

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 23267/2005

% Judgment reserved on: 17th May, 2012
Judgment delivered on: 05th July, 2012

L.R. JOANWAL Petitioner
Through : In person.

versus

UOI & ORS. Respondents
Through : Mr C.K.Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, the petitioner is seeking issuance of an appropriate directions to the respondents, inter alia, on the grounds that the respondents while promoting 78 officers in SM Scale-IV on 17.02.2004, 3 officers on Review Appeal thereafter in 2004, 90 officers on 25.02.2005 and 16 officers thereafter on Review Appeal in 2005, wrongly, illegally, and deliberately rejected such promotion to the petitioner after overlooking his seniority and exemplary performance and promoted officers with lower performance including a large number of his juniors.

2. The case of petitioner is that he had joined Indian Overseas Bank (hereinafter called respondent Bank) as Probationary officer on 16.08.1978 and was placed from the same date in Junior Management

Scale-I. The petitioner was promoted by the Bank to Middle Management Scale-II from 01.01.1990, to Middle Management Scale-III from 03.06.1998 and his seniority number was 421, as all these details are evident from Bank Seniority list in MM Scale-III as on 01.09.2002, which is annexed as Annexure I.

3. In the year, 2004, respondent Bank conducted promotion interview for promoting officers from MM Scale-III to SM Scale-IV. However, Bank circular identifying number of promotion vacancies and seniority list as on the date of conducting promotion process were not circulated among the officers.

4. The eligibility criteria for promotions from middle management Grade Scale-III to Senior Management Grade Scale -IV as per para 2.3 of Bank Promotion policy for officers Circular Memo No.7(f) 155 of 1992-1993 dated 18.01.1993, which is annexed as Annexure II, as amended vide Circular Memo No. 7 (f) 31 of 2001-2002 dated 01.06.2001, which is annexed as Annexure III was **“Five years of satisfactory service in MM Grade Scale-III.”**

5. For the purpose of assessing performance of individual officers, the Performance Review System designed by the Bank was to be followed. The system of Appraisal may be reviewed at Bank's discretion from time to time depending upon the trend and circumstances in the Banking Industry and the needs of Bank. **Marks will awarded on the basis of rating under different parameters, given in the performance review reports for the last three years.**

The petitioner fulfilled all the eligibility criteria, and as such Bank called him to appear in Promotion Interview vide letter No.RO/STAFF/89/2003-04 dated 31.01.2004, which is annexed as Annexure IV. The petitioner appeared in the interview on 13.02.2004. However, the name of the petitioner was not included in the said list of promoted officers.

6. The respondent Bank promoted a large number of officers with lower performance than the petitioner. Bank even promoted a large number of his juniors, as is evident the list of 51 juniors, attached as Annexure-VI. The petitioner was at 6th position in his entire batch of officers promoted to SMG Scale-III on 03.06.1998 by Bank. His performance in MM Grade Scale-III was also exemplary, as per details furnished in Annexure-VII.

7. The petitioner could not make an immediate appeal for reconsideration of his promotion due to his suffering a fatal accident while attending official outdoor duties because of which he had to undergo an operation, which led to fixing two rods in his left knee, with bed rest for quite a long time.

8. In 2005, Bank again conducted promotion interview for promoting officers from MM Scale-III to SM Scale-IV and again called the petitioner to attend the promotion interview vide letter No.PAD/177 dated 27.01.2005, attached as Annexure-VIII, which was also attended by the petitioner on 10.02.2005. This time also Bank did not circulated the vacancies identified for promotion together with the

list of officers eligible for consideration in this promotion process.

9. The bank declared list of 90 officers promoted to SM Scale-IV, vide Transient Series (File) Circular NO. 7(F) 93 OF 2004-2005 dated 25.02.2005, attached as Annexure-IX. The name of the petitioner was again not included in the list of promoted officers.

10. This time also the bank promoted large number of officers with lower performance than that of the petitioner including 58 of his juniors, list of juniors is in Annexure-X.

11. Aggrieved from his non-promotion, the petitioner submitted his appeal dated 11.03.2005 which is annexed as Annexure XI to the Bank for consideration of his promotion.

12. The petitioner vide his letter dated 19.03.2005, which is annexed as Annexure XII, also requested the bank to intimate the marks obtained by him in the Promotion process under various parameters and cut of marks fixed for promotion to SCs, STs and General category officers. But no reply is received from the Bank so far.

13. In the meanwhile, the petitioner learnt about one Mr. B.P. Gupta, Roll No. 8287, who was promoted from MM Scale-III to SM Scale-IV on making Appeal dated 12.03.2004, which is annexed as Annexure XIII, against non-promotion vide Bank letter NO. 177/SUP dated 14.05.2004, which is annexed as Annexure XIV.

14. As per the performance details available, Mr. B.P. Gupta had no achievement at all during the years 1998, 1999, 2000, 2001. He also

except for 2002, could not achieve profit target of his branch for all years up to 2004. He was also not able to achieve target assigned by the Bank for Bank's Maiden and subsequent IPO. Additionally, there were large number of financial and house-keeping irregularities/lapses, which is annexed as Annexure–XV. Whereas, petitioner's performance has been exemplary, the details furnished in Annexure-VII. Although, only last three years performance is taken cognizance of for the purpose of promotion, yet a comparison of the performance of petitioner with Mr. B.P. Gupta for entire tenure of MM-III, is placed as Annexure-XVI.

15. In addition to the lower performance of Mr. B.P. Gupta, much before the release of his promotion by Bank Review DPC vide letter No. 177/SUP dated 14.05.2004, which is annexed as Annexure XIV, Bank C.O. Inspectors vide C.O. Inspection report dated 23.04.2004 as mentioned in Bank's letter No.INSP/174/148/2004-05 dated 14.07.2004, which is annexed as Annexure XV, pointed out that 31 serious financial irregularities/lapses and additional 15 serious house keeping irregularities in Preet Vihar Branch ,where Mr. B.P. Gupta was working as Senior Manager First Line in MMG Scale-III, but Bank after ignoring all these serious financial and house keeping irregularities not only promoted Mr. B.P. Gupta but also retained him in same Preet Vihar Branch vide Bank letter dated 17.07.2004 which is annexed as Annexure-XVII.

16. In view of the above performance and retention of Mr. BP Gupta, petitioner submitted a representation dated 08.04.2005, which is

annexed as Annexure-XVIII, to the Chairman and Managing Director of the Bank by furnishing comparison of both performances and requested his promotion. But so far there is not reply from the Bank.

17. In the meanwhile Bank had released a list of 16 officers (Annexure –XIX), promoted on the basis of their appeal against non-promotion. Even in this list, the petitioner was not promoted.

18. The petitioner had endorsed a copy of his representation dated 08.04.200 to the General Manager and Chief Liason Officer for SC/ST of the Bank at Central office, Chennai, for redressal of his grievance of non-promotion, who has so far neither replied nor acknowledged the representation.

19. On the contrary, the petitioner was asked to submit his comments on two anonymous complaints (i) Dated 17.04.2003 (Annexure-XXIV) and (ii) Dated 30.09.2004 (copy was not provided by Bank), despite the fact that as per para 9.1.1 (modified) Special Chapter on Vigilance Management in Public Sector Banks, circulated by the Bank vide letter No. RO/VIG/05/2002-03 dated 12.07.2002-“No action should at all be taken on anonymous/pseudonymous complaints (Annexure-XXV). They must just be filed”. In first complaint, Bank conducted investigation in Petitioner’s Bank account and asked about three cash transactions. First two of Rs.45,000/- were related to loan taken from the bank and third of Rs.117250/- was kept by the petitioner for daughter’s marriage after declaring the same in annual return of movable and immovable property submitted to the bank every

year and bank would have verified it from there. In second anonymous complaint, Bank raised certain allegations about few closed loans of 1999 when 100% verification/inspection of all priority sector advances/loans is conducted by regional office Inspectors once in 12 months and verification/inspection of all advances/loans is also conducted by Central officer Inspectors once in 18 months. Additionally, followed by regular quarterly executive visits and none of them had ever pointed out any irregularities in any loan account in Nangal Township branch. Despite request vide letter dated 26.07.2005 (Annexure-XXVI), Bank declined to provide copy of complaint, Investigating Officer report, thus violated the rules.

20. The petitioner in addition to other correspondence, made representation dated 08.04.2005. In reply to the said representation, the respondent bank replied as under:-

“With regard to the representation of Shri L.R. Joanwal for promotion to Senior Management Grade Scale –IV, it may be stated that the DPC constituted for promotion of Officers from MMG Scale – III to SMG Scale –IV have not included Sh.L.R. Joanwal in the select list after going through the performance, reports etc. The member has also preferred as appeal to the Appellate Authority and the Appellate Authority after going through the records of Departmental Promotion Committee and evaluation of reports has not considered the appeal favourably.”

