

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

+ W.P.(C) No. 2191/2014

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10th March, 2015

RAM SINGH SETIA

..... Petitioner

Through: Mr. S.S.Ray, Ms. Rakhi Ray, Mr.
Vaibhav Gulia and Ms. Rupali Lal
Mathur, Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Vivek Goyal, CGSC for R-1 and
2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner, who was an aspirant to the post of Executive Director of a Nationalized Bank, impugns the actions of the respondents in denying him the post of the Executive Director for the relevant year of consideration being 2012-2013.

2. It is not disputed that the applicable guidelines by which appointments are made by the respondents to the post of Executive Directors

of different banks are contained in the Guidelines dated 13.4.2011, and these guidelines have also been filed by the respondents themselves as Annexure R-1 to the writ petition. These guidelines dated 13.4.2011, so far as the relevant portion of appointment of the Executive Directors is concerned, read as under:-

“GOVERNMENT OF INDIA
SECRETARY OF THE
APPOINTMENTS COMMITTEE OF THE CABINET
DEPARTMENT OF PERSONNEL AND TRAINING
OFFICE OF THE ESTABLISHMENT OFFICER
NORTH BLOCK, NEW DELHI

No. 18(67) EO/08(ACC)

Dated: 13th April, 2011

Reference correspondence resting with the Department of Financial Services' communication No.1/1/2009-BO.I dated 5.04.2011.

2. The Appointments Committee of the Cabinet (ACC) has approved the following revised Guidelines for appointment of Executive Directors and Chairmen & Managing Directors of Public Sector Banks:

I. Executive Directors:-

The pool for selection of EDs may be confined to GMs of Nationalized Banks. CGMs of Associate Banks of SBI who have risen from the Associate Banks Service will also be included in the pool.

Applications will be invited from those General Managers of Nationalized Banks, and ***CGMs of Associate Banks of SBI who have risen from the Associate Banks Service, and who have completed two years service as GM and have three years of residual service.***

The cut-off date for determining the eligibility will be reckoned as on 1st April of the financial year in which the vacancies arise.

The Sub-Committee of the Appointments Board will comprise of Dy. Governor, Reserve Bank of India (RBI), 3 external experts in the management and banking field and **Secretary, Department of Financial Services**. The Sub-Committee will interact with the eligible candidates.

The panel of experts to be associated with the Sub-Committee will be approved by ACC from the panel suggested by Department of Financial Services.

The Sub-Committee after interaction with eligible candidates will prepare a merit list after taking into account the Annual Performance Reports (APRs) of last seven years for which 70 marks would be awarded (10 marks for outstanding, 08 marks for very good, and 06 marks for good). If there are adverse remarks, 2 marks are to be deducted for each such APR. The remaining 30 marks will be assigned on the basis of performance during the interaction. Further, in Banks where there are only 3 Grades instead of the usual four, the grading will be converted to the next highest level. For example, if a Bank does not have “outstanding” in its grading system, the grading of “v good” will be read as “outstanding”.

Further, a minimum benchmark of 50 (out of the total of 70 marks) in the last 7 APRs would be required for eligibility for consideration. The grade ‘Average’ would not be upgraded.

Where the candidates score equal marks, seniority will be determined with reference to age, the older person being ranked senior.

The role of the Sub-committee will be to interact with the eligible candidates and to empanel them after interaction based on their domain knowledge, banking skills and APRs.

If an officer has been imposed more than three minor penalties or more than one major penalty and two minor penalties or two major penalties in his /her career, he/she will not be considered eligible for pool of selection of EDs/CMDs.

The Sub-Committee of the Appointment Board will draw up a merit list as per the number of anticipated vacancies with a reserve list upto 25% of the anticipated vacancies and recommend the same to the Appointment Board.

The Panel prepared for the year will be valid for one year i.e. upto 31st March of the financial year for which it has been prepared.

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3. A reading of the aforesaid guidelines shows that the eligibility criteria is having a minimum of 50 marks out of 70 marks with respect to last 7 years’ Annual Performance Reports (APRs) are concerned, and there is no other requirement of having a minimum number of total marks to be

got for being considered for appointment as per the selection process. Also, the guidelines do not lay down that particularly a minimum number of marks have to be secured in the interview, and which in the present case would become 10 marks, inasmuch as, respondents have in the relevant selection process required that the total minimum marks for being considered for appointment would be 80 marks, ie since the total maximum marks as per the APRs can only be 70 and the total marks for being considered for appointment are 80, 10 marks would have to be obtained at the minimum in the interview process.

4. I may note that in terms of the guidelines dated 13.4.2011 a merit list is prepared as per the number of vacancies available in the particular year for selection/appointment inasmuch as the number of vacancies keep on varying each year in terms of the vacancies available for appointment to the posts of Executive Directors in the Nationalized Banks. Appointments are made as per the serial numbers in the select list with the last serial number of appointment being the last serial number of the vacancy.

