

GAHC010062132021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/113/2021

SUMAN DEY,
S/O- LATE BIJAN DEY,
R/O- 104-B, CORE RESIDENCY,
PANJABARI ROAD, OPPOSITE PURABI DAIRY, GUWAHATI,
PIN- 781037, DIST.- KAMRUP(M), ASSAM.

.....Appellant

-VERSUS-

1. PUNJAB NATIONAL BANK, HEAD OFFICE, DWARKA,
PLOT NO. 4, SECTOR-10,
REP. BY ITS
EXECUTIVE DIRECTOR, NEW DELHI- 75.
- 2: GENERAL MANAGER,
HUMAN RESOURCE MANAGEMENT DEPARTMENT,
PUNJAB NATIONAL BANK, HEAD OFFICE,
DWARKA, PLOT NO. 4, SECTOR-10, NEW DELHI- 75.
- 3: DEPUTY GENERAL MANAGER,
PUNJAB NATIONAL BANK, HEAD OFFICE,
DWARKA, PLOT NO. 4, SECTOR-10, NEW DELHI-75.

.....Respondents

For the Appellant	:	Mr. U.K. Nair, Sr. Advocate.
	:	Mr. A. Boro, Adv.
	:	Mr. A. Chetry, Adv.
	:	Mr. M.P. Sarma, Adv.
	:	Ms. U. Sharma, Adv.

Advocates

For the Respondents	:	Mr. P.K. Kalita, Sr. Adv.,
		Mr. K.R. Barooah, Adv.

Advocates

BEFORE
HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Date of Hearing and Judgment : 02.02.2023

JUDGMENT AND ORDER (ORAL)

[N. Kotiswar Singh, CJ(Acting)]

Heard Mr. U.K. Nair, learned Senior counsel assisted by Mr. A. Boro, learned counsel for the appellant. Also heard Mr. P.K. Kalita, learned Senior counsel assisted by Mr. K.R. Barooah, learned counsel for the respondents.

2. The present appeal has been preferred against the judgment and order dated 26.02.2021 passed by the learned Single Judge in WP(C) No.2459/2019 by which the plea of the writ petitioner/appellant for fixing the ratio for recruitment to the higher post of Senior Manager (Law), MMG Scale III has been rejected on the ground that in absence of any prescribed ratio for filling up such vacant posts of Senior Manage (Law), MMG Scale III by way of direct recruitment and promotion, the appellant/petitioner has no legal or fundamental right to seek any such direction from the Court.

3. Before we examine the correctness of the view of the learned Single Judge, relevant facts may be noted.

4. The appellant/writ petitioner is presently serving in the post of Manager, Law (MMG Scale-II) with the respondent Punjab National Bank.

5. According to the appellant/writ petitioner, the respondent authorities issued a notice

for promotion from the post of Manager (Law), Scale-II to Senior Manager (Law), Scale-III on 05.01.2019 in which the petitioner participated. However, he could not get promoted as the promotional posts were restricted only to 2(two) posts and since the petitioner was at Serial No.6 of the merit list he could not be accommodated. However, soon thereafter, the petitioner found that the respondent authorities issued an advertisement on 12.02.2019 for direct recruitment of Technical Officers to the higher post of Senior Manager (Law), Scale-III. The said posts were sought to be filled up by way of direct recruitment conducting necessary recruitment process.

6. It is the case of the appellant/writ petitioner that while the Bank authorities did not apportion sufficient number of posts to be filled by way of promotion, the respondent authorities sought to fill up these higher posts by direct recruitment in a disproportionate manner, thus, depriving the opportunity to get promotion to the higher post.

Accordingly, the petitioner approached this Court by filing the writ petition, WP (C)No.2459/2019, seeking direction to the respondent authorities to fix the ratio of source of recruitment by way of direct and promotion in the ratio of 50:50 so that the higher post of Senior Manager (Law), Scale-III can be equally filled up from these two sources of recruitment, and the petitioner who has already served for a long period in the bank as a Manager (Law), Scale-II can have a legitimate expectation of being promoted to the higher post.

7. The respondent Bank authorities in the said writ petition, WP(C) No.2459/2019 contested the writ petition by filing their affidavit-in-opposition.

8. In the affidavit-in-opposition, it has been clearly admitted by the respondent Bank

authorities that there is no service Rule, Regulation or Policy in the Bank fixing the ratio of 50:50 for appointment to the said higher post, though there is a ratio as regards promotion whereby the posts which are to be filled up by promotion have been categorised in two categories in the ratio of 40% and 60% under normal seniority channel and merit fast track channel respectively as provided under the promotion policy.