21. The respondent Bank has filed the response to the instant petition, wherein it is stated that the promotion policy for Officers in the Bank is based on the guidelines issued by the Government of India

under relevant Regulations contained in the Officers Service Regulation and also keeping in mind the overall objectives which is to provide motivation to meet the legitimate aspiration of Officers to position of Higher responsibilities in the Bank.

22. The following facts were identified as relevant for promotion:

- a) *Banking knowledge.*
- b) *Performance*
- c) *Potential*
- d) *Role function*
- e) *Rural service*
- f) *Service in Hardship Centres*
- g) *Leave Record*
- h) *Mobility etc.*

23. Earlier, the marks awarded for promotion from MMG-III to SMG –IV were as follows:

a)	<i>Role Function / Exposure</i>		
	<i>(including leave Record)</i>	-	35
b)	<i>Performance</i>	-	35
c)	<i>Potential</i>	-	30
	<i>Total</i>	-	<i>100”</i>

24. It is further stated that among the 35 marks awarded for Role Function / Exposure, 18 marks were awarded for Role Function, 15 marks were awarded for mobility factor and 2 marks for leave record. 18 marks for Role Function was awarded for having worked as first line in Branches, SBAA, RCDD / on Deputation to Regional Rural Banks as General Manager, Second Line Branches, Faculty Members,

Inspectors, Lead Bank Manages, Deputy Chief Managers in Regional Office / Zonal Office / Central Office etc.

25. Thereafter, the policy was amended to the effect that the maximum marks of 30 is awarded for Role Function for promotion MM-III to SMG-IV and marks are awarded for Mobility Factor. Further, the Departmental Promotion Committee, assess the overall performance of the candidates on the basis of service and awarded marks up to 15. Apart from above, the other parameters for promotion were 25 marks for potentiality. Therefore, the assessment of an officer for promotion MMG-III to SMG-IV, is coming under the following categories namely:-

<i>“a) Role Function / Exposure</i>		
<i>(including leave Record)</i>	-	35
<i>b) Performance</i>	-	25
<i>c) Potential</i>	-	25
 <i>d) DPC award for Service</i>		
<i>Record</i>	-	15
<i>Total</i>	-	<i>100”</i>

26. It is further stated that the petitioner was assessed under various parameters as stated above and found not eligible for promotion by Departmental Promotion Committee to promotion to SMG-IV.

27. In regard to Sh. B.P. Gupta, he submitted his appeal for promotion against his non-promotion declared on 17.02.2004. Upon his appeal, he was promoted, as decided by DPC. On the other hand, the petitioner had not only preferred any appeal for promotion declared on 17.02.2004. The petitioner submitted the appeal on 22.05.2005,

therefore, cannot be compared with Sh. B.P. Gupta that his performance was better than Sh. B.P. Gupta.

28. Moreover, the service record of the petitioner was not clean as charge-sheet was issued to him on 22.08.1983 and 05.06.1984 under Vigilance Case for misappropriation of funds. During July, 1984 explanation was called for from the petitioner for misappropriation of funds and preferring false claim under LFC. Explanation was submitted by the petitioner on 27.09.1984 and an original order dated 30.09.1986 was passed withholding of increments pay falling due on 01.01.1987 for charges, such as granting of clean overdraft and awaiting of personal loan for purchase of furniture from non-existent firm. The petitioner was also charge-sheeted on 25.09.1991 under vigilance angle for mis-utilization of loan proceeds as he did not verify the end use of their loans. The answering respondent had passed an original order dated 31.07.1993 withholding two increments in respect of the charge-sheet dated 25.09.1991.

29. Thereafter, bank had received a complaint on 17.04.2003 that petitioner purchased a *Benami* property at Delhi and monetary transactions had taken place disproportionate to the known sources of income of the petitioner. The said complaint was investigated at this instance of CBI and closed after issuing warning letter to the petitioner. The charge-sheet has been issued to petitioner on 28.03.2006 on various charges such as Sanction of housing loan etc. under vigilance angle.

30. The petitioner filed rejoinder to the reply filed by the respondent bank and submitted that as regards the allegation against the petitioner, Regional Office, Chandigarh, had enquired into the said complaint in contravention with the Central Vigilance Commission's instructions had not found any proof and recommended the closure of the file to IRD, Central office, Chennai. As regards charge-sheet dated 28.03.2006, it is submitted that the respondent Bank had issued the same to the petitioner only after filing of the present petitioner to teach him a lesson for filing the instant petition.

31. In pursuance to order dated 25.04.2008 of this Court, the petitioner filed additional affidavit wherein it is stated that he secured 70.63 marks in promotion result declared on 17.02.2004 and cut off / minimum marks for the same were 75.6 marks. One Officer Mr. B.P. Gupta who was promoted during 2004 thus secured minimum 75.6 passing marks. Since the performance of Mr. Gupta stands nowhere in comparison to the far better performance of the petitioner and still he was awarded 5 marks higher is absolutely unjustified.

32. The Government of India revised / reduced the zone of consideration to merely twice a number of vacancies + 4 i.e. for 78 vacancies during 2004, Bank had to consider only first senior most 160 officers, but in violation of these rules Bank had considered around 1000 Officers vide O.M. No. 22011/1/90-Estt.(D) dated 12.10.1999, O.M. No. 22011/1/9-Estt.(D) dated 22.04.1992.

33. The Government of India had further revised / reduce zone of consideration to merely on 1½ times of the number of vacancy + 3. Further, Government of India, Ministry of Finance, Department of Financial Services had clarified vide letter no. 1/4/2008-SCT (B) – RTI dated 24.03.2008 that the instructions contained in Annexure Q2 to Q6 are duly applicable to all the Public Sector Banks / Financial Institutions.

34. The petitioner in person has submitted that it is evident from “Comparison of Performances” Annexure XV that for last three years – 2001 to 2003, which the respondent Bank had considered in accordance with Para 8 of the Promotion Policy which is as Annexure-II, for promotion from MMG Scale – III to SMG Scale-IV during 2004, that the performance of Mr. B.P. Gupta stands nowhere in comparison to the performance of the petitioner as under:-

“PERFORMANCE COMPARSION OF MR. B.P. GUPTA & PETITIONER

Year	Performance of Mr. B.P. Gupta	Performance of the petitioner
2001	Achieved Target: Nil	*Achieved Targets under all parameters. **Declared Best Regional Semi Urban Branch & ***Awarded First Prize and Raj Bhasha Shield (in House) Scheme Competition

2002	Achieved Target for – (a) Profit and (b) NPA	*Achieved all Targets except Advances missed just by Rs. 2 Lac. *** Branch was awarded overall “A” Rating.
2003	Achieved Target Under (a) Deposit (b) Advance (c) Branch was awarded overall “B” Rating.	Achieved Target under (a) Advances (b) Current Deposit (c) Profit (d) Other Income. **Achieved Bank IPO Target

It is evident from the above comparison:-

- (a) That Mr. B.P. Gupta’s Branch was never declared as Best Regional Branch, whereas the Petitioner’s Branch – Nangal Township Branch was declared as Best Regional Branch under Semi Urban Category. On an average there are around 50 Branches in a Region (Delhi Region had 58 Branches) and getting such recognition is a rare distinction.
- (b) That Mr. B.P. Gupta’s Branch never awarded any Prize / Raj Bhasha Shield (in House) Scheme Competition whereas Petitioner’s Branch was awarded First Prize and Raj Bhasha Shield (in House) Scheme Competition.
- (c) That Mr. B.P. Gupta’s Branch was awarded overall “B” Rating whereas the Petitioner’s Branch was awarded overall “A” Rating.

- (d) That the Petitioner was able to convert the 1976 opened Nangal Township regular loss incurring Branch into a profit marking Branch whereas there was no such remarkable performance on the part of Mr. B.P. Gupta.
- (e) That the performance of the Petitioner was quite far better in the achievement of targets allotted under different parameters by the Bank in comparison to Mr. B.P. Gupta.
- (f) In addition, while promoting Mr. B.P. Gupta, Bank had overlooked 31 serious financial and 15 house-keeping irregularities observed in Preet Vihar Branch headed by him, whereas there were no such irregularities ever pointed out in any Inspection Report in respect of the petitioner.

35. He further submitted, when Mr.B.P. Gupta with his lower / inferior performance was awarded minimum 75.63 passing marks and promoted during 2004, there was absolutely no justification for awarding 70.63 marks i.e. five marks lower to the petitioner despite his far better performance in his comparison.

36. It is submitted that the Bank Promotion Policy for Officers provides as under:-

“The number of persons to be considered for promotion from one scale to another shall normally be restricted to three times the number of posts for which promotions are being considered.”