5. The record of this writ petition shows that for the relevant year 2012-13, there were admittedly a total number of 22 vacancies and 39 candidates were called for the interview. A merit list was prepared at the

conclusion of the selection process wherein the petitioner's name appears at number 18/20 i.e within the list of 22 vacancies for the posts of Executive Directors.

6. Respondents however did not appoint the petitioner because for the first time in this year 2012-13, and which was never so in the earlier years, respondents fixed a minimum passing marks of 80 during the selection process. Putting it in another words, the requirement of the candidates reaching a minimum marks of 80 ie at least 50 marks in the APRs and at least 10 marks in the interview have been fixed during the selection process, and thereby, the rules of the game have suddenly been changed during the selection process. Even if we take that no minimum marks are fixed for the interview, and which obviously cannot be there because the maximum marks as per the APRs can theoretically be the maximum marks of 70, the total marks required for clearing the examination being 80 thus a candidate will have to get at least 10 marks in the interview. The fact of the matter is that before the relevant year 2012-13, no such criteria or guideline was ever applied for selection inasmuch as for selection a merit list was prepared with the minimum requirement of 50 marks and which merit list obviously was as per the number of vacancies available in that relevant year and all eligible persons as per their position in the select list as per the

vacancies available, would be entitled to be appointed with the only requirement that the candidate must have 50 out of 70 marks in the last seven years' APRs i.e there was no other requirement of a candidate having a total of 80 marks or effectively having at least 10 marks in the interview.

7. The Supreme Court in the judgment in the case of ***K. Manjusree Vs. State of Andhra Pradesh and Another (2008) 3 SCC 512*** has held that the selection criteria has to be prescribed in advance and rules of the game cannot be changed afterwards. The relevant para of this judgment is paragraph 33 and which reads as under:-

“33. The Resolution dated 30-11-2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.”

(underlining added)

8. In *K. Manjusree's case (supra)*, the Supreme Court has also referred to its earlier judgments as per which rules of the game cannot be changed during the selection process.

9. In the present case, by fixing the minimum cut off of 80 marks, a new criteria has been imposed during the selection process when the interviews were being conducted, and which could not have been done in view of the ratio of the judgment in the case of *K. Manjusree (supra)*.

10. There is also effectively an additional criteria that at least 10 marks must be added in the interview, and which criteria again could not have been fixed during the selection process inasmuch as this was not the criteria which was fixed prior to the selection process.

11. Most importantly, it requires to be noted that the Selection Committee had no power to alter the applicable guidelines dated 13.4.2011 because the Selection Committee had to act under the guidelines dated 13.4.2011 and they had no powers to create new guidelines by prescribing a different criteria for appointment which was not provided in the relevant circular of Appointments Committee of the Cabinet (ACC) dated 13.4.2011. The Selection Committee has to act in accordance with the selection process guidelines and it cannot create its own selection process criteria.

12. In view of the above, since the petitioner's name appeared at number 18/20 in the select list, and admittedly there were 22 vacancies, respondents could not have refused appointment to the petitioner for the post of Executive Director for the financial year 2012-2013.

13. Accordingly, this writ petition is allowed. Respondents will appoint the petitioner to the post of Executive Director against any available vacancy of the year 2012-13, and it can alternatively be against vacancies now existing for the financial year 2015-16, of course provided the petitioner satisfies the relevant rules for being appointed as an Executive Director.

14. At this stage, counsel for the petitioner states that petitioner cannot be appointed at the post of Executive Director for the vacancies in the financial year 2015-16 because as per the relevant rule a candidate to successfully seek appointment to the post of Executive Director must have three years residual service and since the petitioner will not have the three years residual service for 2015-16, the prayer which is made to this court is by modifying the existing prayers in the writ petition, in terms of the principles contained in Order VII Rule 7 of the Code of Civil Procedure, 1908 that the petitioner be granted notional appointment to the post of Executive Director without any monetary benefits of the Executive Director

during the period of service as an Executive Director i.e no monetary emoluments will be payable to the petitioner as an Executive Director but the petitioner will have services as an Executive Director as if he stood appointed in terms of the vacancies for the year 2012-13.

I think the prayer made on behalf of the petitioner is a fair prayer and considering that respondents have brought the position to the present pass by violating its own guidelines dated 13.4.2011 as also ratios consistently laid down by the Supreme Court that the rules of the game cannot be changed midway, this writ petition is disposed of by directing that the petitioner will stand appointed notionally against the vacancy of the year 2012-13 to the post of Executive Director as if a supernumerary post is created of Executive Director in a Nationalized Bank and petitioner since is already working with the Bank of Baroda, he will be entitled to monetary benefits of retirement as if petitioner would have superannuated from the post of Executive Director of the Bank of Baroda. Of course the Bank of Baroda will be entitled to recover any monetary liability as imposed upon it on account of the present judgment from the respondent no.1/Union of India and respondent no.1 shall pay the same to the Bank of Baroda on it raising a demand.

15. The writ petition is allowed and disposed of in terms of the aforesaid observations. Parties are left to bear their own costs.

MARCH 10, 2015
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VALMIKI J. MEHTA, J.