9. In this regard, we may refer to para 4 of the affidavit-in-opposition filed on behalf of the respondent Bank in the writ petition wherein the stand of the Bank authorities is clearly discernible which reads as follows,

“4. That the contents of para 4 as stated are wrong and denied. It is specifically denied that the vacancies to the post of Senior Manager Law (MMG Scale-III) are required to be filled up by promotion and direct recruitment in the ratio of 50:50 as has been assumed by the Petitioner and stated in this paragraph. Since, there is no such Rule, Regulation or Policy existing in the Respondent Bank which proves that the vacancies for the post of Senior Manager Law (MMG Scale-III) should be filled up by Internal Promotion to the direct recruitment in the ratio of 50:50, it is for the said reason that the Petitioner has failed to refer or rely upon any such Rule, Regulation or Policy of the Respondent Bank. The Direct Recruitment and Internal Promotion, it is needless to say are two different processes. The ratio for filling up the post through the internal process i.e. (a) normal seniority channel and merit fast track channel have been defined in the Promotion Policy in the ratio of 40% and 60%. The Promotion Policy is statutory in nature, which has been framed by the Board of Directors of the Respondent Bank in exercise of its powers under Regulation 17 of PNB (Officers) Service Regulation 1979 having regard to the Guidelines of the Government. Nowhere in the said statutory Promotion Policy it is mentioned that the total number of vacancies will be filled up in the ratio of 50:50 through the process for Director Recruitment and Internal Promotion Process. The Part-B of the said Promotion Policy is acceptable to Technical Officers (like Law Officers). A copy of the Promotion Policy for Officers circulated by HRMD Circular No.433 dated 21.12.2018 has been annexed by the Petitioner Annexure-5 with the Writ Petition.”

10. Before us, Mr. P.K. Kalita, learned Senior counsel appearing for the respondent Bank authorities has also fairly admitted that there is no quota or ratio fixed for direct recruitment or promotion for appointment to the higher post of Senior Manager (Law), MMG Scale-III and the Bank proceeds to fill up the post by way of direct or promotion as and when vacancy arises. It has been also submitted that the petitioner could have applied for the said post of Senior Manager (Law), MMG Scale-III which have been advertised by way of direct recruitment but he being not eligible could not apply and as such, the Bank authorities could not be blamed if the petitioner is not eligible for applying for direct recruitment. It has been accordingly, submitted that it cannot be said that any prejudice has been caused to the appellant.

11. We have heard the learned counsel for the parties and also perused the materials on record.

12. We have also considered the view of the learned Single Judge after considering the rival contentions of the parties, as stated in para No.6 of the impugned judgment dated 26.02.2021 that in the matter of employment, the employer must have a free hand to decide how to recruit personnel for a particular post of Senior Manager, Law (Scale-III) in absence of Rules prescribing any ratio in which such posts are to be filled up. In this connection, the learned Single Judge proceeded to observe that the petitioner does not have any fundamental right to have the post of Senior Manager, Law (Grade-III) filled up in a particular manner and the petitioner had participated in the departmental promotion exercise for filling up the post of Senior Manager, Law (Grade-III) on promotion. Accordingly, the learned Single Judge proceeded to hold that the petitioner cannot have a grievance that there is no scope for any career advancement avenue open to him in his remaining service career

and that he would stagnate in same post in service and the learned Single Judge held that as no legal and fundamental right of the petitioner can be said to have been violated, no writ would lie.

13. Learned Single Judge further observed in para No.7 of the impugned judgment that by the promotion policy for Technical Officer in force, which includes the posts of Senior Manager, Law (Scale-III), which does not prescribe any ratio for filling up of vacant posts of Senior Manager, Law (Scale-III) by way of direct recruitment and promotion, his service conditions had been altered to his detriment. Therefore, in absence of any infringement of any legal or fundamental right, the petitioner is not entitled to any relief claimed in this petition.

The aforesaid observations made by the learned Single Judge in para Nos.6 and 7 of the impugned judgment are reproduced hereinbelow:

“6. In the matter of employment, the employer must have a free hand to decide how to recruit personnel for a particular post of Senior Manager, Law (Scale-III) in the absence of Rules prescribing any ratio in which such posts are to be filled up. In this connection, the petitioner is not found to have any fundamental right to have the post of Senior Manager, Law (Grade-III) to be filled up in a particular manner. The petitioner had participated in the departmental promotion exercise for filling up the post of Senior Manager, Law (Grade-III) on promotion. Therefore, it is seen that the petitioner does not have a grievance that there is no scope for any career advancement avenue open in his remaining service career and that he would stagnate in same post in service. Therefore, as no legal and fundamental right of the petitioner is found to have been violated.

