
(2014) 11 MAD CK 0019

Madras High Court

Case No: Writ Petition No. 14543 of 2014 and M.P. Nos. 1 to 4 of 2014

All India Union Bank
Officer Staff
Association

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision: Nov. 28, 2014

Acts Referred:

Constitution of India, 1950 – Article 14

Citation: (2014) 11 MAD CK 0019

Hon'ble Judges: M.M. Sundresh, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

M.M. Sundresh, J.

The first petitioner is an Association of the employees of the 2nd respondent consisting of Officers from Junior

Management Grade Scale -I onwards. The 2nd petitioner is a member of the 1st petitioner. The 3rd respondent is stated to be the majority union

of the 2nd respondent having impleaded itself with the primary object of modifying the interim order obtained by the petitioners as it effectively

stalled the entire promotion of all the Officers to the promotional post of MMG Scale-II. Seeking to quash the circular issued by the 2nd

respondent bearing Reference No. 6083 insofar as it fixes 75% marks in APAR for each year and the cut-off date fixed for promotion as

1.7.2004 as illegal, arbitrary and contrary to the guidelines issued by the 1st respondent dated 4.4.2013 and with a further direction to consider the

members of the 1st petitioner Association, who have been appointed on or before 4.7.2011 for promotion, the present writ petition has been filed.

Facts in brief:-

2. By the proceedings dated 11.6.2011, appointment orders were issued to the successful candidates as probationary officers in JMGS-I by the

2nd respondent. In the said appointment orders, all the selectees were informed that their probation period and confirmation in the services of the

Bank as well as their inter se seniority in the Bank/Cadre will be determined from the date of their joining the services of the Bank. But clause (17)

of the appointment order requires a selectee to join the services of the Bank on or before 4.7.2011. Accordingly, the selectees joined their service

from 12.6.2011 to 4.7.2011. It appears that some of the persons were even permitted to join even after 4.7.2011. The 2nd respondent Bank has

published a revised promotion policy on 11.4.2012. As per clause 1.1 of the Annexure to Staff Circular No. 5839 dated 11.4.2012, in the revised

promotion policy for Officers, the common cut-off date for determining eligibility as well as completed years of service will be as on 1st of April of

the financial year (April-March) in which the vacancies arise. There is a two channeled system of promotion of Officers from JMGS-I to MMGS-

II, MMGS-II to MMGS-III. The first category is called ""Normal Track"", by which 80% vacancies identified are to be filled up and the second

method is by way of ""Fast Track"", which would be used to fill up the remaining 20% vacancies identified. The following is the eligibility for being

considered under the Fast Track Channel.

""Fast Track

3 years of satisfactory service in JMGS-I including two years continuous Rural Branch service as an Officer

75% Marks in APAR for each of the year of service eligible for promotion.""

3. Clause 1.7, which deals with Zone of Consideration, the relevant portion of which reads as under:

1.7. ZONE OF CONSIDERATION

I. Zone of consideration for promotion should be maintained strictly in the ratio of 1:3. In case, fresh candidates equal to the number of anticipated

vacancies are not available by keeping Zone of Consideration at 3 times the anticipated vacancies, the Zone of Consideration may be extended to

4 times the number of anticipated vacancies with the prior approval of the Board.""

4. The Government of India viz., the 1st respondent issued promotion guidelines to all the public sector Banks. The guidelines also provided for the

power of relaxation to the 2nd respondent Bank. The following guidelines are apposite for the purpose of our case:

""2. It has been decided that Banks can with the approval of their Boards provide relaxation if required, in the guidelines on promotions Reasons

for any such relaxation/deviation must be properly recorded in the minutes of the Board meetings.

However, any relaxation/change in the following provisions in the promotion guidelines referred to in para 1 above would require prior approval of

the Government.

a) Minimum experience requirement at each scale. However Banks may with the prior approval of their Boards provide a further relaxation of 3

months in the minimum experience requirement at each scale.

b) Minimum requirement of APAR marks. However Banks may with the Prior approval of their Board, relax the requirement of marks in APAR

to an average of 75% marks of APAR with minimum 60% in each preceding five years.

c) The requirement of rural/semi urban experiences. However Bank may decide with the prior approval of their Boards, if the stipulated tenure of

rural/semi-urban experience is required to be continuous or in parts.

d) The requirement of length of service in specialized cadre before promotion or prior to joining the main stream cadre.

e) The requirement of the zone of consideration. However Banks may with the prior approval of their Boards relax the zone of consideration so as

to include all officers promoted on the same date/batch.""

5. Pursuant to the promotional guidelines issued by the 1st respondent dated 4.4.2013, the 2nd respondent has issued the impugned circular with

respect to fast track promotion from and among the Officers recruited in JMGS and the relevant portion of which is as under:

""PROMOTION UNDER THE FAST TRACK:

All Officers who have been promoted to/ recruited in JMGS I, on or before 01.07.2011 with 2 years of continuous Rural service as an Officer and

having 75% marks in Appraisal Report for each of the year of service eligible for promotion 2010-11, 2011-12 & 2012-13) are eligible to apply

under Fast Track and they will be eligible to participate in the Promotion Process subject to various provisions of the Promotion Policy for

Officers.....

Now, this Circular issued by the 2nd respondent is sought to be impugned by the petitioners before this Court.

Submissions of the Petitioners:

6. Learned counsel appearing for the petitioners submitted that though appointment orders were issued by the 2nd respondent to all the selectees

on 11.6.2011, a discrimination is sought to be made among them by only making those who reported on or before 1.7.2011 alone. Such a

discrimination is violative of Article 14 of the Constitution of India. Date of joining is fortuitous. The 2nd respondent, having fixed the date as on or

before 4.7.2011 for joining, cannot adopt a discriminatory policy in preventing those who joined after 1.7.2011 and before 4.7.2011. The Circular

impugned to that effect is liable to be set aside as unconstitutional. The guidelines issued by the 1st respondent dated 4.4.2013 have been wrongly

interpreted by the 2nd respondent. Clause No. 2(e) of the guidelines, which deal with the ""requirement of zone of consideration"" provides for

consideration of all the Officers of the same batch. Same batch would mean only in pursuant to the same selection process followed by

appointment orders and not the year. The object and rationale behind a Fast Track promotion is to take best of the candidates. Clause No. 2(e) is

not contrary to clause 2(a). While there is no difficulty in relaxing the minimum experience required at each scale, exercise of power for the said

purpose will not take away the exercise of power under clause 2(e). Similarly, Clause 1.7 of the revised promotional policy dated 11.4.2012 of

the 2nd respondent cannot be interpreted to place any fetters on the power to include Officers selected on the basis of same process.

7. The 2nd submission of the learned counsel for the petitioners is that without rationale the 2nd respondent has fixed 75% marks in APAR for

each year for the promotional post from TEGS VI to TEGS-VII, which is a higher post than MMGS-II and a lesser qualification is fixed by fixing

qualification with minimum of 60% marks in each preceding five years. When a lesser qualification is fixed for higher post, a higher qualification

cannot be fixed for a lower post. All other statutory Banks have adopted lesser qualifications. Therefore, the qualification fixed at 75% marks in

APAR for each year will have to be set aside by directing the 2nd respondent to re-fix it at 60%, as it was done earlier.

Submissions of the 2nd respondent:

8. The learned Senior Counsel for the 2nd respondent submitted that the writ petition is not maintainable as the petitioners are seeking to challenge

the policy decision without an adequate prayer. Neither the promotional policy enunciated by the 2nd respondent is challenged nor the guidelines

issued by the 1st respondent in this regard. The Circular has been issued in exercise of the power conferred on the 2nd respondent. In the absence

of any arbitrariness the same cannot be put into challenge. Insofar as the cut-off date is concerned, it has been done as per the revised promotion

policy. The relaxation has been made by taking into consideration of the requisite number of fresh candidates. The 2nd respondent cannot exceed

1:3 ratio as fixed in Clause 1.7 of the revised promotion policy. The promotion guidelines issued under Clause 2(a) will not permit the relief sought

for by the petitioner. The clause pertaining to the requirement of zone of consideration as enunciated in Clause 2(e) is applicable only to the

promoted officers. There is no vested right to the petitioners. Their right to participate in the normal promotion is not taken away. Having accepted

Clause No. (16) of the appointment order dated 11.6.2011 it is not open to the members of the 1st petitioner to contend to the contrary.

9. Insofar as the second contention raised by the petitioners is concerned, the same is also not liable to be interfered with as it is a policy decision.

It is for the employer to fix the requisite qualification considering the fact situation. The decision was made in view of the relaxation given. The three

year qualification could not be implemented due to lack of candidates. The qualification has been fixed based upon need basis. The qualifications

fixed by the other Banks do not have any application or binding on the 2nd respondent. A lesser qualification has been fixed for the higher post on

need basis. There is no question of comparing the two categories.

Submissions of the 3rd respondent:-

10. The learned Senior Counsel for the 3rd respondent submitted that it is that respondent, which is a major union. The 1st petitioner cannot

represent all the Officers of the 2nd respondent. In view of the interim order obtained by the petitioners, the entire selection process including

regular promotions have been withheld. The 3rd respondent was constrained to implead itself in view of the said scenario.

Discussion:

11. Let us first take the second issue raised by the petitioners. The grievance of the petitioners is that the 2nd respondent ought not to have fixed

75% marks in APAR for each year of service, being eligible for promotion. As rightly submitted by the learned Senior Counsel for the 2nd

respondent, the petitioners do not have a vested right to seek for relaxation. The power of relaxation, as seen from the guidelines of the 1st

respondent, has to be exercised for appropriate reasons. Merely because it was done earlier, the petitioners cannot seek as a matter of right that it

should be done for the subsequent year. In the earlier year, the norm was relaxed as adequate number of persons did not come within the zone of

consideration. As Officers in JMGS-I are distinct and different class by themselves, there cannot be any comparison with Officers in other scales.

In the absence of any arbitrariness, the decision made by the 2nd respondent, being the employer, cannot be questioned by the petitioners. The

power of judicial review over such decision is rather limited. The petitioners cannot make out a case by asking the 2nd respondent to reduce the

qualification. A qualification is fixed in order to achieve the avowed object. It cannot be diluted to bring down the quality when it is otherwise not

required. It is against the object and rationale behind the Fast Track selection, which is not a normal one. As rightly submitted by the learned

Senior Counsel for the 2nd respondent, there are no justifiable reasons for exercising the power of relaxation by the 2nd respondent with respect

to minimum 75% APAR marks for each year. Clause 2(b) of the promotion guidelines dated 4.4.2013 speaks about the minimum requirement of

APAR. The said clause is very specific that it is totally left to the discretion of the 2nd respondent to relax the requirement of marks. There is also

no preceding five years in the present case as adopted for the higher post. Considering the fact that we are concerned with the Fast Track

Promotion, this Court does not find any merit in the submission made by the petitioners insofar as the qualification fixed with respect to marks is

concerned.

12. Now, coming to the first submission, Clause 1.7 of the revised promotion policy dated 11.4.2012 framed by the 2nd respondent deals with

zone of consideration. As per the said clause referred supra, the ratio of 1:3 is required to be maintained. It cannot be relaxed in a case where

fresh candidates equal to the number of anticipated vacancies are not available.

Therefore, in compliance with the Clause 1.7, relaxation of three

months has been given by the 2nd respondent. In other words, the cut-off date of 1.4.2011 has been relaxed for a period of three months by

extending the same to on or before 1.7.2011. This relaxation is not questioned. The grievance of the petitioner is that this relaxation will have to be

applied making it eligible for those who got themselves appointed/joined after 1.7.2011 and before 4.7.2011. The objection on behalf of the 2nd

respondent for the said request is on three grounds. The first ground is that under Clause 2(a) of the promotion guidelines of the 1st respondent

dated 4.4.2013, a further relaxation of three months alone is permissible in the minimum experience requirement at each scale. Similarly, under

Clause 2(e), which deals with requirement of zone of consideration and the power to relax, application can be made only to the Officers promoted

either on the same date or belonging to the same batch. Therefore, the direct recruits cannot be considered under clause 2(e). The third obstacle

according to the 2nd respondent is clause 1.7 of the revised promotion policy dated 11.4.2012 which speaks about compliance of 1:3 ratio. In

other words, by allowing the Officers, who got appointed between 2.7.2011 to 4.7.2011, the said ratio would be exceeded. Based upon these so

called obstacles, the 2nd respondent did not extend the benefit to others, who are appointed between 2.7.2011 and 4.7.2011.

13. Now, coming to Clause 1.7 of the revised promotion policy, which speaks about zone of consideration, the object and rationale behind it is to

encourage a direct recruit to participate. That is the reason why it proceeds to state that the ratio can be extended till fresh candidates equal to

the number of anticipated vacancies are available by keeping zone of consideration at three times the anticipated vacancies. Further, the said clause

is subject to the power conferred upon the 2nd respondent under the promotion guidelines issued by the 1st respondent dated 4.4.2013. The said

guidelines are also subsequent to the revised promotion policy dated 11.4.2012. Hence this Court is of the considered view that Clause 1.7 of the

revised promotion policy framed by the 2nd respondent dated 11.4.2012 does not bar the said authority from extending the zone of consideration

by including those Officers who are appointed within the time granted by it in pursuant to the same selection process. After all, the object and

rationale behind a Fast Track promotion is to get the best of the talent. Further, any qualification restricting those, who are appointed by the same

selection process and by similar order would create an artificial classification having no nexus to the object sought to be achieved with reference to

the policy enshrined for a Fast Track promotion. This Court is also of the considered view that condition No. (15) of the appointment Order

would not act as a bar for such consideration and it deals with only an inter se seniority, probation period and confirmation.

14. Coming to Clause 2(a) of the promotion guidelines dated 4.4.2013 issued by the 1st respondent, it stands on a different footing. It merely

provides for a power to the Banks to relax the minimum requirement at each scale for a period of three months. In other words, clause 2(a) is not

in conflict with Clause 2(e). Clause 2(e) deals with a requirement of the zone of consideration. Much submission has been made by both counsels

on the interpretation of this clause. It is the interpretation of Senior Counsel for the 2nd respondent that it applies to only Officers promoted on the

same day and their batch. In other words, it is the specific contention of the learned Senior Counsel that the said clause does not have any

application to the direct recruits. This Court is of the considered view that such a technical and narrow interpretation would be contrary to the

guidelines issued for promotion in public sector banks dated 4.4.2013. Guidelines do not discriminate between promotees and direct recruits. If it

is restricted to only the promoted officers, then it can be very well said that notwithstanding clause 2(a), which fixes relaxation of three months for

promoted Officers promoted on the same day can be considered for promotion. Similarly they can also be considered for promotion if they form

the same batch. In other words, notwithstanding their date of appointment they can be considered as eligible for further promotion, inspite of the

alleged bar under Clause 2(a), which provides for only three months relaxation. When such is the position, this Court is of the view that Clause

2(a) also will not prevent the direct recruitees who are appointed on the same day and of the same batch from being considered for promotion.

15. It is not in dispute that the zone of consideration is for promotion by which both a promotees as well as direct recruitee are eligible. Therefore,

such a zone of consideration cannot have any partial application with respect to their own respective batch. When the power of relaxation can be

exercised so as to include promotee the officers of the same batch, necessarily the said power has to be exercised for the direct recruitee officers

of the same batch. A contention has been raised on behalf of the 2nd respondent that if that is accepted, all direct recruitees of the year 2011 will

have to be considered. The said contention can only be quoted to be rejected, as the word ""batch"" will have to be read with respect to the same

selection process, that too, within the time limit granted by the 2nd respondent. In the case on hand, as discussed above, the 2nd respondent has

given time till 4.7.2011 for joining to all the selectees. Joining on a specific date can be because of the various factors. Such a fortuitous situation

cannot lead to any discrimination. As discussed above, such a classification at best can be termed as an artificial one. After all, the 2nd respondent,

being a model public sector employee, is expected to act fairly. It is also settled law that while construing the provisions, a possible conflict is

required to be eschewed and a harmonious construction is to be followed.

16. An interpretation of provision having statutory prescription should be reasonable and purposive. Such an interpretation should make the

provision workable and not unconstitutional. Therefore, this Court is of the view that on a conjoint reading of the provisions the stand taken by the

2nd respondent cannot be sustained in the eye of law.

Conclusion:-

17. Now, coming to the final conclusion, this Court is of the considered view that Clause 2(e) of the promotion guidelines dated 4.4.2013 gives

discretion only to the 2nd respondent to relax the zone of consideration for the purpose of including the Officers, who are similarly placed.

Therefore, while the petitioners cannot claim it as a matter of right, the 2nd respondent will have to consider the exercise of power on the facts of

the case as to whether such a relaxation is required or not. As the said exercise has not been done by the 2nd respondent on the premise that

clause 2(a) of the promotional guidelines dated 4.4.2013 and Clause 1.7 of the 2nd respondent dated 11.2.2014 would stand in the way, this

Court directs the said authority to decide the said issue of relaxation in the light of the discussion made supra. In other words, in view of the finding

rendered in the preceding paragraphs there will not be any legal bar for the 2nd respondent in considering the cases of those Officers, who joined

their services on and between 2.7.2011 and 4.7.2011 as per the orders of appointment. Accordingly, the impugned circular insofar as it restricts

only those who are appointed on or before 1.7.2011 are concerned as against those who are appointed between 2.7.2011 to 4.7.2011 are

concerned, is set aside and consequently the 2nd respondent is directed to consider their inclusion by relaxing the zone of consideration within a

period of eight weeks from the date of receipt of copy of this order. It is made clear that the order passed by this Court will not have any

application to those appointed after 4.7.2011, though belonging to the very same year. The challenge made to the qualification of 75% for being

considered for promotion is rejected. It is made clear that the observation made with effect to Clause 15 of the appointment orders dated

11.6.2011 is only for the purpose of deciding the eligibility for Fast Track promotion only and not inter se seniority. The writ petition stands

ordered accordingly. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.