(2012) 4 ADJ 55

Allahabad High Court

Case No: Civil Misc. Writ Petition No''s. 68394 of 2010 and 3536 of 2011

Ravindra Nath Rai and Others		APPELLANT
	Vs	
Chairman, Purvanchal Gramin Bank Mohaddipur, District Gorakhpur and Others		RESPONDENT

Date of Decision: Feb. 10, 2012

Acts Referred:

- Regional Rural Banks Act, 1976 - Section 3

Citation: (2012) 4 ADJ 55

Hon'ble Judges: Sunil Ambwani, J; Manoj Misra, J

Bench: Division Bench

Advocate: Anil Kumar and V.K. Singh, for the Appellant; Aditya Kumar Singh and Santosh Kumar Mishra, for the Respondent

Final Decision: Dismissed

Judgement

1. By the court .- We have heard Sri V.K. Singh, Senior Advocate, assisted by Sri Anil Kumar for the petitioners in both the writ petitions. Sri Ashok Khare, Senior Advocate, assisted by Sri Aditya Kumar Singh appears for the Purvanchal Gramin Bank, Mohaddipur, District Gorakhpur. On 29.11.2010, notices were issued to private respondents. The office has sent the notices by registered post. The Office reports that neither acknowledgement, nor undelivered cover has been received back in the office upto 7.1.2011. Under the Rules of the Court, the notices shall be deemed to be served on the private respondents. The four petitioners in Writ Petition No. 68394 of 2010, and the sole petitioner in Writ Petition No. 3536 of 2011, were initially appointed as Clerk-cum-Cashier in the Bank. At present, they are working as Office Assistants in various branches of the Bank at Gorakhpur. They filed the writ petitions with prayers to quash the order dated 12.10.2010, issued by the Board of Directors of the Bank,

promoting the Office Assistants, who are junior to the petitioners, on the post of Junior Management Grade-I, ignoring the criteria of "seniority-cum-merit" under the Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules 1998.

2. The Purvanchal Gramin Bank is one of the Regional Rural Banks constituted u/s 3 of the Regional Rural Banks Act, 1976. The bank is sponsored by the State Bank of India, with its headquarters situated at Gorakhpur. The services of the employees of the bank for appointment and promotion are regulated by Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998 (In short the Rules of 1998), notified on 29.7.1998. By a Circular No. 21 dated 1.5.2010, the General Manager of the bank issued a notice for promotion of employees serving in the Clerical Grade (Office Assistant), to the post of Officer Scale-I, to fill up 74 vacancies from the clerical grade under the Rules of 1998, on the criteria of "seniority-cum-merit". The selections were to be made by holding a written test of a total of 70 marks, followed by interview of a total of 20 marks and appraisal of work of a total of 10 marks by a Selection Committee consisting of Chairman of the Bank, a Director nominated by the Bank, and a Director nominated by a Nationalised Bank.

3. A written test was held in which only those candidates were declared successful, who secured 40% marks in the written test as per criteria laid down in the Rules. All the petitioners were declared successful in the written test, and were placed in accordance of their seniority in the list of Office Assistants maintained in the bank. The four petitioners in Writ Petition No. 68394 of 2010, were placed in the list at Sl. Nos. 73, 76,13 and 29, and the petitioner in Writ Petition No. 3536 of 2011, was placed at Sl. No. 49.

4. Sri V.K. Singh appearing for the petitioners submits that the criteria for promotion is "seniority-cum-merit", but the respondents in violation of the statutory rules, instead of finalizing list on the basis of seniority-cum-merit, have promoted the employees, who are junior to the petitioners, without disclosing the procedure, in finalizing the list of successful candidates.

5. Sri V.K. Singh, submits that the selection committee, in violation of mode of selection stipulated in the Rules of 1998, took into consideration, and included the marks awarded in interviews and also marks for performance appraisal reports in preparing the result of selected candidates. The proviso to the Rule declaring that there shall be no minimum qualifying marks in the interview," was ignored, and consequently the selections were made competitive in which merit dominated in the selections. The criteria of "seniority-cum-merit" as provided in the Rules of 1998 and the Circular No. 21 dated 1.5.2010, was thus violated.