7. It is not the case of the petitioner that by the Promotion Policy for Technical Officer in force, which includes the posts of Senior Manager, Law (Scale-III), which does not prescribe any ratio for filling up of vacant posts of Senior Manager, Law (Scale-III) by way of direct recruitment and promotion, his service conditions have been altered to detriment of any his right or interest

whatsoever. Therefore, in the absence of any infringement of any legal or fundamental right, the petitioner is not found entitled to any relief in this writ petition.”

14. From the above, it is very clear that the plea of the petitioner/appellant is for fixing the ratio for appointment to the higher post of Senior Manager, Law (MMG Scale-III) by way of promotion and direct recruitment so as to afford a reasonable opportunity for career advancement, and he has sought for fixing 50% of the total posts to be filled up by promotion.

15. On the other hand, it is the plea of the respondent Bank authorities that the rule is silent as regards apportionment of percentage for filling up the said higher post either by way of direct recruitment or by promotion and in such an event, the authorities would have liberty/discretion to proceed to fill up the post either by direct recruitment or by promotion as the case may be. In any event, the petitioner having failed to get the opportunity for promotion and did not apply for direct recruitment, no legal right of the petitioner can be said to have been violated.

16. From the above, it is clear that the recruitment rule/service rule is silent about the apportionment of posts to be filled either by way of direct recruitment or by promotion. In our view, it would be desirable to fix the ratio for appointment either by direct recruitment or by promotion as per the wisdom of the employer for the reason that first of all it would obviate any arbitrary action on the part of the employer while making recruitment and secondly, it will enable the employees at the lower level to ascertain their future prospects in the service. This aspect has been dealt with by the Hon'ble Supreme Court in a number of cases including in ***S.G. Jaisinghani and Ors. Vs. Union of India and Ors., 1967 AIR (SC)1427, Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and***

Ors., 1990(2) SCC 715 and Orissa Judicial Services Association Cuttack and Anr. Vs. State of Orissa and Ors., 1992 (Supp) 1 SCC 187.

17. In ***S.G. Jaisinghani*** (supra), the Hon'ble Supreme Court opined that it will be desirable that roster system be adopted by framing an appropriate rule for working out the quota between the direct recruits and the promotee and that a roster should be maintained indicating the order in which appointments are made by direct recruitment and by promotion in accordance with the percentages fixed under the statutory rule for each method of recruitment.

The said observation was made to obviate any exercise of arbitrary power as also observed in para No.14 and 15 thereof.

Para Nos.14 and 15 are accordingly, reproduced hereinbelow.

“14. In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey-"Law of the Constitution"-Tenth Edn., Introduction ex). "Law has reached its finest moments", stated Douglas, J. United States v. Wunderlick.(1951) 342 US 98, "when it has freed man from the unlimited discretion of some ruler..... Where discretion ; absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes.(1770) 4 Burr 2528 at p.2539, "means sound discretion guided by law. It must be governed by rule, not by humour : it must not be arbitrary, vague and fanciful."

15. We should also like to suggest to the Government that for future years the roster system should be adopted by framing an appropriate rule for working out the quota between the direct recruits and the promotees and that a roster should be maintained indicating the order in which appointments are made by direct recruits and by promotion in accordance with the percentages fixed under the statutory rule for each method of recruitment.”

18. In para Nos.47(C) and (G) of ***Direct Recruit Class II Engineering Officers’ Association*** (supra), the Hon’ble Supreme Court held as follows,

“47.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

.....

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.”

19. In Para No.6 of ***Orissa Judicial Services Association Cuttack and Another*** (supra), the Hon’ble Supreme Court held as follows,

“6. While it is true that statutory rules can be supplemented by administrative instructions and the State Government in consultation with the High Court is competent to prescribe quota for the two sources of recruitment to the service by administrative orders but it would be desirable and proper to prescribe the quota for recruitment to the Service in the rules themselves. Absence of statutory provision in the Rules fixing the quota for the two sources of recruitment, results into a state of uncertainty leading to suspicion and litigation. We are, therefore, of the opinion that the State Government should take immediate steps in consultation with the High Court for amending the Rules by prescribing the quota to remove the uncertainty. If the statutory rules prescribe quota fixed for the two sources of recruitment, it would eliminate the exercise which the State Government and the High Court have to undergo every time whenever a vacancy arises for determining the question whether it should be filled up from which of the two sources. It is, therefore, necessary that provision for quota be made in the Rules.”

20. In this regard, we have noted the submission advanced by Mr. Nair, learned Senior

counsel for the petitioner that in fact, the Bank authorities had been following an arbitrary and non-uniform policy as regards recruitment to other higher posts as well.

