

PETITIONER:
STATE BANK OF INDIA ETC.

Vs.

RESPONDENT:
KASHINATH KHER & ORS. ETC.

DATE OF JUDGMENT: 08/02/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)
G.B. PATTANAIK (J)

CITATION:
1996 AIR 1328 1996 SCC (7) 470
JT 1996 (2) 569 1996 SCALE (2)423

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NO.4232 OF 1994
O R D E R

These appeals by special leave arise from the orders of the Division Bench of the Madhya Pradesh High Court made on August 27, 1993 in Misc. Petition Nos.1965/90 and 2091/90. The facts not in dispute are that the respondents while working as Middle Management Grade Scale II officers (for short, "MMGS-II") in the State Bank of India, its Bhopal Circle have challenged the policy of the appellant-Bank dated March 21, 1990 and August 6, 1990 whereunder the officers who have not completed two years of line assignment and two years Rural/Semi-urban service were to be considered eligible for promotion to Middle Management Grade Scale III (for short, "MhGS-III"). The High Court has held that they are ineligible and such a clubbing of ineligible officers with eligible officers is violative of Article 14 and accordingly struck down the criteria and given directions in the order. Calling in question of the said order, these appeals by special leave came to be filed.

The Preamble of the State Bank of India, Act 23 of 1955 (for short, the "Act") envisages establishment of the State Bank of India (for short, the "Bank") for extending banking facility on a large scale more particularly in the rural/semi urban area and for diverse other public purposes. Section 43(1) of the Act gives power to the Bank to appoint such number of officers, advisers or employees as it considers necessary or desirable for the efficient performance of its functions and to determine the terms and conditions of their appointment and service. Regulation 55 of the State Bank of India General Regulations (for short, the "Regulations") provide the power of the Local Board in respect of the staff. Regulation 55(2)(a) envisages that appointing and/or promoting authority for various

categories/Grades of officers and employees shall be such as the Executive Committee may by general or special order designate from time to time. The operation of the Bank is regulated by the Board of Managing Directors of the Bank which empowers appointment of the Committee. The Managing Committee consists of the Chief General Manager and such of the officers designated thereunder. It would appear that the Board or Managing Committee issues policy directions from time to time. The State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979 (for short the "Rules") was made in exercise of the aforesaid power under Section 43(1). Rule 17 provides procedure for promotion. It envisages that:

"Promotions to all grades of officers in the Bank shall be made in accordance with the policy laid down by the Central Board or the Executive Committee from time to time.

EXPLANATION: For the avoidance, of doubts, it is clarified that the provisions of this paragraph shall also apply to promotions of any category of employees to the junior management grade."

The Executive Committee issued circulars from time to time. In 1990, for promotion from MMGS-II to MMGS-III effective from August 1, 1986, the eligibility criteria laid down is as under:

"(a) The eligibility criteria will be reckoned with reference to a date of eligibility which will normally be 1st of August every year.

(b) 2 years service as MMGS-II and both parts of C.A.I.I.B.; or 3 years" service as MMGS-II and Part I of C.A.I.I.B.; or 5 years" service as MMGS-II and no Part of the C.A.I.I.B.

(c) The officer should have completed satisfactorily 2 years of line assignment.

NOTE:

For the promotions effective from the year 1988 onwards, to become eligible for promotion to MMGS-III, an officer should have also completed 3 years' stay in rural/semi-urban branch."

In 1990, by memo dated March 21, 1990 general guidelines for promotion to MMGS-III were envisaged which read as under:

"Line Assignment:

Satisfactory completion of Line assignment as Branch Manager or as Manager of a business division for a minimum period of 2 years is a pre-requisite for consideration for promotion. Officers who have not completed the full 2 years tenure of the line assignment but are otherwise eligible for consideration for promotion to MMG

Scale III would have to be placed in the line assignment position for a minimum period of not less than six months so as to complete or exceed a minimum period of two years service in the line assignment.

Rural/Semi Urban Service in a Branch:

As approved by the Executive Committee of the Central Board at its meeting held on 21.10.1989, it was advised that as per the Government of India guidelines, all officers JMG Scale I and MMG Scale II are required to put in the undernoted minimum stipulated service in a Rural or Semi Urban branch before they are considered for promotion to MMG Scale II and MMG Scale III.

Grade of Officer Stipulated period of Service

JMG Scale I Minimum 2 years service in a rural branch.

MMG Scale II Minimum 3 years service in a rural and/or semi-urban branch including 2 years rural service as officer, JMG Scale I.

This stipulation is effective for promotions to be made from 1988 onwards and shall be one of the eligibility criteria for promotions to MMG Scale II and MMG Scale III with effect from 1.8.1988 and onwards."

In the light of these guidelines, the promotions are to be considered and the eligibility criteria prescribed thereunder regulates the eligibility of the candidates for promotion. The case of the respondent is that for the promotions that have arisen from 1988, 1989 and 1990, as per the rules and the policy, the officer in MMGS-II should put in minimum of two years in "line assignment" and three years in rural/semi urban service even for consideration. Line assignment has been stated as exposure to work in the line or branches like Branch Managers and Managers of the segmental division both of which involved in discharging budgetary responsibility and fulfillment of targets in banking business. Rural/Semi urban service would mean working experience on being posted in various area where the population is less than 10,000 in rural area and more than 10,000 but less than one lakh as a semi urban area.

It would thus be seen that for the candidate to become eligible for consideration for promotion the criteria required under the guidelines requires to be fulfilled. But it is seen from the record that for reasons of non-availability of the posts or due to nonenforcement of the conditions, many of the officers have not had the benefit of working in the line assignment and the rural service. Consequentially, the question arose whether rule requires to be adhered to or the policy requires to be changed. In that behalf the Board has decided to relax the condition for the

posts as one time measure to give the chance to the officers to fulfill the conditions. Nonetheless, the conditions have not been fulfilled due to the diverse reasons which include mismanagement at circle levels as noted by the Board. Consequentially, they have decided to arrange three lists. List A consists of officers who have put in two years required service of line assignment; in list B composing of officers who have not completed two years service but have done partly and list 'E' consists of officers who have not had the service at all. The officers who have not completed the rural or semi-urban service are not included in list B. But they are separately dealt with. In this case we are concerned with List B officers and we are not concerned with List 'C' officers.

It is stated by the Board in their circular that in spite of repeated instructions given to the circles, they have not complied with the directions of posting the officers to the line assignment as well as rural/semi-urban services. As a consequence, heart burning was brewing up among the officers who did not have the opportunity to serve in the line assignment and also rural/semi-urban services. Consequentially, the Board had decided that all those who were required to be promoted would be considered subject to the fulfillment of the eligibility criteria. Officers who have completed the required service and found fit for promotion would be promoted immediately; officers who have not completed two years service in the line assignment and also in rural/semi-urban service would be considered for promotion and if found fit would be selected, put in B list would be promoted only on their completing their required service. Thereafter, their placement on completion of the above service conditions would be below his immediate senior in MMGS-II but promoted earlier to them in MMGS-III.

The respondents, therefore, have contended in the High Court that clubbing the officers in List B with those of List A is unconstitutional violating Article 14, being unequals they are treated as equals with them and that, therefore, it is not permissible in law. That contention was found favour with the High Court. It is contended by Shri R.F. Nariman, the learned senior counsel for the appellant that the policy adopted by the appellant was not in relaxation of the essential conditions of the service, but providing eligibility for the officers who for fortuitous circumstance of not completing the service were given opportunity to consider eligibility for promotion and thereby making everyone on par so as to avoid hardship or injustice for no fault of theirs to those officers who are otherwise eligible, may be some of them more seniors to the officers who are placed in List A. Thereby there is no injustice meted out to anyone.

Ms. Nisha Bagchi, learned counsel for the respondents contended that the entire exercise is illegal. According to her, under the Rules, having made the satisfactory completion of line assignment and rural/semi urban service being a condition precedents unless officers in MMGS-II complete those conditions, they are not eligible to be considered; ineligibles cannot be made eligibles by virtue of instructions issued by the Board which is inconsistent with the rules. The consideration for promotion should be made as and when vacancies have arisen. These directions by way of circulars were issued by the Board in 1990 for the vacancies that have arisen in 1988, 1989 and 1990 and that, therefore, the criteria cannot be applied to the vacancies that have arisen in 1988, 1989 and 1990. It may be prospective for the vacancies to be filled up in future. She

also contended that when the respondents filed the Writ Petitions in the High Court assailing the correctness thereof, the Board had come forward with the relaxation subsequently to undo the mischief which the respondents had pointed out.

Having considered the respective contentions, the question arises whether the action taken by the appellant in making the officers who have not completed the required service of the line assignment and rural/semi-urban service and considering their case, found them fit and placed them in list B is violative of Article 14? We find that the stand taken by the Bank appears to be just and fair on the facts of the case. It would be seen that from 1986 onwards no promotions have been made. Despite directions issued in 1986 as one time measure directing all the circles to post the officers to line assignment and for rural/semi urban assignment from 1989, no steps have been taken at the circle level to comply with the directions given by the Board and the Executive Committee. Consequentially, officers, who are otherwise eligible and entitled to be considered were made ineligible for no fault of theirs. Under those circumstances, it necessitated to relieve hardship to such officers due to the inaction or skillful manoeuvre at circle level. Fortuitous circumstances of some officers completed the criteria would be a ground to scale march over officers who are otherwise legible and they cannot be made to suffer injustice, denial of their legitimate expectation to consider their cases for promotion would be unjust and unfair. It is true, as rightly Contended by Ms. Nisha, that the criteria being conditions of service cannot be relaxed. Service conditions being essential conditions cannot be relaxed and it is not the case of the appellant-Bank that they have done that exercise. What the Board has done is giving an opportunity to the officers, who are otherwise eligible, to complete the required service conditions and then would be given promotion, on completion of requisite conditions thereof. In view of the fact that they did not have the opportunity to serve and complete the qualifying service, with a view to see that those who had the advantage of completing the service would not scale a march over the seniors, they equally adopted an equitable principle of putting the officers in list B and being given seniority after promotion below his immediate senior in MMGS-II so that injustice will not be meted out to such officers for no fault of them. The procedure adopted by the Bank is just, fair and reasonable.

The question is: whether such exercise is in violation of Article 14. The contention of Ms. Nisha is that weightage provided in the criteria for consideration by the committee get defeated is without force. The committee is required to consider the overall experience for the period specified therein. The mere fact that the fortuitous factor of officers officiating in MMGS-III would not be a wedge to walk over those who did not have such fortuitous opportunity nor they denied of equal opportunity. This Court had considered an analogous situation in Mohd. Usman & ors. vs. State of Andhra Pradesh & ors. [1971 Suppl. SCR 549]. Therein, the UDCs and LDCs in a district were unit-wise. The LDCs were entitled to be considered for promotion as UDCs. The UDCs were eligible to be considered for promotion as Grade II Sub-registrars in the Registration Department of Andhra Pradesh. Grade II Sub-Registrars was Statesise cadre while LDCs and UDCs were districtwise cadre. In some Districts where persons appointed as LDCs though seniors, due to lack of opportunities, they could not get the chance

to become UDCs, but they get the chances lately. In some districts, due to frequent of successive vacancies, LDCs appointed later to those appointed in other districts would get chances for promotion as UDCs over their counter part seniors in other districts thereby they would steal a march over LDCs working in other districts. With a view to see that all of them would become eligible for consideration as Sub-Registrars Grade II, the UDCs and LDCs were clubbed together as a unit and for Statewise promotion as Sub-Registrar Grade II. That criteria was adopted to avoid hardship and injustice to such of those senior LDC candidates. When the validity of the rule was questioned, the High Court declared rule 5 of the Special Rules to be ultra vires of Article 14. When the matter had come up, this Court had held thus;

"On the facts before us we are unable to agree that for the purpose of recruitment with which we are concerned herein the State should have classified the U.D.Cs. and L.D.Cs. separately. If the State had treated the U.D.Cs. as being superior to the L.D.Cs. for the purpose of that recruitment it would have resulted in a great deal of injustice to a large section of the clerks. The fortuitous circumstance of an officer in a particular district becoming a U.D.C. would have given him an undue advantage over his seniors who might have as efficient or even more efficient than himself, merely because they chanced to serve in some other district. For the reasons mentioned above, we do not think that in the present case the State can be said to have treated unequals as equals. The rule of equality is intended to advance justice by avoiding discrimination. In our opinion the High Court by overlooking the reason behind Rule 5 came to the erroneous conclusion that the said rule violated Art.14 of the Constitution."

It would thus be seen that it is not a case of ineligible persons made eligible, but a case of giving opportunities to those officers, who for no fault of theirs, were not made eligible to be considered and given opportunity to be considered for promotion and after consideration, on fulfillment of the service of line assignment and rural/semi-urban service for a minimum of two years were promoted to the MMGS-III. Thus, we hold that the policy adopted by the Board is not violative of Article 14 of the Constitution. But it must be remembered that in considering whether the candidate has completed the line of assignment or rural/semi-urban service for the required period, a clear demarcation be drawn between the officers who either due to volitions refusal to serve and those on account of inaction or deliberate omission on the part of the controlling authority did not have an opportunity as the case may be, to get the required service qualifications. Therefore, an exercise requires to be done by the appellant to identify this grouping and consider all those candidates

who have otherwise become eligible but did not get opportunity, for no fault of theirs', to secure the service qualification but should be denied to those who volunteered not to go for line assignment or rural or semi-urban service as the case may be, and then to consider according to the criteria prescribed under the rules or the circulates issued from time to time.

It is true as contended by Ms. Nisha, learned counsel, that due to the accelerated promotions, the line-up promotions have been scaled in quick succession from Scale II to Scale III and then to Scale IV but, unfortunately, no factual foundation has been placed before us to find out as to when and under what circumstances such exercise came to be made and in what circumstances the accelerated promotions came to be given. But these are the matters to be looked into after doing the exercise as indicated above.