6. Sri V.K. Singh submits that the Bank has ignored the basis of selection namely, "seniority-cum-merit", as explained by the Supreme Court and High Court in its various judgments. He has relied upon B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., ; K. Samantaray Vs. National Insurance Co. Ltd., ; Harigovind Yadav Vs.

Rewa Sidhi Gramin Bank and Others, and the judgment of this Court in Rajendra Prasad Yadav v. Chairman, Samyut Kshetriya Gramin Bank, Azamgarh and others, 2008(4) ADJ 639 (DB).

7. In the counter-affidavit of Ramesh Prasad Singh, Manager Personnel, Purvanchal Gramin Bank, Head Office, Mohaddipur, Gorakhpur, it is stated in paras 9 to 13 as follows :

9. That the contents of paragraph No. 13 of the writ petition being mater of record. However, it is submitted that Circular No. 21 dated 1.5.2010, issued by the respondent bank is in accordance with the Regional Rural Bank (Appointment and Promotion of Officer and other Employees) Rules, 1998.

10. That, the contents of paragraph No. 14 of the writ petition are misconceived, hence denied. In reply thereto, it is submitted that the respondent bank''s Circular No. 21 dated 1.5.2010, was issued in strict adherence with RRB (Appointment and Promotion of Officers, and other Employees) Rules, 1998. Hence petitioners'' statement about Rules 1988 is quite irrelevant in the instant promotion.

11. That the contents of paragraph No. 15 of the writ petition are misconceived and for away from the facts, in reply thereto, it is submitted that the principle of seniority-cum-merit is fully protected with the provisions laid down in the Regional Rural Bank (Appointment and Promotion of Officers and Other employees) Rules, 1998; that after written, test "A list of only those candidates who secure a minimum of 40% marks each in English and Banking Law and Practice & Procedure shall be prepared. The Bank, thereafter, shall prepare the list of selected candidates in the order of seniority to the extent of two hundred percent of the vacancies for promotion for the purpose of calling for interview." In view of the above provisions in the Rules 1998, it is clear that -

(i) Securing minimum 40% marks in each subject is fixed by the Rules, 1998 and hence the same has been fixed by the respondent bank to ensure the weightage of seniority allowed by the Rules, 1998 of G.O.I.

(ii) Further, a list of candidates securing minimum 40% marks in each subject is prepared upto 200% of vacancies for calling for interview mean thereby that the senior candidate securing only 40% marks separately in each subject i.e. 28 marks (14 + 14) in each disciple out of total 70 marks (35 + 35) fixed for written test will certainly get a place in the list of candidates called for interview.

Hence in accordance with Rules, 1998 a list of 148 candidates having secured minimum 40% marks in each subject of written test held on 27.6.2010 against total vacancies of 74, upto 200%, was prepared with strict adherence to their seniority and was circulated vide respondent Bank''s circular No. 59 dated 15.7.2010. The photo copy of Circular No. 59 dated 15.7.2010 is being filed herewith and marked as Annexure-CA-2 to the affidavit.

12. That the contents of paragraph No. 16 of the writ petition are being matter of record needs no reply. However, it is pertinent to mention here that upto 200% of 74 vacancies, 148 candidates who secured minimum 40% marks in the written test held on 27.6.2010 were called for interview according to their seniority (category wise - SC and General) in strict adherence to the provisions laid down in Rules, 1998 and was circulated vide respondent Bank''s circular No. 59 dated 15.7.2010.

13. That, the contents of paragraph No. 17 of the writ petition are not correct hence vehemently denied and in reply thereto it is submitted that in accordance with provisions laid down in Rules, 1998, the select list is drawn in order of seniority and all the seniors, who have secured minimum 40% qualifying marks in written test in each disciple, were called for interview within 200% of total vacancies and thereafter adding to it marks obtained by them in performance appraisal report and in interview, a list of candidates selected for promotion, among the senior has been prepared and published. Here, it is evident that only senior who obtained just 40% marks in the written test for promotion got their place in the ratio of 1 : 2 in the list of candidates called for interview and amongst the seniors so called for interview, those who had better service records and appraisal and competitively better performance in the interview, became able to make their place in final select list and have been duly promoted. Therefore, the process adopted for instant promotion is in absolute conformity with the principle of seniority-cum-merit laid down under Regional Bank (Appointment and Promotion of Officers and other employees) Rules, 1998

8. Sri Ashok Khare, appearing for the bank submits that the selections were made strictly in accordance with the criteria of ''seniority-cum-merit'' given in the rules. The petitioners have no complaint with regard to minimum qualifying marks of 40% in the written examination in English and Banking Law and Practice & Procedure. They succeeded in obtaining minimum marks, and were placed in the list strictly in accordance with their seniority of Office Assistants maintained by the bank. They were thereafter called for interview. The Selection Committee did not commit any error in awarding marks in interview and performance appraisal reports, for which maximum 20 and 10 marks respectively were allocated. The list thereafter was prepared in accordance with the marks given in the interviews and assessment of performance appraisal. The calculation of marks awarded in interview and assessment of performance appraisal reports did not shift the criteria of selection from ''seniority-cum-merit'' to ''merit'' alone. He has relied upon judgment of this Court in Rajeev Ranjan Tripathi v. Purvanchal Gramin Bank and others, 2010(6) ADJ 397 (DB) in respect of selections for promotion from the post of Office Assistants to Junior Management Grade-I held in the year 2009. He submits that the selections have been made on the same criteria, which has been upheld by this Court. The Rules of 1998 are being followed in compliance with the circular of NABARD dated 29.10.2008

9. In the Circular No. 147 of Purvanchal Gramin Bank dated 20.3.2009, it is stated that the Government of India appointed a Committee under the Chairmanship of Dr. Y.S.P.

Thorat for a wide ranging review of the policy and Human Resource Management in Regional Rural Banks and that the Central Government has after receipt of the recommendations issued directions to implement the recommendations. The proposals were placed in the meeting of the Board of Directors of the bank held on 3.3.2009 and in which apart from other matters, it was decided that since the detailed policy for appointment and promotions, in implementation of the recommendations of Thorat Committee, is to be shortly issued by the Central Government, the appointment and promotions shall be made after the receipt of such policy. Para 10 of the Circular provides that bank has been following the criteria of "seniority-cum-merit" for promotions. After the acceptance of the recommendation of the Thorat Committee the procedure of promotions by normal and fast track channel is being followed and accordingly the table given in para 10 provides that for promotions from Category-B to Category-A, Officer Scale-1 for those who have completed 10 years of service are eligible for normal mode of promotion to 50% posts to be selected after holding written test, interview and performance assessment with three times the candidates including repeaters for the vacancies. For those, who are graduate and have completed 6 years of service a fast track channel is provided in the same table with a written examination, interview and performance appraisal. There is no difference of procedure in the Circular dated 20.3.2009 for promotions. Clause-10 simply divides the two methods of promotion namely normal for those, who have completed 10 years of service for 50% vacancies, and fast track channel for remaining 50% vacancies from amongst those, who are graduates with 6 years of service. The Bank has clarified that there is no one in the Category-B for promotions to Officer Scale-1 except those, who were appointed on compassionate grounds having less than 10 years of service. The petitioners, therefore, have not sufferred any prejudice, if the bank has not followed the Fast Track Channel by providing to fill up all the vacancies for promotion by holding written test, interviews and performance appraisal.

10. In B.V. Sivaiah (Supra) it was held by the Supreme Court that "seniority-cum-merit" in the matters 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 which in turn may be based on service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.

11. In K. Samantaray (Supra) the criteria for promotion namely "seniority-cum-merit" and "merit-cum-seniority" and the hybrid mode was explained. It was held that promotion is understood as advancement in rank, grade or both. The principles of "seniority-cum-merit" and "merit-cum-seniority" are conceptually different. For the former the greater emphasis is laid on seniority, though it is not the determinative factor, while in

the later, greater emphasis is laid on merit, which is the determinative factor. The third mode is the hybrid mode, in which seniority is duly respected and merit is appropriately recognized.

12. In Harigovind Yadav (Supra) the Supreme Court held that in the matter of criteria of ''seniority-cum-merit'' for promotion, the policy, which did not prescribe a minimum standard for assessing merit and which promoted candidates on the basis of comparative merit, with reference to total marks obtained by the eligible candidates, actually followed the merit-cum-seniority principle and was not in consonance with the principle of seniority-cum-merit.

13. In Rajendra Prasad Yadav (Supra) this Court examined the criteria of ''seniority-cum-merit'' for promotions from the post of Field Supervisor in Gramin Bank. Following the judgments cited as above, the Court held that it was open to the employer to fix minimum standard which a candidate should achieve before he could be granted promotion having regard to his seniority, but it was not open to the employer to make appointment on the basis of relative merit secured by the candidates on the basis of the marks fixed for various disciplines ignoring the seniority. The Division Bench held that learned Single Judge has expressed his opinion contrary to the law laid down by the Supreme Court. Instead of remanding the matter in view of the fact that persons, who were already promoted were not impleaded the Court found it appropriate to dispose of the writ petition with liberty to the petitioners to approach the Board of Directors to ventilate their grievances by making representations.

14. In B.V. Sivaiah (Supra) the Supreme Court after laying down the principles of law as aforesaid proceeded to consider the promotions in Rayalaseema Gramin Bank, Pinakini Gramin Bank, Bastar Kshetriya Gramin Bank, Rewa Sidhi Gramin Bank and Chhindwara-Seoni Kshetriya Gramin Bank. In para 26 the Supreme Court approved the promotion process adopted by the Rayalaseema Gramin Bank in its Circular dated 27.9.1989 in which it had set aside 34 marks for seniority, 10 marks for qualifications, 20 marks for interview and 56 marks for performance. Out of total number of 120 marks, the maximum number of marks, which may be awarded for seniority was 34 and 0.75 marks was to be given for each completed month of service over and above the minimum qualifying service. If two persons were appointed on the same day, same number of marks had to be awarded for seniority out of 120. 50% marks were set apart for interview and performance. The Supreme Court upheld the judgment of the High Court concluding that only those officers, who had secured higher number of marks were ultimately promoted and that it was not a case where minimum qualifying marks were prescribed for assessment of performance and merit and those, who secured prescribed minimum qualifying marks were selected. Shri Ashok Khare has also relied upon the ratio of K. Samantaray (Supra) and Harigovind Yadav (Supra) for the same proposition.

15. Both the petitioners and respondents are relying upon same principles laid down by the Supreme Court in its decisions to examine the correctness of the procedure adopted

for assessing the comparative merit in the criteria of seniority-cum-merit; and whether the fixing of cut off marks, however low they may be in the written examination and thereafter the marks awarded in interviews and appraisal of performance excluding the chances of seniors to be considered for promotion, violates the principles of law of "seniority-cum-merit" as determined by the Supreme Court.

16. In K. Samantaray (Supra) the Supreme Court held that it is always open to the employer to specify the area and parameters 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 any right, statutory scope of interference and other relatable matters. It was found that B.V. Sivaiah"s case is distinguishable on facts. That was a case, where statutory rules governed the field. Fixing the terms, which are at variance with statutory rules is impermissible but that in K. Samantaray"s case there were no codified prescription. Prior to the formulation of policy these guidelines were taken into consideration for rationalising and codifying the existing guidelines relating to promotion within the officers" cadre. In Harigovind Yadav it was held (para 22), that where the procedure adopted did not provide for minimum standard for promotion but only minimum standard for interview, the selection was made with reference to comparative marks was contrary to the rule of seniority-cum-merit. In Sher Singh and Others Vs. Surinder Kumar and Others, , the Supreme Court held while deciding the similar question relating to promotion that criteria for promotion was seniority-cum-merit but the bank did not follow the criteria and made promotions on the basis of merit-cum-seniority.

17. The vacancies in the bank are provided to be filled up under Rule 6 of the Rules of 1998, by promotion in accordance with the provisions contained in the Rules and the Third Schedule to the Rules. Rule 6 provides :

6. Filling up of vacancies.-All vacancies, determination under Rule 5 by the Board, shall be filled by promotion or direct recruitment in accordance with the provisions contained in these rules and Third Schedule to these rules.

18. The Third Schedule appended to the Rules provides for appointment to different categories of officers and other employees to Group-A, B and C posts, where by direct recruitment or by promotion For Scale-1 officer classified as Group-A post Para 3 (c) provides 50% of the vacancies to be filled up by direct recruitment through Banking Service Recruitment Board and 50% by promotion. The promotion is to be made under Para 3 (d) on the basis of "seniority-cum-merit". The mode of selection in Para 3 (f) (ii) is by selection to be made by the Committee, on the basis of written test, interview and performance appraisal reports. The selection process is given in Para 3 (j) as follows:

(j) Selection process for promotees

(A) Written Test

(B) Interview

(C) Performance Appraisal Reports Total marks

(A) Written Test (70 marks)

(B) Interview (20 marks)

(C) Assessment of

Performance Appraisal Report (10 marks)

The selection shall be on the basis of performance in the written test, interview and five years Performance Appraisal Reports as per the division of marks given below :

70	marks
20	marks
10	marks
100	marks

The candidates shall be required to appear for written test comprising test in English and test in Banking Law, practice and procedures including working procedures in the Regional Rural Bank concerned.

70 marks allotted to written test shall be further divided as under :

English	35
Banking Law	marks
Practice and	35
Procedures	marks
Total marks	70
	marks

A list of only those candidates who secure a minimum of 40% marks each in English, Banking Law, practice and procedures shall be prepared. The Bank, thereafter, shall prepare the list of selected candidates in the order of seniority to the extent of two hundred per cent of the vacancies for promotion for the purpose of calling for interview.

There shall be no minimum qualifying marks in the interview.

The Performance Appraisal Reports for the preceding three years of the concerned employees, shall be considered.

19. The petitioners have not challenged the procedure and criteria of the selection process for promotions given in para 3 (f) of the Third Schedule appended to the Rules.

20. In paras 26, 27, 28, 29, 30 and 31 of the judgment in Writ Petition No. 35630 of 2009 (Rajeev Ranjan Tripathi v. Purvanchal Gramin Bank and others) decided on 7.5.2010, to which one of us (Hon''ble Sunil Ambwani, J) was a member, it was held by the Court as follows :

26. The judgment in Syndicate Bank SC, ST Employees Association v. Union of India, 1990 (Suppl.) SCC 350, is not of much help to the petitioners. The Supreme Court held that for the purposes of promotion in the cadre of officers upto Scale-V is not based on seniority alone. Apart from seniority other factors based on selective process were also important and as such it could not be held that the promotions in the higher scale were based solely on seniority. The bank in that case followed hybrid system of promotion, in which upto Scale-IV points were given for seniority as well as for other factors, which are based on short of selection process depending upon the educational qualifications, performance in the scale and interview. In the case of promotion from Scale-4 to Scale-7 no points were given for seniority at all. Rule of reservation for SC, ST was to apply to appointment made by promotion on selection basis, subject to procedure somewhat different from the usual procedure adopted in filling up posts reserved for SC & ST on selection basis alone for appointment to be made by direct recruitment.

27. From the aforesaid discussion we find that the recommendation of the Thorat Committee have been accepted but broad based policy on the basis of recommendations has not been issued by the Central Government so far and that Rules have not been amended. The petitioners have not challenged the selection process for promotions in Third Schedule of the Rules of 1998. They have prayed for implementation of the recommendations of the Thorat Committee. After the broad based human resource policy is issued by the Central Government, the Rules of 1998 will require amendment. Until then the statutory rules are to be followed. The Circular No. 31 dated 21.5.2009 does not provide for any change in the process of promotion.

28. The ''seniority-cum-merit'' as the criteria of promotion in the rural bank has been considered by the Supreme Court in B.V. Sivaiah (Supra), K. Samantaray (Supra) and Harigovind Yadav (Supra). The Supreme Court after several rounds of litigation held in Hargovind Yadav (Supra) that where the procedure adopted does not provide a minimum standards for promotion but minimum standard for interview, and selection is made with reference to comparative marks is contrary to the rule of ''seniority-cum-merit''. In the present case selection has been held in accordance with the process to Third Schedule of Rules of 1998. It does not provide for selections with reference to comparative marks. The Bank followed the procedure prescribed in the Rules to find out minimum merit for preparing a list of the candidates, who secured a minimum of 40 marks each in English, Banking Law Practice and Procedure. It thereafter prepared the list in order of seniority to the extent of 200% of the vacancies for promotion, for the purposes of calling for interview

in which 20 marks were fixed with stipulation that there shall be no minimum qualifying marks in the interviews. The preparation of eligibility list of those candidates, who secured 40% marks was not to find out comparative merit in the written examination, but to shortlist the persons having minimum merit for the purposes of promotions to the Scale-1 Officer.

29. We, therefore, find that the prescription of 70 marks in the written test was not to compare merit amongst the eligible candidates but to draw a list of those candidates, who secured a minimum 40% marks in each of the two papers carrying 35 marks i.e. 14 marks in each paper. The marks secured in the written examination were not added to the marks in the interview in which no minimum qualifying marks were fixed. The selection, therefore, was based strictly in accordance with the criteria of "seniority-cum-merit" as explained by the Supreme Court in Hargovind Yadav"s case.

30. We also find that the petitioners having participated in the selection were not competent to challenge the same selection on the ground that the process of selection was bad and was not confirming to the principle of "seniority-cum-merit".

31. Both the writ petitions are accordingly dismissed.

21. The Supreme Court in Harigovind"s case explained the working of the criteria of seniority-cum-merit in promotions, in paras 22 and 23 as follows :

22. 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. But where the procedure adopted, does not provide the minimum standard for promotion, but only the minimum standard for interview and does the selection with reference to comparative marks, it is contrary to the Rule of "seniority-cum-merit". This aspect of the matter has been completely lost sight of by the learned Single Judge and the Division Bench of the High Court in this round of litigation. As noticed above, they have proceeded on the basis that the appellant having failed to secure the minimum marks prescribed for interview, was rightly denied promotion, by ignoring the principle laid down by this Court in SIVAIAH in regard to seniority-cum-merit. At all events, as the promotion policy adopted by the Bank was held to be illegal in the earlier round of litigation (W.P. No. 4485/1993 dated 13.10.1988), the Bank could not have adopted the same policy to again reject the Appellant for promotion. We may also note that the law laid down in SIVAIAH was reiterated in Sher Singh and Others Vs. Surinder Kumar and Others, , wherein this Court had occasion to consider a similar question relating to the promotion for the post of clerk to Field Supervisor in the case of another Gramin Bank. this Court held that as the criterion for making promotion from the post of clerk to that of Field Supervisor was seniority-cum-merit but the Bank did not follow the criterion of seniority-cum-merit but made promotions on the basis of merit-cum-seniority, the promotion was vitiated and therefore invalid.

23. We will now deal with para 37 in SIVAIAH (supra) relied on by the Respondents. Para 37 related to Chhindwara-Seoni Kshetriya Gramin Bank where the procedure adopted for promotion was different from the criteria that was adopted by the Rewa Sidhi Gramin Bank, first respondent herein. In the case of Chhindwara Seoni Kshetriya Bank, the assessment of minimum necessary merit was by interview. The candidate who secured a minimum of 50 out of 100 marks in the interview, was selected for promotion on the basis of seniority. It was thus found to be a case where minimum standard was prescribed for assessing the merit of the candidates and those who qualified by securing the minimum marks (50%) were promoted strictly as per seniority. Thus, it was in consonance with the principle of seniority-cum-merit. Therefore, the observations in para 37 of SIVAIAH are of no assistance to Respondents. As we have already noticed, in this case, the procedure is not one of ascertaining the minimum necessary merit and then promoting the candidates with the minimum merit in accordance with seniority, but assessing the comparative merit by drawing up a merit list, the assessment being with reference to marks secured for seniority, performance, postings at rural/difficult places and interview. The fact that the appellant had failed to secure the minimum marks in interview, is not relevant as the entire procedure adopted by the bank (of which interview is a part) is found to be vitiated and not in consonance with the principle of seniority cum merit.

22. The Supreme Court in Haryana State Warehousing Corporation Vs. Jagat Ram and Another, , considered all its previous decisions on the criteria of seniority-cum-merit in promotions, in paras 38 to 46, and held as follows :

38. In State of Kerala and Another Vs. N.M. Thomas and Others, , this Court held that:

seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though less meritorious shall have priority.

39. In B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., , a three Judges" Bench of this Court considered the question "what is meant by seniority-cum-merit"; and held as follows : (SCC p. 730, para 18)

18. 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.

40. In Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another, , this Court held that "seniority-cum-merit" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed, and subject to fulfilling the said requirement, the promotion is based on seniority. It was also held that the requirement of assessment of comparative merit was absent in the case of "seniority-cum-merit".

41. Following the decision in B.V. Sivaiah (supra), this Court in Harigovind Yadav Vs. Rewa Sidhi Gramin Bank and Others, , held that where the procedure adopted did not provide the minimum standard for promotion, but only the minimum standard for interview, and did the selection with reference to comparative marks, it was contrary to the rule of "seniority-cum-merit". this Court in that case found that the procedure was

not one of ascertaining the minimum necessary merit and then promoting the candidates with the minimum merit in accordance with seniority, but assessing the comparative merit by drawing up a merit list, the assessment being with reference to marks secured for seniority, performance, postings at rural/difficult places and interview.

42. In Rajendra Kumar Srivastava and Others Vs. Samyut Kshetriya Gramin Bank and Others, , while considering the question "whether minimum qualifying marks could be prescribed for assessment of past performance and interview, where the promotions are to be made on the principle of seniority-cum-merit", this Court observed as follows : (SCC pp 340-41, paras 11 and 13)

11. It is also well settled that the principle of seniority-cum-merit, for promotion, is different from the principle of ''seniority''; and the 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.

12. xxx xxx xxx

13. 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.

43. In Rupa Rani Rakshit and others v. Jharkhand Gramin Bank and others, (2010) 1 SCC 345, the Bank did not subject eligible candidates to any process of assessment to ascertain any specified minimum merit, for the purpose of promoting candidates who possessed the minimum merit, on the basis of 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 and thus proceeded to promote those who had secured higher marks in the order of merit. this Court held that such promotions were not on seniority-cum-merit basis.

44. Though Learned Counsel for the petitioners relied on the decision of this Court in Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others, , the said decision cannot support the case of the petitioners, because, in the said case the guidelines applicable to the promotions had specifically provided that "the selection of the eligible candidates should be based on performance of the respective candidates in the Bank". However, Learned Counsel invited our attention to the following observation in paragraph 8 of the judgment: (SCC p.680)

8.... It is settled proposition of law that even while making promotions on the basis of seniority-cum-merit, the totality of the service record of the officer concerned has to be taken into consideration.

The above observation only means that, for the purpose of considering whether the officer fulfils the requirement of minimum merit or satisfies the benchmark previously fixed, the totality of his service record has to be taken into consideration. It does not mean that a further assessment of comparative merit on the basis of the service record is warranted even after the officers are found to fulfil the requirement of minimum merit and satisfy the benchmark previously fixed.

45. Thus it is the settled position that the criterion of seniority-cum-merit is different from the criterion of merit and also the criterion of merit-cum-seniority. 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. 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. Seniority-cum-merit means that, given the minimum necessary merit required for efficiency of administration, the senior, though less meritorious, shall have priority in the matter of promotion and there is no question of a further comparative assessment of the merit of those who were found to have the minimum necessary merit required for efficiency of administration. 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 employees. 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 considered for promotion on the basis of seniority-cum-merit.

46. The concept of "seniority-cum-merit" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed and, subject to fulfilling the said requirement, promotion is based on seniority. There is no further assessment of the comparative merits of those who fulfil such requirement of minimum merit or satisfy the benchmark previously fixed. On the other hand, the principle of "merit-cum-seniority" puts greater emphasis on merit and ability and seniority plays a less significant role. Seniority is given weightage only when merit and ability are more or less equal among the candidates considered for promotion.

23. In the present case, Para 3 (f) (ii) and Para 3(j) of the Third Schedule to the Rules of 1998, laying down the procedure of selections for promotions have not been challenged. The petitioners obtained the minimum of 40% marks, as bench mark in written examinations, and were placed in the list of candidate strictly in accordance with their seniority in the grade. Thereafter, they were considered for interviews, in which according to Para 3 (j) of Third Schedule, no minimum qualifying marks were fixed, and their Performance Appraisal Reports were considered. The procedure of promotions was thus followed strictly in accordance with the Rules of 1998, and did not deviate from the criteria of "seniority-cum-merit". The seniority was thus not ignored and the "merit did not become sole criteria for promotion. We do not find that the bank has violated the Rules or the criteria of "seniority-cum-merit", as explained by the Apex Court in its various decisions cited by us in the judgment. Both the writ petitions are consequently dismissed with no order as to costs.