21. Referring to the advertisement for promotion initiated on 05.01.2019, Mr. Nair has submitted that in respect of the higher posts of Senior Manager, Agriculture (MMG Scale III), 30 posts were advertised to be filled up by way of promotion. Similarly, in respect of Senior Manager, Credit/CA/FA (MMG Scale III), 14 posts were advertised for appointment by way of promotion at the same in respect of the post of Senior Manager, Law (MMG Scale III), only 2 (two) posts have been advertised to be filled up by way of promotion. He submits that however, while issuing the advertisement for direct recruitment, it is seen that no posts have been at all advertised in respect of Senior Manager, Agriculture (MMG Scale III). Similarly, in respect of Senior Manager, Credit (MMG Scale III), as many as 51 vacancies have been sought for direct recruitment whereas in respect of Senior Manager, Law, (MMG Scale III), 55 numbers of vacancies have been sought to be filled up.

22. It has been submitted by Mr. Nair that the total number of Senior Manager, Law (MMG Scale III) is 57 which is admitted to be correct by the learned Senior counsel for the respondent Bank also.

Thus, what we see is that out of total numbers of 57 posts of Senior Manager, Law (MMG Scale III), 55 posts are sought to be filled by direct recruitment but only 2(two) posts are sought to be filled up by promotion.

From the above, it is clearly evident that the Bank authorities had not been following any uniform course as far as recruitment is concerned and had been adopting varying degrees of quota for different posts, which must be eschewed and the Bank must follow a

uniform pattern.

23. We do not wish to make any observation at this stage as to how many posts should be filled up by way of direct recruitment or by promotion in the various higher posts as it would be within the domain of the employer. At the same time, it is to be noted that in absence of any rules fixing the quota of recruitment by direct recruitment or promotion, the authorities can change or vary the quota of the source of recruitment at their *ipse dixit* as it appears to have been done by the Bank which would be impermissible in view of the decisions of the Hon'ble Supreme Court referred to above. It will introduce an element of arbitrariness on the part of the employee, and uncertainty from the perspective of the prospective employees in the feeder grade, which would be violative of Article 14 of the Constitution of India.

24. Under the circumstances, we are of the view that the Bank authorities must lay down a policy by prescribing the specific quota for both direct recruitment as well as promotion as per their wisdom taking into consideration all the relevant factors to avoid any arbitrariness in the manner of recruitment. As to whether the posts are to be filled up by resorting to both the methods of direct recruitment or promotion, or whether the appointment will be exclusively by way of direct recruitment or by promotion, is a matter which is within the domain of the employee to decide.

Whatever may be the policy, as to whether any post is to be filled up only by direct recruitment or by promotion or by both the methods, it must be so clarified and if the authorities decide to resort to dual mode of recruitment, the ratio as regards direct recruitment and promotion must be clearly laid down.

25. Accordingly, we direct that except for those recruitment processes for the posts which

have been already completed, no recruitment process shall be initiated in future for any post without first laying down the policy as regards the quota for the different sources of recruitment and if any post is sought to be filled up both by direct recruitment and by promotion, the quota for each of these sources must be specified.

26. We have also noted that this Court on 23.04.2021 while admitting this appeal, had directed that 5(five) posts of Senior Manager (Law), MMG Scale-III shall not be filled up until further orders. Though this Court is refraining from fixing the ratio or quota for recruitment from these two sources of direct recruitment and promotion for the post of Senior Manager (Law) MMG Scale-III, as it is within the wisdom of the authorities, keeping into consideration that only 2(two) posts are earmarked for promotion and remaining 55 posts for direct recruitment, till the authorities frame recruitment policy laying down the specific percentage of recruitment by direct recruitment and promotion, the said 5(five) posts in the Senior Manager (Law), MM Scale III Grade which have been directed not to be filled up, can be considered for filling up by way of promotion.

27. Under the circumstances, while allowing this appeal, we direct the respondent Bank authorities to consider the case of the present appellant/writ petitioner for promotion to the higher post of Senior Manager (Law), MMG Scale-III from one of the 5(five) posts which are lying unfilled in terms of the order of this Court considering the submission made that the petitioner/appellant has been already found to be eligible for promotion to the higher post from the date when other persons who were considered along with the petitioner were promoted w.e.f. 01.04.2019, which exercise is to be undertaken within a period of one month from today.

28. With the above observations and directions, the present appeal stands allowed by setting aside the impugned judgment and order dated 26.02.2021 passed by the learned Single Judge in WP(C) No.2459 of 2019.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant