

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

+ **W.P.(C) 2888/2012**

% *Judgment reserved on: 7th November, 2012*
Judgment delivered on: 8th January, 2013

RAJINDER KUMAR Petitioner
Through: Mr. Ashok Bhalla, Advocate.

Versus

PUNJAB NATIONAL BANK AND ANR Respondents
Through: Mr. Dhruv Mehta, Senior
Advocate with Mr. Yashraj
Singh Deora, Advocate.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, the petitioner is seeking the relief as under:-

“Issue a writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari quashing the Clarificatory guidelines issued by the Respondent Bank for promotion process, promotion from MMG/S-III to SMG/S-IV for the year 2012-2013 vide P.A.D. Circular No. 88 dated 8.5.2012 with further directions to the Respondent Bank to consider the Petitioner for ensuing promotion process from MMG/S-III to SMG/S-IV for the year 2012-2013.”

2. It is pertinent to mention here that on the first date of hearing i.e. on 15.05.2012, Mr. Dhruv Mehta, Id. Sr. Counsel made his appearance on behalf of the respondent Bank and submitted that the petitioner would be called for interview. He also submitted that till the disposal of the instant

petition, one vacancy shall be kept reserved for the petitioner and his seniority shall be subject to the final outcome of the petition.

3. Accordingly, this Court passed an order in CM. No. 6225 of 2012 on the said date that one vacancy shall be kept reserved for petitioner and result of interview of petitioner shall be kept in sealed cover, till further order.

4. The respondent Bank, thereafter, filed an application vide no. 9390/2012 whereby sought clarification of the interim order dated 15.05.2012 for the reasons as under: -

“That the process of selection for promotion from MMGS-III to SMGS-IV, as prescribed in the promotion policy (pg 20 to 22 of Paper Book), involves assessment of eligible candidates and allotment of marks for (a) Performance (b) Group Discussion (C) Interview and (d) Branch Experience.

That, however, it is most respectfully submitted that having regard to what is submitted herein in above, as the last interviews for promotion to SMGS-IV were held on 15.05.2012 i.e. the date when this Hon’ble Court passed an interim order in the present petition, at present, the Respondent Bank is unable to invite the petitioner herein for Group Discussion with other eligible candidates, which is one of the parameter for assessment for consideration for promotion to SMGS-IV.”

5. Upon receiving the aforesaid application, this Court decided to dispose of the instant petition, instead of passing any further order.

6. Facts of the case, in brief, are that the petitioner is presently working as Senior Manager in MMG/S-III in Punjab National Bank, Head Office at New Delhi. He had joined the respondent Bank in March 1980 as a Clerk-cum-Cashier. He was promoted as officer in Junior Management

Grade/Scale-I (JMG/S-I) in September 1986. Thereafter, he was promoted as MMG/S-II in the year 1999 and in the year 2006, he was promoted as MMG/S-III.

7. The case of the petitioner is that he has meritorious service record and was accorded marks in his P.A.F. for the years 2005-2006 onwards as under:-

<i>S.No.</i>	<i>Review Period</i>	<i>Overall Rating</i>	<i>Marks</i>
<i>1.</i>	<i>2005-2006</i>	<i>Excellent</i>	<i>89</i>
<i>2.</i>	<i>2006-2007</i>	<i>Excellent</i>	<i>89</i>
<i>3.</i>	<i>2007-2008</i>	<i>Outstanding</i>	<i>93</i>
<i>4.</i>	<i>2008-2009</i>	<i>Very Good</i>	<i>70</i>
<i>5.</i>	<i>2009-2010</i>	<i>Excellent</i>	<i>83</i>
<i>6.</i>	<i>2010-2011</i>	<i>Excellent</i>	<i>83</i>

8. It is further stated that in the year 2008-2009, the Reporting Officer had given 95 marks, however, deliberately with malafide intention for oblique reasons was downgraded by the Reviewing Authority. The petitioner reserved his right to challenge the illegal downgrading of his PAF for the year 2008-2009 in accordance with law.

9. However, notwithstanding the above position, the petitioner was even otherwise eligible for promotion process for promotion from MMG/S-III to SMG/S-IV for the year 2012-2013, in terms of instant promotion policy.

10. Mr. Ashok Bhalla, learned counsel for the petitioner submitted that the service conditions of officers in Punjab National Bank are governed by the Regulations framed by the Board of Directors in exercise of powers conferred by Section 19 read with Sub-section 26 of Section 12 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 in consultation with the Reserve Bank of India and with the previous sanction of the Central Government. Regulation 17 of PNB Officer's Services Regulations, 1979 lays down that the promotions to all grades of officers in the Bank shall be made in accordance with the policy laid down by the Board from time to time having regard to the guidelines of the Government, if any.

11. The Board of Directors of the respondent Bank having regard to the guidelines of the Government of India, Requirements of the Bank and also deliberations held with the representatives of AIPNBOA in small committee meetings, in Board Meeting held on 21.03.2012 had approved the revised promotion policy for officers in Punjab National Bank. Further, the Board of Directors in its meeting held on 20.04.2012 had also approved certain amendments in the above promotion policy operative w.e.f. 01.04.2012, which read as under:-

“THE TITLE AND COMMENCEMENT:

- iii) This policy will be operative w.e.f.01.04.2012 i.e. in respect of the promotion process for the year 2012-13 and onwards.
- ix) **‘Financial Year’** means the period commencing from the 1st day of April of a year and ending with the 31st day of March of the next year.

