

CHAIRMAN, RUSHIKULYA GRAMYA BANK

v.

BISAWAMBER PATRO & OTHERS

(Civil Appeal No. 2760 of 2013)

APRIL 2, 2013

[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

Service Law – Promotion – On the basis of seniority-cum-merit – Employer laying down a bench mark, besides the criteria fixed by promotion rules – Propriety of – Held: The employer has discretion to fix minimum merit having in mind requirements of the post.

The question for consideration in the instant appeals was whether it was open to the management of the appellant-Bank to lay down a benchmark, besides the criteria fixed by the rules for grant of promotion on seniority-cum-merit basis.

Allowing the appeals, the Court

HELD: The minimum necessary merit for promotion, is a matter that is decided by the management, having in mind the requirements of the post to which promotions are to be made. The employer has the discretion to fix different minimum merit, for different categories of posts, subject to the relevant rules. [Para 14] [246-G-H]

Rajendra Kumar Srivastava and Ors. v. Samyut Kshetriya Gramin Bank and Others (2010) 1 SCC 335: 2009 (15) SCR 936 – relied on.

State of Kerala N.M. Thomas (1976) 2 SCC 310: 1976 (1) SCR 906; Bhagwandas Tiwari v. Dewas Shajapur Kshetriya Gramin Bank (2006) 12 SCC 574: 2006 (8) Suppl.

A **SCR 760; B.V. Sivaiah v. K. Addanki Babu (1998) 6 SCC 720: 1998 (3) SCR 782 – referred to.**

Case Law Reference:

B	1976 (1) SCR 906	referred to	Para 10
	2006 (8) Suppl. SCR 760	referred to	Para 10
	1998 (3) SCR 782	referred to	Para 10
	2009 (15) SCR 936	relied on	Para 11

C **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2760 of 2013.**

From the Judgment & Order daed 12.02.2008 of the High Court of Orissa at Cuttack in Writ Petition No. 13076 of 2004.

D **WITH**

C.A. Nos. 2761, 2762, 2763, 2764, 2765, 2766, 2767 of 2013.

E Dr. Lakshme Narsimha, S. Udaya Kumar Sagar, Bina Madhavan, Karan Kanwal (for Lawyer's Knit & Co.) for the Appellant.

C.K. Sasi, Abhith Kumar, P.P. Singh for the Respondents.

The Judgment of the Court was delivered by

F **AFTAB ALAM, J.** 1. Leave granted in all the special leave petitions.

G 2. All the appeals are at the instance of a Regional Rural Bank, namely, Rushikulya Gramya Bank, and the matter relates to promotion from one scale to another. Out of the eight appeals, six relate to promotion from Junior Management Scale-I to Middle Management Scale-II and in the remaining two appeals (arising from SLP (Civil) No.17974 of 2008 and SLP(civil) No.18898 of 2008), the matter relates to promotion

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from Clerk to Junior Management Scale-I. A

3. The short question that arises in these appeals is whether it is open to the management of the Bank to lay down a benchmark, besides the criteria fixed by the rules for grant of promotion on seniority-cum-merit basis. B

4. The appellant - bank issued a circular No.024/2004-05, dated June 23, 2004 notifying the vacancies inter alia in the seventeen posts of Middle Management Scale-II and eight posts of Junior Management Scale-I. The circular stated that the process of promotion shall be conducted as per the promotion rules of the Government of India. For promotion to the post of Middle Management Scale-II, the zone of consideration was four times the number of vacancies and for promotion to the post of Junior Management Scale – I, all eligible candidates were permitted to take the exam. C D

5. The rules governing promotion from Junior Management Scale-I to Middle Management Scale-II, in so far as relevant for the present, are as under:-

*2 (a) to (c) xxxxxxxx E

(d) Whether promotion to be made on seniority basis or merit:

Promotion shall be made on the basis of seniority-cum-merit. F

(e) Eligibility: xxxxxxxx

(f) Mode of Selection: The Selection of the candidates shall be made by the committee on the basis of written test, interview and assessment of Performance Appraisal Reports for the preceding H G

A five years as an officer in Sealed/Field Supervisor.

(g) Composition of Committee: xxxxxxxxx

B (h) Reckoning of the minimum eligibility: xxxxxxxxx

(i) Number of candidates to be considered for promotion: xxxxxxxxx

C (j) Selection process for promotion: The selection shall be on the basis of performance in the written test, interview and performance Appraisal Report for preceding five years as per the division of marks given below.

D (A) Written Test: 60 marks

E (B) Interview: 20 marks

(C) Performance Appraisal Reports: 20 marks

TOTAL marks: 100 marks

F (A) Written test (60 marks)

G The candidates shall be required to appear for written test comprising of two parts viz. Part (A) covering Banking Law and practice of Banking and Part (B) covering Credit Policy, Credit Management including Priority Sector, Economics and Management.