37. But, the Bank in violation of its own above instructions had considered and promoted officers out of:-

- (a) Around 1000 Officers i.e. over 12 times of the number of vacancies for promotion to 78 vacancies of SMGS-IV during 2004, and
- (b) Around 1000 Officers i.e. over 12 times of the number of vacancies for promotion to 90 of SMGS-IV during 2005. (Exact number of Offices considered not known as Bank had not issued any Circular in the matter).

38. The Bank Promotion Policy further provides:-

“Any guidelines / directives issued by the Government of India from time to time in regard to promotion of Officers will be deemed to be a part of this Promotion Policy. Any guidelines contained in brochure on Reservation for Scheduled Castes and Scheduled Tribes in services or any other guidelines issued by the Government of India in the Bank will also be deemed to be a part of this Promotion Policy.”

39. And prescribed Zone of Consideration of Officers for more than 5 vacancies was twice the number of vacancies + 4. And in the case of non-availability of sufficient number of SC/ST Officers, the Extended Zone of Consideration for SC/ST Officers was up to five times of the number of vacancies vide Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training instructions contained in O.N. NO. 22011/1/02-Estt. (D) dated 15th November, 2002 read with O.M. NO. 22011/1/90-Estt. (D) dated 22nd April, 1992 and O.M. NO. 22011/1/90-Estt.(D) dated 12th October, 1990.

40. In considering higher number of Officers by the respondent bank, not falling under prescribed zone of consideration had violated instructions contained in Government of India of O.M. No.22011/3/76-Estt. (D) dated 24.12.1980. But, in violation of above Government of India instructions:-

- (I) Bank instead of considering only first 160 senior most Officers ($78 \times 2 + 4 = 160$) for 78 vacancies, had considered around 1000 Officers during 2004 and
- (II) Bank instead of considering only first 184 senior most Officers for 90 vacancies, had considered around 1100 Offices during 2005 and
- (III) If sufficient number of SC/St Officers were not available within prescribed zone of consideration, as detailed in I and II above, Bank to Extend Zone of consideration up to 5 times of the number of vacancies only for SC/ST Officers.

41. The petitioner in person has further submitted that on seeking clarification about the applicability of above instructions under RTI Act, Secretary & APIO to the Government of India, Ministry of Finance, Department of Financial Services vide his letter No.1/4/2008-SCT(B)-RTI dated 24.03.2005 had clarified that:-

“All instructions/guidelines issued by Government of India through department of Personnel & Training on reservation etc. are applicable to all public Sector Banks / Financial Institutions”.

42. Thus, in the light of above submissions:-

- a. Bank had wrongly, illegally and deliberately considered over first 160 senior most Officers during 2004 and over first 180 senior Offices during 2005, and

- b. Bank had wrongly, illegally and deliberately promoted a large number of junior officers who were not falling under prescribed zone of consideration for promotion from MMGS-III to SMGS-IV during 2004 to 2005.

43. Hence, promotion of junior officers not falling under prescribed Zone of Consideration for promotion from MMGS-III to SMGS-IV during 2004 and 2005 being unjustified, malafide, biased, arbitrary, illegal and void deserves to be quashed.

44. After hearing petitioner and learned counsel for respondent Bank, it has emerged that the petitioner was denied promotion from middle management Grade Scale-III to Senior Management Grade Scale –IV, whereas 78 officers were promoted on 17.02.2004 and 90 officers on 25.02.2005. Additionally, 3 officers on Review Appeal in 2004 and 16 officers, thereafter, on Review Appeal in 2005 were also promoted. However, rejected the promotion to the petitioner by overlooking his seniority and exemplary performance and promoted officers with lower performance including a large number of his juniors.

45. Admittedly, the petitioner joined as Probationary officer w.e.f. 16.08.1978 and was placed from the same date in Junior Management Scale –I. Thereafter, he was promoted to Middle Management Scale – II w.e.f. 01.01.1990 and Middle Management Scale –III w.e.f. 03.06.1998. Till then, the petitioner has been found fit for the promotions mentioned above. However, when the petitioner appeared in the process for his promotion from Middle Management Scale III to Senior Management Grade Scale IV, the DPC of the respondent bank

not found him fit for further promotion in the year 2004 and 2005 as well.

46. Admitted fact is, the bank promoted the large number of juniors (51 in total), despite the fact that the petitioner was at 6th position in his entire batch of officers promoted to SMG Scale III on 03.06.1998. His performance in MM Grade Scale-III was also exemplary as per details furnished in Annexure-VII.

