(2004) 09 CAL CK 0014

Calcutta High Court

Case No: M.A.T. No. 1245 of 1998

The Chairman, Sagar Gramin Bank and Others		APPELLANT
	Vs	
Manicklal Bhowmick and Others		RESPONDENT

Date of Decision: Sept. 21, 2004

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 21, 226
- Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988 - Rule 10(4), 4
- Regional Rural Banks Act, 1976 - Section 17, 29

Citation: (2005) 1 CALLT 189 : (2005) 3 CHN 238 : (2005) 105 FLR 179

Hon'ble Judges: Tapan Kumar Dutt, J; Asok Kumar Ganguly, J

Bench: Division Bench

Advocate: S. Sanyal, for the Appellant; Sardar Amjad Ali, for the Respondent

Final Decision: Dismissed

Judgement

Asok Kumar Ganguly, J.

This appeal, at the instance of Sagar Gramin Bank (hereinafter called the "Bank") has been filed against the judgment and order dated 18th May, 1995 passed by a learned Judge of the Writ Court. In the said judgment, the learned Judge was, inter alia, pleased to hold that the denial of promotion to the petitioner and the co-petitioners on the basis of the criteria and the marks given to them in the interview and performance was in contravention of the principles laid down in the Seniority Rules and the relevant circular and as such is illegal. The learned Judge was further pleased to hold that the principles of Seniority -cum-Merit indicate that seniority will get preference. The learned Judge ultimately directed that the Bank should promote the writ petitioner and the co-petitioners to the post of Area Manager/Senior Manager with effect from the date the persons junior

to them have been promoted. Against the said judgment the Bank filed its appeal and also a stay petition. By an order dated 9th July, 1996, a learned Division Bench of this Court was pleased to find that there was no prima facie case for stay of the order of the learned single Judge and as such, the order was not stayed. But the learned Judges of the Division Bench made it clear that the promotion made in terms of the judgment under appeal, shall be subject to the final decision of the appeal.

2. It is not in dispute that in terms of the judgment passed by the learned trial Judge, the writ petitioner and the co-petitioners were promoted to the post of Area Manager/Senior Manager since 1997 and have been continuing in those posts for about seven years now.

3. The case of the Bank in assailing the said judgment was mostly built around interpretation of various circulars issued by NABARD and the Central Government from time to time as also a particular statute referred to hereinafter.

4. The writ petition was filed initially by one petitioner namely Manicklal Bhowmik challenging the denial of his promotion. Thereafter several persons joined as co-petitioners and in the writ petition several private respondents were also made parties. It does not appear that except the said Bank anybody contested the matter either before the learned Judge of the Writ Court or before this Appeal Court.

5. The case made out in the writ petition is that the petitioner is senior to the private respondents having joined the post as Officer in the said Bank earlier than the private respondents. The fact that the writ petitioner is senior to the private respondent is also not disputed by the Bank. It is also not disputed by the Bank that promotion to the post of Area Manager/Senior Manager of the said Bank is governed by certain rules which have been framed in exercise of powers conferred by Section 29 of the Regional Rural Bank Act, 1976 read with Section 17 thereof. These Rules have been framed by the Central Government after consultation with the National Bank and sponsored Bank specified in the First Schedule to those Rules. Those Rules are called Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988 but hereinafter referred to as 1988 Rules. The learned counsel for the Bank admitted that under the 1988 Rules all vacancies determined under Rule 4 of the Rules by the Board shall be filled up by each Regional Rural Bank in accordance with the rules and subject to such guidelines as may be issued by the Government from time to time. It was also accepted by the learned counsel for the Bank that under Rule 10(4) the Selection Committee shall follow the procedure as determined by the Board for selecting the candidates for promotion in accordance with the guidelines issued by the Central Government from time to time. The learned counsel for the Bank submitted that acting under the said Rule, the Chairman of the Bank has framed the procedure for promotion for different categories of the employees of the bank and in so far as promotion to the post of Area Manager/Senior Manager was concerned the following procedure was formulated:

"For Promotion to the Senior Manager / Area Manager from the post of offic

a) Cut off date	:	30.09.1989
b) Length of service	:	08 (Eight) years
c) No. of vacancies	:	08(Eight)
d) Allotment of marks	:	Total marks =100
i) Seniority	:	50 (For first eight years of serv marks, for every subsequent years at the rate of 4 marks per year o thereof proportionately to be rounded to the nearest integar)
ii) Performance	:	25
iii) Interview	:	25"

6. According to the learned counsel the aforesaid procedure was formulated under the said Rules by the Bank in their meeting dated 1.12.1989.

7. But the relevant provisions under the said rules for such promotion to the post of Senior Manager / Area Manager are as follows:

"a) Source of recruitment: Hundred per cent by promotion from amongst confirmed officers working in the Bank. Promotions will be on the seniority-cum-merit. If suitable officers are not available internally, those posts could be filled by taking temporarily officers of the sponsor banks and other banks or organisations on deputation.

b) Qualifications and Eligibility:

(i) A Graduate of recognised University or any equivalent qualifications recognised as such by Government of India, preference being given to Agriculture or Commerce or Economics Graduates.

(ii) Eight years service as an officer in the Regional Rural Bank concerned. Provided that the Board may, with the prior approval of National Bank, relax the period of service by a period not exceeding two years, if suitable candidates of requisite experience are not available.

Note: The post of Area Managers and Senior Managers will be equivalent in rank and will be interchangeable.

c) Mode of selection:

Interview and assessment of Performance reports for the preceding three years period as officer for promotion."

8. Prior to coming into effect of the 1988 Rules guidelines were framed by National Bank for Agricultural and Rural Development (NABARD) and those guidelines were framed in

1984. Under the said guidelines framed by NABARD the following procedures were laid down for promotion to the post of Area Manager/Senior Manager:

"Area Manager/Senior Manager:

a) Source of Recruitment :

100% by promotion from amongst officers working in the bank. Promotions will be on the basis of seniority-cum-merit. If suitable officers are not available internally, these posts could be filled by taking temporarily officers of the Sponsor Banks and other banks/organisations on deputation.

b) Qualifications & Eligibility :

i) A graduate of recognised University, preference to Agricultural/Commerce/Economics Graduates.

ii) Eight years service as an officer in the bank.

The above condition (ii) will be relaxable by a maximum period of two years with the specific prior approval of National Bank for Agriculture and Rural Development if suitable candidates with requisite experience are not available.

c) Reservation of Posts:

As may be laid down by Government of India from time to time.

d) Procedure and Agency for Selection:

As may be laid down by Government of India from time to time.

The above posts Area Managers/Senior Managers will carry a special pay of the officer concerned."

9. The learned counsel for the Bank while assailing the judgment of the learned Judge of the Writ Court also relied on the Circular given by NABARD on 25th May. 1988. In the said Circular it was also stated that importance has been given to seniority as also the confidential reports of the officers/employees. It was also stated that in order to consider merit/suitability a little weightage has been given to the academic qualification, service beyond the stipulated period and also performance at the interview and it was stated that the marks for which have been kept to the minimum. The NABARD Circular further stated that in order to achieve the desired standards of proficiency, merit and suitability desired for effecting promotions in Rural Regional Bank, the sponsored Rural Regional Bank may adopt the system of valuation by marks as contained in the enclosure to the said guidelines and it was stated that the said Circular was issued with approval of the respective Board of Directors. It is under the said Circular that the concept of marks were

given for performance and appraisal and for interview.