:60 marks allotted written test shall be further divided as under:

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Part "A" 30 marks A
Part "B" 30 marks

A list of only those candidates who secure minimum 40% marks in each part shall be prepared and such candidates shall be called for interview. B

(B) Interview (20 marks): C

There shall be no minimum qualifying marks for the interview.

(C) Performance appraisal Reports (20) marks): D

Performance Appraisal Reports for the preceding five years shall be considered for the purpose of awarding marks for promotion." E

In case of promotion from Clerk to Junior Management Class-I scale the division of marks is as under:-

"(A) Written test : 70 marks F

(B) Interview marks : 20 marks

(C) Performance Appraisal Reports : 10 marks.

Total Marks : 100 marks." G

70 marks allotted to written test are further divided as under:

"English : 35 marks H

A	Bank Law Practice	:	35 marks
	Total Marks	:	70"

B 6. A candidate in order to qualify must secure a minimum of 40 per cent marks each in English and banking law practice.

C 7. The appellant – bank, in addition to the requirement of 40% qualifying marks in the written test further fixed the qualifying mark of 60% for general candidates and 55% marks for SC/ST candidates on the aggregate marks comprising written test, performance appraisal reports and interview.

D 8. The names of all candidates who got 60% or above in the aggregate were put in the list for promotion strictly as per their seniority. All candidates were promoted in order of seniority, irrespective of anyone among them having got marks in excess of 60% in the aggregate.

E 9. The respondents in each of the appeals who were unsuccessful in getting promotions, challenged the select list of the promoted candidates by filing writ petitions before the Orissa High Court. The High Court heard W.P.(civil) No.14359/2003 (giving rise to civil appeal, arising from SLP(Civil) No.19292/2008)) as the leading case. It allowed the Writ Petition holding that prescription of the benchmark of 60% marks in the aggregate was in violation of the promotion policy and the rules governing the field. It, accordingly, allowed the Writ Petition and directed the appellant-bank to make fresh selection in accordance with the Rules. (The other writ petitions giving rise to the other appeals were disposed of following the judgment passed in W.P.(Civil) No.14359/2004).

G 10. In taking the view that the prescription of the minimum qualifying marks in the aggregate was in contravention of promotion based on seniority-cum-merit, the High Court relied upon the decisions of this Court in *State of Kerala v. N.M.*

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*Thomas*¹, *Bhagwandas Tiwari v. Dewas Shajapur Kshetriya Gramin Bank*², and *B.V. Sivaiah v. K. Addanki Babu*³. A

11. In a more recent decision in *Rajendra Kumar Srivastava and Others v. Samyut Kshetriya Gramin Bank and Others*⁴, this Court re-visited the issue of fixing a high percentage as the minimum qualifying marks for promotion on seniority-cum-merit basis. It examined all the three decisions (besides others) relied upon by the High Court, namely, *Bhagwandas Tiwari* (supra), *B.V. Sivaiah* (supra) and *N.M. Thomas* (supra). B C

12. In *Rajendra Kumar Srivastava*, the Court framed the following two questions for consideration:

“8. On the contentions urged, the following two questions arise for our consideration: D

(i) 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? E

(ii) Whether the first respondent Bank was justified in fixing a high percentage (78%) as the minimum qualifying marks (minimum merit) for promotion? F

13. Answering both the questions in the affirmative, the Court on an analysis of the earlier decisions observed and held that: F

“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, G

1. (1976) 2 SCC 310.

2. (2006) 12 SCC 574.

3. (1998) 6 SCC 720.

4. (2010) 1 SCC 335. H

A 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
B 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
C 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.
D

14. The next question is whether fixing of 78% as
minimum qualifying marks (that is, as the minimum
necessary merit) is unreasonable and arbitrary. The Rules
in this case provide that the mode of selection is by
E interview and assessment of performance reports for the
preceding three years as officer Scale I. The seniority list
of officers in Scale I was published on 4-12-1996.
Thereafter, the promotion process was held by earmarking
60 marks for assessment of performance reports (at the
F rate of 20 marks per year) and 40 marks were allotted for
interview. The officers possessing the minimum qualifying
marks of 78%, were then promoted on the basis of
seniority. What should be the minimum necessary merit for
promotion, is a matter that is decided by the management,
G having in mind the requirements of the post to which
promotions are to be made. The employer has the
discretion to fix different minimum merit, for different
categories of posts, subject to the relevant rules. For
example, for promotions at lower levels, it may fix lesser
H minimum qualifying marks and fix a comparatively higher

minimum qualifying marks for higher posts.” A

14. The decision of the High Court, thus, appears to be clearly contrary to the view taken by this Court in Rajendra Kumar Srivastava.

15. The decision of the High Court is, accordingly, set aside. The writ petitions filed by the respondents before the Orissa High Court are dismissed. The select list prepared by the appellant-bank is affirmed. The appeals are allowed but with no order as to costs. B

K.K.T. Appeals dismissed. C