfully made. Whenever a person is promoted to a post without following

the rules prescribed for such promotion, he should be treated as a person not regularly promoted to that post. Consequently, where promotions are governed by Rules, in computing the length of service, in the post to which an employee is promoted, it is not permissible to include the period of service rendered in pursuance of an illegal promotion which is subsequently set aside. It, therefore, follows that the period of service rendered by the appellants from 1990 to 2001 cannot be counted for the purpose of seniority in the cadre of Officers/Field Superiors. Therefore, the appellants in C.A. No.1789/2002 are also not entitled to any relief.

11. Therefore, all the appeals and the applications for impleadment are dismissed.

.....J.
(R. V. Raveendran)

New Delhi;
November 24, 2009.

.....J.
(K.S. Radhakrishnan)