10. The learned counsel relying on the said NABARD Circular, 1988 submits that the procedure, which has been adopted in the case of promotion to the post of Area Manager/Senior Manager, were formulated on the basis of the said Circular. The learned Judge of the writ Court failing to appreciate the same fell into an error and unnecessarily interfered with the order passed by the Bank by holding that the action of the Bank was arbitrary. The learned counsel for the Bank also stated that 50 marks were allotted for seniority, 25 marks were allotted for interview and 25 marks were allotted for performance appraisal. This procedure of appointment was made known to everyone including the writ petitioner. The writ petitioner appeared in the interview and subjected himself for appraisal on the basis of the aforesaid procedure and having failed to succeed in the said procedure for promotion, cannot now complain and come before the Court. In other words the learned counsel submitted that the action by the petitioner in coming before the Court and filing a writ petition, could not be sustained in view of the principles of estoppel. The learned counsel submitted that on the merits also no fault can be found with the manner of selection conducted by the said Bank and in the said manner of selection the cases of the petitioner and other co-petitioners were considered and as the petitioner and the co-petitioners failed to obtain the promotion in question, they challenged the Bank''s orders subsequently. The learned counsel submitted that this is not permissible in view of some well known decisions of the Apex Court.

11. The learned counsel for the writ petitioners and the other co-petitioners, on the other hand, argued that the basis for promotion to the posts of Area Manager and Senior Manager having been clearly established under the rule as one of the ''Seniority-cum-Merit'', the procedure adopted by the authorities of the Bank is not in accordance with the said rules.

12. The learned counsel further submitted that the said rules came into effect in the year 1988 and the promotion exercise has been undertaken in the year 1989 and as such the previous circulars of NABARD cannot be given effect to.

13. The learned counsel further submitted that both under the rules and under the guidelines framed by the Central Government prior to the rules, there is no basis of a departure for the aforesaid principle of ''Seniority-cum-Merit''.

14. To the submissions advanced by the learned counsel for the Bank that the writ petitioners are estopped from challenging the action of the Bank, the learned counsel for the writ petitioners submitted that there is no pleading of estoppel in the Affidavit filed by the Bank before the learned Judge of the Writ Court. It was also submitted that the question of estoppel is a question of fact and must be pleaded. Since the authorities of the Bank did not plead the same in their Affidavit-in-opposition and since this point was not urged before the learned Judge of the Writ Court this question cannot be raised for the first time in the appeal since the same is a question of fact.

15. The learned counsel for the Bank also stated that the learned Judge of the Writ Court made a factual error by holding that there is nothing against the writ petitioners and the other co-petitioners by way of adverse remarks or by way of disciplinary proceeding. The learned counsel for the Bank submitted that this is factually wrong insofar as the writ petitioner was reprimanded and reprimand is one of the minor penalties under the rules of the Bank.

16. These are basically rival contentions of the parties. The learned counsel for the parties has also cited a number of judgments in support of their contentions. In support of his contentions, the learned counsel for the Bank cited the following judgments:

1) Union of India and Another Vs. N. Chandrasekharan and Another, ;

2) Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, :

3) Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others, ;

4) Mohan Dutt Sharma Vs. Chief Justice, Punjab and Haryana High Court, ;

The learned counsel for the writ petitioners, on the other hand, cited the following judgments in support of his contentions:

1) B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., ;

2) State of Kerala and Another Vs. N.M. Thomas and Others,

3) Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ;

4) Union of India and Another Vs. Ravi Shankar and Another, and

5) Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others,

17. Of all the decisions, which have been cited by the learned counsel for the parties, the decision, which has been cited by the learned counsel for the writ petitioner in the case of B.V. Sivaiah and Ors. v. K. Addanki Babu and Ors., is very relevant for the purpose of deciding the controversy in this case.

18. The decision in the case of Sivaiah and Ors. v. K. Addanki Babu and Ors. (supra) dealt with the provisions of the 1988 Rules, which are the governing rules in the present case. The principles of "Senority-cum-Merit in the matter of promotion under the relevant rules were explained. While explaining the difference between the principles of "Merit-cum-Seniority" and "Seniority-cum-Merit", the learned Judges, after considering various decisions on the point, concluded the discussions in paragraph 18 and at page 2571 of the Report. In the said paragraph, the learned Judges held that the criterion "Seniority-cum-Merit" in the matter of promotion means 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.

19. The learned Judges further held that 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 promotion. The learned Judges also went on explaining that 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 a minimum cut-off marks, which would entitle a person to be promoted on the basis of ''Seniority-cum-Merif.

20. In the instant case, admittedly, no cut off or minimum marks were prescribed insofar as appraisal of performance on the basis of the service record and interview are concerned.

21. Laying down the aforesaid principles, the learned Judges of the Supreme Court examined the cases of various Gramin Banks and in most of the case, even though 55 marks were allotted for seniority, the learned Judges of the Supreme Court found that the procedures followed by the various Gramin Banks were not correct. In the instant case, 50 marks were given for seniority and 25 marks were given for performance and 25 marks were given for interview as noted above. But, the cut off marks for interview and appraisal of performance have not been prescribed. Therefore, that itself is an infraction of principle of ''Seniority-cum-Merit'' in view of the ratio in B.V. Sivaiah (supra).

22. Apart from that, 50 marks, which have been allotted for seniority, is a kind of eye-wash and this is clear from the materials-on-record. Admittedly the selection was held in 1989 and the writ petitioners and the other co-petitioners were all appointed in the year 1981. Four marks were allotted for each completed year of service and some marks were allotted for those officers, who have completed three months or things like that. Therefore admittedly, it is impossible for any officer even though he is the senior most to obtain more than 33 marks on the ground of seniority. Therefore, allotment of 50 marks for seniority was merely on paper, as on grounds of seniority nobody can obtain more than 33 marks out of the said 50 marks. But, the marks, which have been allotted on the ground of interview and appraisal of performance (25+25), there is no such restriction. Thus the principle of ''Seniority-cum-Merit'' has been diluted by adopting such a procedure for promotion.

23. In paragraph 14 of the judgment in Sivaiah (Page 2570 of the report) the Court made it abundantly clear by saying that interview and performance reports are meant to assess the minimum merit and are not meant for ''assessment of comparative merit''. That is why a minimum cut off marks both in interview and performance appraisal was required to be indicated. Admittedly the impugned promotion procedure did not do that. As discussed above the same is a serious infirmity in the procedure.

24. Following this ratio, the learned Judges set aside the erroneous promotion procedure adopted by various Gramin Banks. While dealing with the procedure adopted by Pinakini Gramin Bank, the learned Judges in para 29, (Page 2575 of the report) came to the following finding:

The said circular did not prescribe minimum qualifying marks for assessment of performance and merit on the basis of which an officer would be considered for being selected and, as pointed out by the High Court, the selection was made of only those officers who secured highest number of marks amongst the eligible officers. In the circumstances, the High Court, in our view, has rightly held that this method of selection was contrary to the principle of ''seniority-cum-merif and it virtually amounts to the application of the principle of ''merit-cum-seniority''.

25. The aforesaid observations very much apply to the facts of this case and the Bank in the instant case committed the same errors which were committed by the authorities of Pinakini Gramin Bank.

26. In view of this judgment of the Supreme Court, the cases cited by the learned counsel for the Bank have no application as would appear from the discussion made hereafter.

27. On the question of estoppel several judgments have been cited. It may be noted that there is no pleading of estoppel by the Bank in its affidavit filed before the trial Court. Here the recruitment to the post of Area/Senior Manager is totally made by way of promotion. It is difficult for the writ petitioner and other co-petitioners to ascertain that the promotion procedure followed by the Bank is not based on the principle of Seniority-cum-Merit. It is only after the Supreme Court''s interpretation about the true import of that principle, that its intricacies could be properly ascertained. Therefore unless it is clear to the writ petitioner and the co-petitioners that the promotion procedure followed by the Bank is contrary to the avowed policy of Seniority-cum-Merit, it is not possible for them to object the same nor can they refuse to appear at the interview under the said procedure. Therefore there can be no estoppel in such a situation.

28. The cases cited on this point by the learned counsel for the Bank are all distinguishable.

29. In the case of N. Chandra Sekharan (supra), cited by the learned counsel for the Bank, the facts were that the promotional posts were selection posts in which the candidates had to qualify in a written test and then appear for interview before the Departmental Promotion Committee. The Court held that these requirements of qualifying in a written test appearing in an interview, consideration of confidential report were all known to the officers and after they subjected themselves to all these tests, they cannot subsequently complain of the same. Thus factually the decision in Chandra Sekharan is quite distinguishable.

30. The same is true of the decision in the case of Om Prakash Shukla (supra). That was a case of recruitment on the basis of a competitive examination. The issue was whether the 1947 Rules stood totally superseded by the 1950 Rule. The Court held in the negative. The Court further held that once the petitioners appeared in the competitive examination without protest they cannot subsequently challenge that the examination was not held as per law after realising that they will not succeed in the test. Apart from that on merits, the Supreme Court held that the 1950 Rules do apply. So on merits a decision was reached and the Court did not refuse to examine the case on the ground that the petitioners are estopped from raising a challenge.

31. The decision in Mohan Dutt Sharma (supra) dealt with the question of out of turn promotion granted to a junior in view of his special qualification and excellent track record. In paragraph 9 of the judgment (Page 3097 of the report), it was made clear that promotion given to the employee was not in normal course. That was a promotion in the High Court of Punjab and Haryana and the Chief Justice of that Court, in exercise of His Lordship''s power under Rule 38 of the Rule, directed that normal rule of seniority would not apply and Rule 38 enables the Chief Justice to make such an order.

32. It is thus clear that both factually and legally the situation in Mohan Dutt Sharma was totally different. Here we are not dealing with any out of turn promotion. So the ratio in Mohan Dutt has no relevance here.

33. the Two-Judge Bench decision in Sr. Jagathigowda C.N. (supra) cited by the learned counsel for the Bank was rendered without considering the import of 1988 Rules. That decision construed circulars by NABARD dated 31.12.1984 and subsequent circular dated 7.4.1986. But in the instant case, the promotion is admittedly made under 1988 Rules. This is the case of the Bank in its affidavit filed before the Writ Court [Paras 4(g) and 12].

34. Apart from that, the decision in Sr. Jagathigowda C.N. was considered and distinguished both factually and legally by the subsequent Three-Judge Bench decision in B. V. Sivaiah (supra). (See paras 13 and 16).

35. This Court is bound by the subsequent Larger Bench decision in B. V. Sivaiah which interpreted 1988 Rules and laid down the true import of the principles of Seniority-cum-Merit.

Apart from that factually also the situation in Jagathigowda and the present case is vastly different.

36. Now coming to the last argument of the learned counsel for the Bank that in so far as the writ petitioner is concerned, there is a reprimand recorded in his service-book and reprimand is one of the minor penalties, this Court feels that the same is an argument of desperation. It is nobody''s case that the promotion to the writ petitioner was denied because of that recording of reprimand in his service-book. The promotion has been

denied to the writ petitioner in view of the erroneous promotion procedure followed by the Bank .Therefore, there is no infirmity in the judgment of the learned Judge of the Writ Court in giving the direction to promote the writ petitioner from the date his juniors have been promoted.

So judging the case of the Bank from all its angles, this Court does not find any merit in the same. The appeal is accordingly dismissed. The judgment under appeal is affirmed.

There will be no order as to costs.

Let urgent xerox certified copy of the order, if applied for be given to the learned Advocates for the parties.

Tapan Kumar Dutt, J.

37. I agree.