47. The petitioner made appeal vide letter dated 19.03.2005 which is annexed as Annexure XII wherein also requested the bank to intimate the marks obtained by him in the Promotion process under various parameters and cut of marks fixed for promotion to SCs, STs and General officers. But the respondent bank preferred to give no reply.

48. Thereafter, representation dated 19.04.2005 was made by the wife of the petitioner. In reply thereto, it was stated that the DPC constituted for promotion of officers from MMG Scale –III to SMGS-IV have not selected the petitioner in the select list after going through the performance, reports, etc. It is further stated that the appellate authority after going through the records of departmental committee and evaluation of reports had not considered the appeal favourably.

49. In response to the petition filed by the respondent bank, it is stated that the promotion policy for officers in the bank is based on the guidelines issued by the Government of India under relevant Regulations contained in the Officers Service Regulation and also keeping in mind the overall objectives which is to provide motivation

to meet the legitimate aspiration of Officers to position of Higher responsibilities in the Bank.

50. It has also emerged from the instant petition and submission of the parties that the petitioner has been in the first line Officers, whereas, the others promoted officers have been second line officers. Despite, he was not promoted to the scale in question.

51. No plausible reply has been given by the respondent bank that why the vacancies identified for promotion and the list of officers eligible for consideration, was not circulated.

52. As per the Bank Promotion Policy the number of persons to be considered for promotion from one scale to another, shall normally be restricted to three times the number of posts for which promotions are being considered. But, the Bank in violation of its own instructions had considered and promoted officers out of around 1000 Officers i.e. over 12 times of the number of vacancies for promotion to 78 vacancies of SMGS-IV during 2004, and around 1000 Officers for promotion to 90 officers of SMGS-IV during 2005, even without circulating the list of exact number of officers considered.

53. I note, as per the Bank Promotion Policy, any guidelines / directives issued by the Government of India from time to time in regard to promotion of Officers will be deemed to be a part of its Promotion Policy. It is also stated that any guideline contained in brochure on Reservation for Scheduled Castes and Scheduled Tribes in

services or any other guidelines issued by the Government of India in the Bank will also be deemed to be a part of this Promotion Policy.

54. Moreover, it has been clarified about the applicability of above instructions under RTI, by Secretary & APIO to the Government of India, Ministry of Finance, Department of Financial Services vide his letter No. 1/4/2008-SCT(B)-RTI dated 24.03.2005 that all instructions / guidelines issued by Government of India through department of Personnel & Training on reservation etc. are applicable to all public Sector Banks / Financial Institutions.

55. The bank had wrongly, illegally and deliberately considered over first 160 senior most Officers during 2004 and over first 180 senior Offices during 2005, and also wrongly, illegally and deliberately promoted a large number of junior officers who were not falling under prescribed zone of consideration for promotion from MMGS-III to SMGS-IV during 2004 to 2005.

56. In compliance of the order dated 28.01.2011, passed by this court, the petitioner filed additional affidavit whereby the petitioner has established that he was denied promotion because bank has violated revised selection method of promotion prescribed under Govt guidelines on promotion /reservation which deemed to be a part of Bank Promotion Policy, provides that (a) any guidelines/directives issued by the Government in regard to promotion of officers, (b) any guidelines contained in brochure on reservation for scheduled castes/scheduled tribes in services issued and or (c) any other guidelines issued by the Government relating to the service of

Scheduled Castes/Tribes in the bank will be deemed to be a part of Bank Promotion Policy.

57. Even it provides that the Government guidelines issued vide Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, henceforth called DOPT OM No. 35034/7/97-Estt.D dated 8.02.2002 available at page 24-29 of the paper-book, by stating that “ Although, there is no reservation and concession available to SCs and STs Officers for promotion from lower Groups to Group “A” and pre-revised pay scale Rs. 12000 to Rs. 16500/- and above i.e. Scale IV and above in the Public Sector Banks, yet to increase their chances in such promotions and to avoid supersession of senior officers, the old existing “Selection by Merit” method of Promotion has been revised to “Selection” method of promotion. In the “Selection by Merit” method, superior grading supersedes those getting lower grading. In other words, an officer graded as “outstanding” supersedes those graded as “Very Good” and an Officer graded as “Very Good” supersedes those graded as “Good”.

58. However, in the revised “Selection” method, the element of selectivity (higher or lower) shall be determined with reference to the relevant benchmark (“very good or “good”) determine the merit of those officers being assessed for promotion with reference to the prescribed benchmark and accordingly grade the officers as “Fit” and “Unfit”. Only those who are graded “Fit” shall be included and arranged in the select panel in order to their inter-se seniority in the feeder grade.