4. **SELECTION PROCESS FOR PROMOTION FROM JMG SCALE-I TO MMG SCLAE-II**

a. **Channel-I (Normal/Seniority Channel)**

40% of the vacancies in MMG Scale-II shall be filled up through this Channel. Under this channel, the officers fulfilling the following eligibility criteria shall be eligible to apply:-

Illustration :

For example the marks obtained during the previous five years are as under:-

First Year PAF Marks	-	69
2 nd year PAF Marks	-	56
3 rd year PAF Marks	-	85
4 th year PAF Marks	-	62
5 th year PAF Marks	-	78
Total 05 years PAF Marks	-	350

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xxx

xxx

The selection of candidates shall be done on the basis of the following parameters:-

PARAMETERS	MAXIMUM MARKS	REMARKS
Written Test (Part 'A' & 'B' of 30 marks each, Part 'B' would be for 40 Marks for Technical/Specialist	60/70* Marks (*) for Technical/Specialist Officers	Minimum qualifying marks shall be 40% in individual paper and

<i>Officers).</i>		<i>50% in aggregate for General candidates and 30% & 40% respectively for SC/ST candidates.</i>
<i>Performance</i>	<i>60 Marks</i>	<i>Minimum 75% Marks in PAF of each of the preceding 3 years.</i>

5. SELECTION PROCESS FOR MMG SCALE-II TO MMG SCALE-III

The vacancies in MMG Scale-III, shall be filled up by promotion from MMG Scale-II through 2 channels, described below:-

a) Channel-I (Normal/Seniority Channel)

40% of the vacancies in MMG Scale-III shall be filled up through this Channel. Under this channel, the officers fulfilling the following eligibility criteria shall be eligible to apply:-

- i. The candidates who have completed 5 years of service in MMG Scale-II and have qualified the On-Line Computer Literacy and CBS Awareness Test.
- ii. They must have completed three years of service in Rural/Semi Urban Areas including two years of continuous service in rural areas in JMG Scale I subject to relaxations mentioned under Point No.10.10. This stipulation will however not be applicable in case of Technical/Specialist Officers.

iii. The Officers, other than Technical/Specialist Officers, who have put in more than two years of service in rural areas will get an advantage of further relaxation of 50% weightage in minimum experience for each additional completed year of service while assessing their eligibility as per para 5 a(i) above. This relaxation shall however not be available to the candidates who have availed the relaxation at the time of promotion from JMG Scale-I to MMG Scale-II. Further, the relaxation shall be admissible to those candidates only who complete the additional period of rural posting in MMG Scale-II.

The candidates from amongst the applicants, the number of candidates to be called for the interview in order of inter-se seniority shall be determined in terms of the procedure given in Clause-II 'Number of candidates to be considered for promotion'.

The selection of candidates shall be done on the basis of the following parameters:

PARAMETERS	MAXIMUM MARKS
Performance	60 Marks
Interview	30 Marks/ 40* (*) For Technical/Specialist Officers
Branch Experience Marks/ Branch Experience Marks for posting in the hard area, as identified by the Central government, (Not applicable in case of Technical/ Specialist Officers)	Break – up:- • Branch experience: 1 mark for each completed year of service in branch during last five years (Max. 5 marks). • Incumbent Experience/ posting in the hard area: 1 additional mark for each completed year of service

	as Incumbent Incharge of a branch/ posting in the hard area, as identified by the Central Government, during last five years. (Max. 5 additional marks) However the total marks for Branch Experience and Incumbent Experience/ Hard Area Posting shall not be more than 10.
TOTAL	100

Performance (60 Marks) : The marks for the performance of the 5 preceding years would be reckoned. The maximum marks for PAF provided in the promotion policy multiplied by total marks obtained in the 5 relevant PAFs divided by 500.

The weightage for PAF parameters shall be assigned as illustrated in Para 4(a) herein before.

INTERVIEW:

There will be no minimum qualifying marks in the Interview. An Officer who is not selected through this Channel shall not be disqualified for consideration under Channel-II (Merit/Fast Track Channel) mentioned below.

b. Channel-II (Merit/Fast Track Channel)

60% of the vacancies in MMG Scale-III shall be filled up through the Channel. Under this channel, the officers fulfilling the following eligibility criteria shall be eligible to apply:-

- i. The candidates who have completed 3 years of service in MMG*

Scale-II and have qualified the on-line computer literacy and CBS Awareness Test.

- ii They must have secured at least 75% marks in PAFs of each of the preceding 3 years and*
- iii They must have completed 3 years of service in Rural/Semi Urban Areas including two years of continuous service in rural areas in JMG Scale 1 subject to relaxations mentioned under Point No. 10.10. This stipulation will however not be applicable in case of Technical/Specialist Officers.*

The selection of candidates shall be done on the basis of the following parameters :-

PARAMETERS	MAXIMUM MARKS	REMARKS
<i>Written Test (Part 'A' & 'B' of 30 marks each, Part 'B' would be for 40 Marks for Technical/Specialist Officers).</i>	<i>60/70* Marks (*) for Technical/Specialist Officers</i>	<i>Minimum qualifying marks shall be 40% in individual paper and 50% in aggregate for General candidates and 30% and 40% respectively for SC/ST candidates.</i>
<i>Performance</i>	<i>60 Marks</i>	<i>Minimum 75% Marks in PAF of each of the preceding 3years.</i>

<i>Branch experience marks/Branch incumbent experience marks/marks for posting in the hard area, as identified by the Central Government.</i> <i>(not applicable in case of Technical/Specialist Officers)</i>	<i>10 Marks</i>	<i>10 Marks-</i> <i>Break up:-</i> <i>*Branch experience: 1 mark for each completed year of service in branch during last five years (Max. 5 marks)</i> <i>*Incumbent experience/posting in the hard area: 1 additional mark for each completed year of service as incumbent incharge of a branch/posting in the hard area, as identified by the Central Government, during last 5 years. (Max. 5 additional marks)</i> <i>However, the total marks for branch experience and incumbent experience /hard area posting shall not</i>
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		<i>be more than 10.</i>
Total	<i>130</i>	

Though the selection process for promotion of the officers mentioned above is not under challenge, however, it is relevant to discuss for the adjudication of the issue in question.

6. *SELECTION PROCESS FOR MMG SCALE-III TO SMG SCALE-IV*

The vacancies in SMG Scale-IV shall be filled up by promotion from MMG Scale-III through merit channel only, as described below:-

- *All the vacancies in SMG Scale-IV shall be filled up through this channel. Under this channel, the candidates who have completed 3 years of service in MMG Scale-III and have qualified the on-line computer literacy and CBS Awareness Test shall be eligible to apply.*
- *From amongst the applicants, the number of candidates to be called for the group discussion and interview in order of inter-se seniority shall be determined in terms of the procedure given in Clause-11 'Number of candidates to be considered for promotion'.*
- *The selection of candidates shall be done on the basis of the following parameters :-*

PARAMETERS	MAXIMUM MARKS	REMARKS
<i>Performance</i>	<i>60 Marks</i>	
<i>Group Discussion</i>	<i>20 Marks</i>	
<i>Interview</i>	<i>60/70* Marks (*) for</i>	<i>Minimum qualifying marks</i>

	<i>Technical/Specialist Officers</i>	<i>in the interview shall be 30%</i>
Branch experience marks/Branch incumbent experience marks/marks for posting in the hard area, as identified by the Central Government. (not applicable in case of Technical/Specialist Officers)	<i>10 Marks</i>	<i>10 Marks-</i> <i>Break up:-</i> *Branch experience: 1 mark for each completed year of service in branch during last five years (Max. 5 marks) *Incumbent experience/posting in the hard area: 1 additional mark for each completed year of service as incumbent incharge of a branch/posting in the hard area, as identified by the Central Government, during last 5 years. (Max. 5 additional marks) <i>However, the total marks for branch experience and incumbent experience/hard area posting shall not be more than 10.</i>

Total	150	
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Performance (60 Marks) : *The marks for the performance of the preceding years would be reckoned. The maximum marks for PAF provided in the promotion policy multiplied by total marks obtained in the 5 relevant PAFs divided by 500.”*

12. He further submitted that the aforesaid promotion policy, as was approved by the Board of Directors in its meeting held on 21.03.2012 and on 20.04.2012, was circulated by the General Manager, Personnel Administration Division (Selection Cell) Head Office, New Delhi vide Personnel Administration Division (PAD) Circular No. 83 dated 20.04.2012, wherein specifically mentioned as under:-

“5. Further, a reference has been made by the Bank to Ministry of Finance seeking certain exemptions on the Government guidelines incorporated in the enclosed promotion policy and on receipt of communication from the Government in the matter, the same will be incorporated in the promotion policy.”

13. Based upon the aforesaid Promotion Policy, the Deputy General Manager Personnel Administration Division (Selection Cell) Head Office, New Delhi initiated promotion process for officers JMG/S-I to MMG/S-II, MMG/S-II to MMG/S-III and MMG/S-III to SMG/S-IV for year 2012-2013 by issuing a Circular No. 84 dated 20.04.2012, relevant portion of the same reads as under:-

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SI	Promotion	Particulars
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03.	MMG Scale III to SMG Scale IV	Merit Channel:- All officers who have completed 3 years of service in MMG Scale-III as on 01.04.2012 shall be eligible to apply.
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**The Board in its meeting dated 21.03.2012 has relaxed the eligibility criteria of length of service by one year for these promotions in the selections to be made for the financial year 2012-13.*

***** Bank has taken up with Ministry of Finance that the stipulation of required marks in PAFs may be relaxed to average 60% in preceding 3 years but the clearance is yet awaited. On receipt of clearance, the stipulation will be taken care of in the promotion policy accordingly. In the meantime the candidates having average 60% marks and above in PAFs in last 3 years (i.e. in 2008-09, 2009-10 and 2010-11) may also submit online application under Merit/Fast Track channel for promotion to MMG Scale II and III. But their eligibility shall be subject to receipt of exemption, as sought for, from Ministry of Finance. In case no exemption is granted by MOF, their applications are liable to be rejected."***

14. Learned counsel for the petitioner further submitted that the petitioner being eligible for promotion from MMG/S-III to SMG/S-IV had submitted online application which was accepted by the respondent Bank vide acknowledgement No. OA-IV-2012/03/MC/38339/86.

15. Thereafter, the General Manager Personnel Administration Division (Selection Cell) Head Office, New Delhi issued Circular No. 88 dated 08.05.2012 issuing clarificatory guidelines, the extract of which is annexed as *Annexure P-4*. The same reads as under:-

“For Promotion from MMG Scale III to SMG Scale IV, from amongst the applications, the candidates who have secured at least 75% marks in PAFs of each of the last three years will be eligible for consideration for promotion to SMG Scale IV subject to their eligibility otherwise.

Accordingly, from amongst the candidates who have applied for promotion to SMG Scale IV in response to PAD Circular No. 84 dated 20.4.2012, only those candidates shall be considered for promotion who have secured at least 75% marks in PAFs of each of the last three i.e. 2008-09, 2009-10 and 2010-11 in line with the guidelines from Ministry of Finance”.

16. The aforesaid circular was released on the website of the Punjab National Bank on 09.05.2012, whereas the interviews for promotion to MMG/S-III to SMG/S-IV were scheduled to be held on 14.05.2012 and 15.05.2012. However, due to said illegal guidelines, the petitioner became ineligible for promotion from MMG/S-III to SMG/S-IV for the year 2012-2013, whereas his juniors were being considered for promotion.

17. Learned counsel for the petitioner submitted that the clarificatory guidelines issued by the respondent Bank for promotion process from MMG/S-III to SMG/S-IV for the year 2012-2013 were wholly illegal, contrary to the instant policy and could not be made applicable for promotion for the aforesaid category. It has been wrongly clarified and applied to the officers seeking promotion from MMG/S-III to SMG/S-IV, whereas the same is applicable only to the officers below the aforesaid category i.e. up to promotion to MMG/S-III only.

18. He further submitted that under the garb of the clarification, the respondent Bank has inserted in circular No. 88 dated 08.05.2012 the following clauses:-

“2. In terms of the said promotion policy, applications were invited from eligible officers upto SMG Scale III for consideration for promotion upto SMG Scale IV vide PAD circular No. 84 dated 20.04.2012.

3. We have received communications dated 03.05.2012 from the Department of Financial Services (DFS) Ministry of Finance, Government of India in which it has inter alia been clarified that the requirement of minimum 75% marks in APAR in each of the year under consideration would be relaxed to the extent of 60% marks in APAR in each of the only those scales where passing of an examination by IBPS (Institute of Banking Personnel Selection) is mandatory for promotion. This relaxation has, however, been allowed as one time measure for the promotion process for the year 2012-13.

4. In view of the above guidelines dated 03.05.2012 of Ministry of Finance, the matter was placed before the Board in its meeting held on 8th May, 2012 and accordingly, it is advised as under:-

i. the candidates in JMG Scale I and MMG Scale II who have applied in response to PAD Circular No. 84 dated 20.04.2012 for promotion and had secured at least 60% marks in PAFs of each of the year under consideration i.e. 2009-10 and 2010-11 will be eligible for consideration in the promotion process for the year 2012-13 under Merit/fast track channel, subject to their eligibility otherwise.

ii. For promotion from MMG Scale II to SMG Scale IV, from amongst the applications, the candidates who have secured at least 75% marks in PAFs of each of the last three years will be eligible for consideration for promotion to SMG Scale IV subject to their eligibility criteria.

Accordingly, from amongst the candidates who have applied for promotion to SMG Scale IV in response to PAD Circular NO. 84 dated 20.04.2012 only those candidates will be considered for promotion who have secured at least 75% marks in PAFs of each of the last three years i.e. 2008-09, 2009-10 and 2010-11 in line with the guidelines from Ministry of Finance.”

19. Learned counsel for the petitioner has clarified that the aforesaid clarification dated 08.05.2012 is contrary to the promotion policy. He further clarified that there are two channels of promotion, i.e. first the Fast Track, where written test is required, and second the Normal Channel, where no written test is required for the promotion from Scale-II to Scale-IV. If the aforesaid clarification is applicable, then the whole policy is changed and applicable to every Scale, even for the promotion for the officers from Scale-IV to Scale-V and upwards.

20. To support his arguments, learned counsel for the petitioner has relied upon a case of ***State of Andhra Pradesh & Ors. Vs. Sreenivasa Rao & Ors., (1983) 3 SCC 285***, wherein the Supreme Court has held as under:-

“9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to that panel. In that event the petitioners in the two representation petitions who ranked higher than respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide bases and,

therefore, there was no question of challenging the new rules. But the question of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

21. He also relied upon a case of ***The State of Punjab Vs. Madan Singh & Ors., AIR 1972 SC 1429***, wherein the Supreme Court has held as under:-

“4. For the reasons we have already mentioned in Civil Appeals Nos. 1639 to 1941 of 1968, 31, 1279 and 2227 of 1969, we agree with the High Court that the executive instructions issued by the State Government are void as they amount to an alteration of the rules prescribed under S. 241 of the Government of India Act.”

22. Also relied upon a case of ***Feroz Ahmad Vs. Delhi Development Authority & Ors., (2006) 10 SCC 399***, wherein the Supreme Court has observed as under:-

“7. Mr. Ashwani Kumar, learned Counsel appearing for the respondent on the other hand, would submit that Respondent No. 1 being a statutory authority, the matters relating to recruitment and promotion of the employees are governed by the rules and regulations framed by it. Such rules and regulations having been framed by Respondent No. 1 and having been upheld by this Court in Roop Chand Adlakha, it is not open to Appellant to question the validity thereof. It was pointed out that Appellant had been put in the pay-scale of Rs. 10,000-325-15,200 under the Assured Career Promotion Scheme with effect from 12.8.2000 (under the second upgradation) and in that view of the matter, CPWD Rules relied upon by him are not applicable. According to the learned Counsel, for the purpose of promotion, the recruitment rules which are applicable in the instant case provide for quota of 50% from Junior Engineers having a degree with 3 years of service and 50% from Junior Engineers having 8 years of

service on regular scale. Seniority list, it was urged, was made in terms of the said rules.

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13. The question raised by Appellant would, however, depend upon the validity and/ or applicability of the rules. If no rules have been framed in accordance with law, the earlier rules validly framed shall prevail. A statutory rule, it is trite, cannot be supplemented by an executive order.”

23. Learned counsel for the petitioner also relied upon a case of ***State of Haryana Vs. Mahender Singh & Ors., (2007) 13 SCC 606***, wherein the Supreme Court has observed as under:-

“39. It is now well settled that any guidelines which do not have any statutory flavour are merely advisory in nature. They cannot have the force of a statute. They are subservient to the legislative Act and the statutory rules. [See Maharao Sahib Shri Bhim Singhji v. Union of India,(1981) 1 SCC 166, J.R. Raghupathy v. State of A.P.(1988) 4 SCC 364 and Narendra Kumar Maheshwari v. Union of India, 1990 (Supp) SCC 440.”

24. On the other hand, Mr. Dhruv Mehta, learned Senior Advocate appearing for the respondent Bank submitted that the Department of Financial Services (DFS), Ministry of Finance, Government of India vide their letter dated 14.03.2012 issued guidelines for promotion to Public Sector Banks in supersession of the earlier guidelines issued vide their letter dated 05.12.2011. The guidelines dated 14.03.2012 provide that minimum 75% marks in APAR for each of the year of service would be required for being eligible for promotion under Merit Channel/Fast Track Channel.

25. Based upon the guidelines dated 14.03.2012 received from the Government of India, the promotion policy of the officers was placed before

the Board of Directors of the Bank. The Board in its meeting held on 21.03.2012 approved the promotion policy subject to the modification that the vacancies in SMG/Scale-IV to be filled up by MMG/Scale-III through merit channel and without the selection parameter of written test.

26. He further submitted that the Regulation 17(1) of the said Officers Service Regulations, 1979 *inter alia* provides as under:-

“Promotions to all grades of officers in the Bank shall be made in accordance with the policy laid down by the Board from time to time having regard to the guidelines of the Government, if any.”

27. Learned counsel referred the communication dated 14.03.2012 issued by the Department of Financial Services, Ministry of Finance, wherein the guidelines for promotion in Public Sector Banks states as under:-

“ The Government of India had, vide circular of even no dated 5.12.2011, issued revised guidelines for eligibility and methods of promotions in Public Sector Banks while revising the guidelines issued earlier vide circular No. 4/5/6/84-IR dated 23.06.1986 and 14/18.09.1987 on the subject.

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3. *After consideration, the Government, in supersession of the earlier guidelines issued vide circular of even number dated 5.12.2011, now issues these guidelines for promotion of officers in Public Sector Banks, while providing relaxations for prospective implementation in provisions requiring involving mandatory experience.*

4. *The channel of promotion and minimum experience requirement at various levels shall be as follows:*

<i>Scale</i>	<i>Promotion Channel</i>	<i>Minimum Experience requirement</i>	<i>Maximum Experience relaxation</i>	<i>Minimum length of services</i>
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	(in years)	by Board (in years)	(in years)
xxx	xxx		xxx
III to IV Merit/Fast Track Channel	3	1	NA

5. Cut Off Date for Eligibility

iii. Minimum 75% marks in APAR for each of the years of service required for eligibility for promotion would be required under merit channel/fast track.”

28. Learned senior counsel for the respondent Bank further submitted that the aforesaid guidelines were issued to all the Banks.

29. He has referred to promotion policies for services of the officers, which were issued in terms of Regulation 17 of PNB (Officer's) Service Regulations, 1979 and having regard to the guidelines of the Government of India, the Board of Directors lays down the following policy for promotion of officers in the Bank:-

“v) ‘Guidelines of the Government’ shall mean guidelines issued and/or may be issued by the Government and shall include the guidelines issued by the Government vide its letter No.F.No.4/11/1/2011-IR dated 14.03.2012 in supersession of the earlier guidelines issued by the Government in this regard.”

30. Learned senior counsel for the respondent Bank submitted that with regard to the circular No. 83 issued on 20.04.2012 by the General Manager of PNB to all the officers, the relevant portion of the same is as under:-

“2. The Government of India, Ministry of Finance, Banking Division, had issued guidelines in July, 1979, in accordance with the above Regulations. Subsequent to these guidelines a

number of Government guidelines pertaining to promotion of officers from one scale / grade to another have been received including guidelines vide letter No. F No. 4/11/1/2011-IR dated 14.03.2012 to ensure uniformity in Officers' cadre promotions in all the Public Sector Banks. It has been advised that the guidelines given vide letter dated 14.03.2012 shall be operationalised after adoption by the respective Board of the Banks."

31. Learned senior counsel has referred the communication dated May 3, 2012 issued to CEO's of all Public Sector Banks by the Department of Financial Services, Ministry of Finance. The relevant portion of which reads as under:-

"2. In view of the difficulties being experienced by PSBs regarding non-availability of the requisite number of officers in zone for consideration, due to different profile of officers in Banks, APAR marks, cut-off date, etc, it has been decided that the following relaxations could be allowed by the Bank, as one time measure, for the promotion process for the year 2012-13:-

(v) The requirement of minimum 75% marks in APAR in each of the year under consideration would be relaxed to the extent of 60% marks APAR in each year for only those scales where passing of an examination by IBPS is mandatory for promotion."

32. Learned senior counsel for the respondent Bank has referred to the promotion policy, wherein stated as under:-

b. Channel-II (Merit/Fast Track Channel)

60% of the vacancies in MMG Scale-III shall be filled up through the Channel. Under this channel, the officers fulfilling the following eligibility criteria shall be eligible to apply:-

- i. The candidates who have completed 3 years of service in MMG Scale-II and have qualified the on-line computer literacy and*

CBS Awareness Test.

- ii They much have secured at least 75% marks in PAFs of each of the preceding 3 years and*
- iii They must have completed 3 years of service in Rural/Semi Urban Areas including two years of continuous service in rural areas in JMG Scale 1 subject to relaxations mentioned under Point No. 10.10. This stipulation will however not be applicable in case of Technical/Specialist Officers.”*

6. SELECTION PROCESS FOR MMG SCALE-III TO SMG SCALE-IV

The vacancies in SMG Scale-IV shall be filled up by promotion from MMG Scale-III through merit channel only, as described below:-

- All the vacancies in SMG Scale-IV shall be filled up through this channel. Under this channel, the candidates who have completed 3 years of service in MMG Scale-III and have qualified the on-line computer literacy and CBS Awareness Test shall be eligible to apply.*
- From amongst the applicants, the number of candidates to be called for the group discussion and interview in order of inter-se seniority shall be determined in terms of the procedure given in Clause-11 ‘Number of candidates to be considered for promotion’.*
- The selection of candidates shall be done on the basis of the following parameters :-*

PARAMETERS	MAXIMUM MARKS	REMARKS
<i>Performance</i>	<i>60 Marks</i>	
<i>Group</i>	<i>20 Marks</i>	

Discussion		
Interview	60/70* Marks (*) for Technical/Specialist Officers	Minimum qualifying marks in the interview shall be 30%
Branch experience marks/Branch incumbent experience marks/marks for posting in the hard area, as identified by the Central Government. (not applicable in case of Technical/ Specialist Officers)	10 Marks	10 Marks- Break up:- *Branch experience: 1 mark for each completed year of service in branch during last five years (Max. 5 marks) *Incumbent experience/posting in the hard area: 1 additional mark for each completed year of service as incumbent incharge of a branch/posting in the hard area, as identified by the Central Government, during last 5 years. (Max. 5 additional marks) However, the total marks for branch experience and incumbent experience/hard area posting shall

		<i>not be more than 10.</i>
Total	150	

Performance (60 Marks) : *The marks for the performance of the preceding years would be reckoned. The maximum marks for PAF provided in the promotion policy multiplied by total marks obtained in the 5 relevant PAFs divided by 500.*”

33. Learned counsel further submitted that for promotion of officers from Scale-III to Scale-IV no written test is prescribed, therefore, 75% marks are applicable. He submitted that the petitioner has impugned the circular No. 88 issued on 08.05.2012, wherein it is clarified as under:-

3. We have received communications dated 03.05.2012 from the Department of Financial Services (DFS) Ministry of Finance, Government of India in which it has inter alia been clarified that the requirement of minimum 75% marks in APAR in each of the year under consideration would be relaxed to the extent of 60% marks in APAR in each of the only those scales where passing of an examination by IBPS (Institute of Banking Personnel Selection) is mandatory for promotion. This relaxation has, however, been allowed as one time measure for the promotion process for the year 2012-13.

4. In view of the above guidelines dated 03.05.2012 of Ministry of Finance, the matter was placed before the Board in its meeting held on 8th May, 2012 and accordingly, it is advised as under:-

i. the candidates in JMG Scale I and MMG Scale II who have applied in response to PAD Circular No. 84 dated 20.04.2012 for promotion and had secured at least 60% marks in PAFs of each of the year under consideration i.e. 2009-10 and 2010-11 will be eligible for consideration in the promotion process for the year 2012-13 under Merit/fast track channel, subject to their eligibility otherwise.

ii. For promotion from MMG Scale II to SMG Scale IV, from amongst the applications, the candidates who have secured at least 75% marks in PAFs of each of the last three years will be eligible for consideration for promotion to SMG Scale IV subject to their eligibility criteria.

34. Learned senior counsel submitted that for promotion, the material period is 2008-2011. Though, in the year 2008-2009 petitioner had very good grading with 70% marks, but as per the policy, he is not eligible for promotion.

35. To strengthen his arguments, learned senior counsel for the respondent Bank has relied upon a case of ***Andhra Bank Vs. B. Satyanarayana & Ors., (2004) 2 SCC 657***, wherein the Supreme Court has observed as under:-

“7. It is not in dispute that, pursuant to or in furtherance of Sub-section (2) of Section 12 read with Section 19 of the Act, in consultation with the Reserve Bank of India and upon obtaining prior permission therefore, the Board of Directors of the appellant-Bank framed the Regulations known as 'Andhra Bank (Officers') Service Regulations 1982'. Regulation 17 of the said Regulations reads thus:

"17. Promotions:1. Promotions to all Grades of officers in the Bank shall be made in accordance with the policy laid down by the Board, from time to time, having regard to the guidelines of the Government, if any.

2. For the avoidance of doubts, it is clarified that this regulation shall also apply to promotions of any category of employees to the Junior Management Grade."

8. It appears that the Central Government had also issued guidelines purported to be in terms of Regulation 17 of the Regulations.

9. It was not the contention of the Respondent Nos. 1 and 2 before the High Court or before us that the Board of Directors by reason of the regulation making power could not have been delegated with the power to lay down a policy for grant of promotion to the officers working in the bank. From a bare perusal of Regulation 17, it would be evident that sufficient safeguards have been provided for therein inasmuch as while laying down such policy, the Board must have regard to the guidelines issued by the Central Government. It is further not in doubt or dispute that such guidelines had been provided by the Government in terms of the aforementioned regulation.

13. Regulation 17 of the Regulation, in our opinion, does not confer any unguided, uncanalised and arbitrary power as the same was issued in conformity with the guidelines issued by the Central Government. The requirement to lay down the regulation before both Houses of Parliament also provides for sufficient safeguard. For making a regulation, the requirements of Section 19 of the Act were required to be complied with but the procedure laid down therefore are wholly irrelevant for the purpose of formulating the policy decision in terms of Regulation 17 aforementioned. The High Court in its impugned judgment failed to notice the said distinction and, thus, based its decision wholly on a wrong premise.”

36. I have heard ld. Counsels for the parties. It is emerged that petitioner is presently working as Senior Manager in MMG/S-III in Punjab National Bank, New Delhi. He has meritorious service record since 2006 to 2011. The disciplinary authority and reviewing authority have given him overall rating ‘Excellent’ in four years i.e. from 2005-2007 and 2009-2011 and ‘Outstanding’ in the year 2007-2008. However, he has been very good grading in the year 2008-2009 for which he has sought liberty to challenge before the appropriate forum.

37. The case of the petitioner is that even otherwise, he is eligible for promotion process for the year 2012-2013 for promotion to SMG/S-IV from MMG/S-III as per the instant promotion policy which has been approved by the Board of Directors in the meeting dated 20.04.2012. On perusal of the said policy, it is revealed that there are two channels of promotion i.e. normal / seniority channel and another is merit / fast track channel. The said channel is applicable only for promotion from Scale-I to Scale-II and Scale-II to Scale-III only. As far as the promotion in question is concerned i.e. from MMG Scale-III to SMG Scale-IV, that is through merit channel only.

38. As per the instant policy it has been approved by the Board of Directors that all the vacancies in SMG Scale-IV shall be filled up through this channel only. Under this channel, the candidates who have completed 3 years of service in MMG Scale-III and have qualified the online computer literacy and CBS Awareness Test shall be eligible to apply.

39. Pursuant thereto, the petitioner being eligible for promotion process submitted online application, which was accepted by the respondent Bank vide acknowledgement no. No.OA-IV-2012/03/MC/38339/86.

40. It is relevant to clarify that for promotion from Scale-I to Scale-II and Scale-II to Scale-III, where the examination was also the condition and the said condition is applicable to the Scales mentioned above only.

41. It is further pertinent to mention here that the Board of Directors of the respondent Bank having regard to the guidelines of the Government of India, requirements of the Bank and also deliberations held with the

representatives of AIPNBOA in small committee meetings, in Board Meeting held on 21.03.2012 had approved the instant revised promotion policy for officers in the respondent Bank. Further, the Board of Directors in its meeting held on 20.04.2012 had also approved certain amendments in the above promotion policy operative w.e.f. 01.04.2012. However, there is no change in the revised policy for promotion from Scale-III to Scale-IV and from Scale-IV to Scale-V.

42. Based upon the aforesaid promotion policy, the Deputy General Manager, Personnel Administration Division (Selection Cell) Head Office, New Delhi initiated promotion process for officers JMG/S-I to MMG/S-II, MMG/S-II to MMG/S-III and MMG/S-III to SMG/S-IV for the year 2012-2013. As per the selection process, for promotion from MMG/S-III to SMG/S-IV, all officers who have completed 3 years of service in MMG Scale-III as on 01.04.2012 were eligible. However, the Board in its meeting dated 21.03.2012 relaxed the eligibility criteria of length of service by one year for these promotions in the selections to be made for the financial year 2012-13. Thereafter, the General Manager, Personnel Administration Division (Selection Cell) Head Office, New Delhi issued Circular No. 88 dated 08.05.2012 by issuing clarificatory guidelines whereby it has clarified that amongst the candidates who have applied for promotion to SMG Scale-IV in response to PAD Circular No. 84 dated 20.4.2012, only those candidates shall be considered for promotion who have secured at least 75% marks in PAFs of each of the last three i.e. 2008-09, 2009-10 and 2010-11 in line with the guidelines from Ministry of Finance. The petitioner is

aggrieved with this clarificatory guidelines whereby he has been made ineligible for promotion in question.

43. As per the policy of the respondent Bank, as has been approved by the Board of Directors, i.e. the competent authority, the petitioner is eligible. Accordingly, his application was accepted by the respondent Bank. By changing the said policy, after initiating the process, is bad in law as has been decided in catena of Judgments by the High Court and the Apex Court of India.

44. The respondent under the garb of clarification made the requirement of minimum 75% marks in APAR in each of the year under consideration would be relaxed to the extent of 60% marks in APAR in only those scales where passing of an examination by IBPS (Institute of Banking Personnel Selection) has been made mandatory for promotion.

45. It has further made that amongst the candidates who had applied for promotion to SMG Scale-IV in response to PAD Circular No. 84 dated 20.04.2012, only those candidates will be considered for promotion, who have secured at least 75% marks PAFs of each of the last 3 years as mentioned above.

46. If this Court rely upon the clarification made by the respondents that would be contrary to the promotion policy. There are two channels of promotion, i.e. one Fast-Track wherein written test is required and second the normal channel where no written test is required for promotion from Scale-II to Scale-IV. If it is applicable, then the whole policy stands

changed and applicable to every Scale even for the promotion of Officers from Scale-IV to Scale-V.

47. I note, the aforesaid change has not made applicable on Officers from Scale-IV to Scale-V and only made applicable to Scale-III to Scale-IV, whereas the only channel i.e. through merit channel applicable on the promotion for both the scales mentioned above.

48. Law has been well settled by the Apex Court way back in 1983 in *Sriniwas Rao (Supra)* that the vacancies which accrued prior to the amended rules would be governed by the old rules and not by the amended rules.

49. In the case in hand the respondents have changed the policy under the garb of clarification. There is no doubt that the post which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

50. I am conscious about the settled law that if no rules have been framed in accordance with the law, the earlier rules validly framed shall prevail. A statutory rule cannot be supplemented by an executive order as happened in the present case.

51. Law has also been well settled in the case of *Mahender Singh (Supra)* that any guidelines which do not have any statutory flavour are merely advisory in nature. They cannot have the force of a statute.

52. Moreover, as per the promotion policy, there was no requirement of minimum 75% marks in PAF in each of the preceding 3 years for becoming

eligible for promotion in question. The requirement of 75% marks is applicable only from Scale-I to Scale-II and Scale-II to Scale-III for which the condition of channel-2 i.e. merit / fast-track channel for which written test has also to be conducted.

53. The guidelines issued vide Circular no. 88 dated 08.05.2012 cannot supersede the promotion policy which was laid down by the Board of Directors in terms of Regulation 17 of the PNB Officers Regulations, 1979. Even otherwise, the condition of 75% marks in PAFs for preceding 3 years in respect of promotion imposed by way of clarificatory guidelines cannot be restricted only to MMG/S-III and would have been operative, if any, for all promotions of MMG/S-III to TEG/S-VII.

54. In view of the above discussion and settled law, the impugned circular no. 88 dated 08.05.2012 has no statutory value and cannot prevail over the instant policy. Therefore, the same is hereby quashed as it is not applicable for promotion from MMG Scale-III to SMG-Scale-IV. Consequently, petitioner is eligible for the promotion process from MMG/S-III to SMG/S-IV for the year 2012-2013.

55. Vide this Court's order dated 15.05.2012 one vacancy was directed to be reserved for the petitioner. Accordingly, respondent Bank shall take steps and allow the petitioner in the promotion process within four weeks from the receipt of the judgment.

56. I here make it clear that petitioner shall be entitled for all consequential benefits including seniority.

57. Instant petition is allowed on the above terms with no order as to costs.

CM. No. 6225/2012 (Stay)

CM. No. 9390/2012 (Clarifications)

In view of the above, instant applications also become infructuous and disposed of as such.

SURESH KAIT, J

JANUARY 08, 2013

Jg