Learned counsel for the respondents is not right to contend that the vacancies have arisen in 1988, 1989 and 1990 and that the rule of relaxation cannot be given in 1990 to the vacancies that have arisen in 1988, 1989 and 1990 and be considered according to the rules in vogue when the vacancies had arisen. It is seen that the policy decision was taken for the first time on March 21, 1990 effective from August 1, 1988. In other words, the promotions are required to be considered retrospectively in the light of the decision to fill up the vacancies existing as on August, 1988. Therefore, it is not a case of applying a rule which were made later to a vacancy which was existing anterior thereto. Equally, it is not correct to state that this principle is an unjust principle. It is true that this Court in *Y.V. Rangaiah vs. J.Sreenivasa Rao* [(1983) 3 SCC 284] had considered the question of retrospective application of the rule to the vacancies existing prior to the rules, in paragraphs 7 and 8 of the Judgment. But in that case, the rule was in vogue for Sub-Registrars Grade II in Registration Department of Andhra Pradesh. But no list was prepared, promotion was not made according to the existing rules. The list of eligible candidates was prepared according to the amended Rules, consequential to the zonal system introduced in Andhra Pradesh under Article 371D of the Constitution and Presidential Order. It was held that the vacancies that had arisen prior to making the amendment to the Rules should be filled in accordance with the rules that were in vogue prior to the amendment and vacancies that arose subsequently should be filled according to the amended rules. That situation does not apply to the factual matrix.

It would appear that the confidential reports and character rolls are being prepared by the officers of the same rank in the same MMGS II working in the establishment department over the same cadre officers working elsewhere and the reporting officers are the same. Ms. Nisha is right and the High Court is well justified in holding that such a procedure is violative of the principles of natural justice. Such procedure and practice is obviously pernicious and fragrant with prejudices and manipulative violating the principles of natural justice and highly unfair. The object of writing confidential report is two fold, i.e. to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. This Court in *Delhi Transport Corporation's* case pointed out pitfalls and insidious effects on service due to lack of objectives by the controlling officer. Confidential and character reports should, therefore, be written by superior officers higher above the cadres. The

officer should show objectively, impartially and fair assessment without any prejudices whatsoever with highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralized which would be deleterious to the efficacy and efficiency of public service. Therefore, they should be written by superior officer of high rank, who are such high rank officers is for the appellant to decide. The appellants have to prescribe the officer competent to write the confidential. There should be another higher officer in rank above the officer who was written confidential report to review such report. The appointing authority or any equivalent officer would be competent to approve the confidential reports or character rolls. This procedure would be fair and reasonable. The reports thus written would form basis for consideration for promotion. The procedure presently adopted is clearly illegal, unfair and unjust.

It would also appear from the record that the confidential reports submitted were adopted in toto by the Committee considering promotion without any cross verification from the character rolls or the record and independent assessment of merit and ability. That would also be clearly illegal. Being a competent authority to consider the claim of the candidates, the Committee for promotion has to independently assess the merit and ability of each candidate from the reports and the records etc. consistent with the weightage prescribed in the rules and then to determine the relative merit and ability of officers and then to arrange order of merit of the officers for promotion. Being selection posts, the selection record also must indicate reasons, however, brief they may be, so that when tested by judicial review, the Court would be better assisted by such record to reach correct decision in law. This exercise should also be done by the appellant. If the confidential reports written earlier are by superior officers, then the entire record could be secured by the controlling officers. They should be considered by the promotion Committee and each case must be examined in the light of the record of each officer. It would be desirable to prepare a columnar statement with all relevant columns. The C.Rs. and other relevant record should be preserved. The matters considered by the promotion committee should also be preserved.

Accordingly, we hold that the High Court was not right in setting aside the promotions and giving directions to promote all the officers in list A and then to consider the officers in list B and then to go on doing the exercise as indicated in the order. The promotions made remain ad hoc pending regular consideration and promotion. The appellant is directed to identify the officers who have voluntarily did not opt to serve in the line assignment or rural/semi-urban service and then eliminate such officers for List B, and put them in list 'C'. Thereafter, consider the officers within the zone of consideration of all the officers in List A and B together, who are eligible to be considered for promotion subject to other relevant criteria. Those found fit to be promoted be put in List 'A' and 'B' respectively and take action thereon.

The appeals are accordingly allowed and the orders of the High Court are set aside. The appellant should consider the case of all the officers in accordance with law now laid down. Prepare A and B lists promote all the officers in List A, Officers in List B, be posted in line assignment and also rural/semi-urban service. On completion of the required

service be given promotion to MMGS-III. They would be placed in seniority below their respective immediate senior in MMGS-II. The appellant is directed to complete the exercise within a period of nine months from the date of the receipt of this order. No costs.

Application for intervention is allowed.

JUDIS