59. The applicability of above Government guidelines issued by Government of India are *mutatis-mutandis* followed by the Public Sector Undertakings, financial institutions including Public Sector Banks and DoPT who centrally issues such guidelines to all Ministries vide their letter No. 28034/1/2010-Estt. (A) dated 18th October, 2010 which is at page 241 of the paper book, wherein it is clarified-“ that the instructions issued by this Department (DoPT) are to be complied with by all concerned and naturally the concerned Ministries will have to bring to the notice of various offices under them, the instructions.”

60. The Bank comes under the Ministry of Finance. Guidelines on promotion matters/reservation would be considered to be notice of all Public Sector Banks including respondent bank for their compliance.

61. The respondent bank admitted to the National Commission for Scheduled Tribes vide letter No.PAD-SC/ST Cell/123/258/2008-09 dated 30.05.2008 which is available at page 243 of the paper-book, about having followed the instructions issued in DOPT OM No.35034/7/97 Estt-D dated 8th February, 2002 placed at page 245 to 246 of the paper book.

62. However, the petitioner was not promoted due to violation of revised “selection” method of promotion. The DPC was required to determine the merit of officers assessed for promotion with reference to the prescribed benchmark (“Very Good” or “Good”) and accordingly grade the Officers as “Fit” and “Unfit” and only those who

are graded “Fit” shall be included and arranged in the select panel in order to their inter-se seniority in the feeder grade.

63. The petitioner was awarded 90 marks out of 100 marks in his Annual Confidential Report /Annual Performance Appraisal for the year 2005 which is available at page 259 of the paper-book and marks wise ratings/benchmark prescribed under Bank’s ACR/AP A Form CR-3/APA-7 which is as under:-

MARKS	RATINGS
80-100	OUTSTANDING
60-79	GOOD
40-59	AVERAGE
BELOW 40	BELOW AVERAGE

64. From the said rating of the petitioner, in my considered opinion, he was entitled for outstanding rating/benchmark viz-a-viz “Fit” for promotion grading. However, in violation of “Selection” method, DPC has not included and arranged the name of the petitioner in the select panel in order to his inter-se seniority in the feeder grade and not promoted him and further allowed 68 of his junior officers by superseding him without declaring him “Unfit” for promotion. Thus, it was arbitrary, wholly discriminatory and illegal to deny promotion to the Petitioner to SMG Scale-IV during 2005.

65. The bank promoted 78 officers during 2004. As per marks wise ratings/benchmark given at page 232, he was awarded only 12 marks out of 20 marks. Whereas as per the record, he got two promotions till

2002. Even thereafter, he has been as the first line officer and his work has been appreciated in the ACR Reports.

66. During years 2004-2005, DPC promoted officers with “outstanding” and “good” rating. However, there is no rating as “very good” in the bank. The petitioner was awarded 70.63 marks in 2004 and 73.08 marks in 2005, his rating during these years was “good” and as such “fit” for promotion during these years. So, all the 28 officers and petitioner graded “fit” during 2004 and 38 officers and petitioner graded “fit” during 2005 for promotion were to be included and arranged in the select panel in the order of their inter-se seniority in the feeder grade i.e. MMG Scale-III and were to be promoted accordingly, which was not done. Therefore, the petitioner was not promoted during these years.

67. On the contrary, DPC allowed 51 officers during 2004 and 58 officers during 2005 (refer Annexure – VI page 68-69 and 58 officers during 2005 refer annexure X page 91-92), all juniors to the petitioner who superseded him without declaring him “Unfit” for promotion.

68. The petitioner, in person has strongly pleaded his case as well as pointed out the favour made by the bank to the other officers namely Mr.B.B.Gupta, Mr.Gamit K. Lakhib and Mr. J. Rajendran etc, whose performance were not better than the petitioner. However, I do not comment on their selection as they are not contesting the instant petition before this court.

69. Undisputedly, the petitioner was issued 9 appreciation letters by the bank for his outstanding performance which are available at page 78 to 86 of the paper book. Despite that and by sidelining the instructions issued by the DOPT on zone of consideration and on promotion and reservation, the promotion of the petitioner denied illegally and malafidely. I have no hesitation to say that the petitioner was discriminated only for the reasons some anonymous complaints came against the petitioner as regular practice and were considered at the time of his promotion though he was not punished departmentally which was to be considered at the time of his promotion.

70. The case of the respondent bank is that the petitioner was not having clean record as charge-sheet was issued to him on 22.08.1993 and 05.06.1984 under vigilance case for misappropriation of funds. Vide the original order dated 30.09.1996 passed with holding of increments pay falling due on 01.01.1987 for charges. The petitioner was also charge sheeted on 25.09.1991 under vigilance angle for misutilization of loan proceeds as he did not verify the end use of their loans. Moreover, the bank had received a complaint on 17.04.2003 that petitioner purchased a *Benami* property at Delhi and monetary transactions have taken place disproportionate to the known sources of income of the petitioner. The said complaint was investigated at this instance of CBI and closed after issuing warning letter to the petitioner. Also, the chargesheet has been issued to petitioner on 28.03.2006 on various charges such as Sanction of housing loan etc. under vigilance angle.

71. I find no force in the submissions of the respondent bank because the petitioner was previously promoted twice in the year 1990 and in the year 1998 to Middle Management Scale –II and Middle Management Scale III respectively. Therefore, the complaints mentioned above would not have effect in the promotion in question.

72. The charge sheet dated 28.03.2006 was issued after filing the instant petition, therefore, whatever the charges against him are not relevant for the promotions sought by the instant petition, for the year 2004 and 2005.

73. Even as per Promotion Policy for Officers of respondent Bank, those officers against whom charge-sheets are pending or are under suspension on the appointed date will also be assessed but results will be withheld in sealed cover till the final outcome.

74. If the Officer, in respect of whom the DPC has kept its findings regarding his suitability for promotion to next Scale in sealed cover, is exonerated by the Disciplinary Authority the sealed cover, kept in respect of him will be opened and the findings of the DPC will be operated upon. On opening of the sealed cover, if the concerned Officer has been found suitable for promotion to the next Scale, promotion will be given with retrospective effect for seniority purposes and for salary, emoluments, any perquisites, etc., benefit will be given from the date of such exoneration, on notional basis with reference to the date on which he/she would have been normally promoted. No

arrears would be payable in such cases for the period prior to the date of actual promotion i.e. the date of exoneration.

75. If any penalty/punishment is imposed after enquiry, the sealed covers kept in respect of the particular Officer will not be opened. If major penalty has been imposed by the Disciplinary Authority, the concerned Officer will not be eligible to appear for the Promotion Process for a period of one year from the date of punishment or for the first Promotion Process immediately after the date of punishment, whichever is earlier.

76. However if minor penalty has been imposed by the Disciplinary Authority, the concerned Officer will be eligible for the next Promotion Process which takes place immediately after such punishment is imposed unless the punishment itself precludes promotion for a long period under the I.O.B. Officer Employees' Discipline and Appeal and Conduct Regulations, 1976.

77. An Officer, in respect of whom a major penalty has been awarded during the three years under review preceding the cut-off date or between the cut-off date and date of finalization of promotion by DPC, would not be eligible to appear for the Promotion Process for a period of one year from the date of punishment or for the first Promotion Process immediately after the date of punishment, whichever is earlier. The case of the petitioner does not fall in any of the above categories.

78. As per Office Memorandum F.No.35034/7/97-Estt(D), dated February 8, 2002, 'Bench-mark for promotion was that the DPC shall determine the merit of those being assessed for promotion with reference to the prescribed bench-mark and accordingly grade the officers as 'fit' or 'unfit' only. Only those who are graded 'fit' (i.e. who meet the prescribed bench-mark) by the DPC shall be included and arranged in the select panel in order to their inter-se seniority in the feeder grade. Those officers who are graded 'unfit' (in terms of the prescribed bench-mark) by the DPC shall not be included in the select panel. Thus, there shall be no supersession in promotion among those who are graded 'fit' (in terms of the prescribed bench-mark) by the DPC.

79. Keeping in view the above discussion and after considering the submissions of petitioner and learned counsel for respondent, I am of the considered opinion that the petitioner was deliberately, illegally and discriminately not promoted in the year 2004 and 2005 as well and promoted lower performance officers including the large number of his juniors.

80. The respondent bank is directed to promote him w.e.f. 2004 with all consequential benefits.

81. I further make it clear that the direction passed in this judgment shall be complied within six weeks from the receipt of the copy of the judgment.

82. Accordingly, the instant petition is allowed with no order as to costs.

SURESH KAIT, J

JULY 05, 2012
j/jg/SS/RS