

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-638-2014 (O&M)

Date of Decision: January 10, 2017

National Bank for Agriculture and Rural Development and another

.....Appellants

Versus

Pushkar Datt and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.Gurminder Singh, Sr.Advocate with
Mr.Ramanpreet Singh, Advocate
for the appellants.

Mr.D.S.Patwalia, Sr.Advocate with
Mr.Gaurav Rana, Advocate
for respondent Nos.1, 2 and 4.
Respondent No.3 in person.

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SURYA KANT, J.

This Letters Patent Appeal is directed against the order dated
27.11.2013 vide which learned Single Judge allowed the writ petition and
has directed the appellant-National Bank for Agriculture and Rural
Development (NABARD) to consider and promote the respondent-writ
petitioners from Grade-B to Grade-A service with effect from the date their

juniors, namely, respondent Nos.3 to 33 in the writ petition were appointed, and also to grant all the consequential benefits including seniority and arrears of pay etc.

[2] The facts may be briefly noticed as follows:

[3] The first and the second respondent joined the Reserve Bank of India as Stenographers in the months of June, 1982 and August, 1982 respectively. The appellant- bank (NABARD) came into existence in July 1982 and an option having been given, both the respondents opted for the appellant-Bank. Their services were, thus, transferred to NABARD.

[4] Respondent Nos.3 & 4 joined the Bank as Clerks Grade II by direct recruitment in April 1984.

[5] The service conditions of the employees of the Bank are governed under the Rules known as National Bank for Agriculture and Rural Development (Staff) Rules, 1982 [in short, '1982 Rules']. The Rules contemplate three modes of recruitment, namely, (i) Direct recruitment; (ii) Departmental Test; and (iii) Merit list.

[6] The appellant-Bank appointed 100 Assistant Development Officers in Group-A in the year 1982 against 40% quota of 'Direct Recruitment'. Thereafter a written test was held on 26.04.1982 to fill up 40% vacancies against the quota of 'Departmental Test'.

[7] Similarly, some of the officials/employees were empanelled (Annexure P1) for appointment as Assistant Development Officers Group-A against 20% quota of 'Merit List'. The particulars of all the officials who

40% quota (Departmental Test) and 20% quota (Merit List) are enlisted at Annexure P1.

[8] The respondents who appeared in 'Departmental Test' to fill up 40% vacancies, having not been empanelled, approached this Court alleging *inter alia* that while respondent Nos.1 and 2 were entitled to be empanelled against 40% quota of 'Departmental Test', respondent Nos.3 and 4 were entitled for such empanelment against 20% quota of 'Merit List' as in both the categories their juniors were empanelled.

[9] The appellant-Bank defended its action as per the written statement dated 11.05.1993 on the plea that the empanelled officials were not juniors to the respondents as most of them belonged to the reserved categories and they had been granted out of turn promotions against roster points as a result whereof they had marched over the writ-petitioners in the seniority list. It may be mentioned here that though in total 86 candidates were appointed to Group A service but only 26 were juniors to the respondents, who were impleaded as party-respondents. Appellant-Bank further maintained that the tentative seniority list was circulated in which private respondents in the writ petition were shown above the writ-petitioners and no objections against the said *inter se* seniority list were filed, hence writ petitioners could not claim themselves to be seniors to the selected candidates. It was further averred that seniority was not the criteria for selection either in 40% quota of 'Departmental Test' or 20% quota of 'Merit List'. The precise stand was that since in the written test the writ petitioners could not make it to the merit list, they were rightly not

empanelled.

[10] The writ petition filed by the respondents in the year 1992 was allowed on 27.11.2013 by the learned Single Judge vide order under appeal with categorical findings that (i) the Bank has failed to produce any record to substantiate its plea that tentative seniority list was circulated or brought to the notice of the writ-petitioners to enable them to submit their objections; (ii) the private respondents, namely, the empanelled candidates were admittedly juniors to the writ petitioners except that they were promoted against the roster points and roster points do not determine seniority; (iii) each of the writ-petitioner had secured above the cut off marks in the merit test, hence there was no rhyme and reason to overlook their claim while empanelling their juniors; (iv) no 'selection criteria' or 'record' was produced by the appellant-Bank despite the Court asking repeatedly to produce the same; (v) the appellant-Bank has failed to justify the reservation quota without any disclosure as to how such quota was fixed at the promotion posts or how the respective roster points were fixed; (vi) the writ petitioners' plea that they had absolutely no knowledge of the tentative seniority list was accepted for want of any proof of its communication to them; and (vii) similarly, the Bank failed to satisfy the learned Single Judge as to how the backlog was determined and the vacancies were carried forward.

[11] We have heard learned counsel for the parties at a considerable length and gone through the record.

[12] It is the conceded position that the appellant-Bank did not produce the selection record in support of its plea that the selection was

made on the basis of any transparent, fair and just criteria under which the juniors could march over their seniors. Neither the selection criteria nor the selection record was produced before the learned Single Judge. The plea now taken at the appellate stage is that one of the buildings of the appellant-Bank in Mumbai collapsed in the year 1997 in which several files containing original records including that of promotion from Group-B to Group-A service were destroyed. An affidavit to this effect has also been filed.

[13] We have gone through the contents of the affidavit and are not convinced with the explanation. Firstly, no FIR or DDR was got registered in respect of loss of the record. Secondly, when the matter was already subjudice before the Court of law and the original record was material to determine the controversy, it was obligatory on the appellant- Bank – authorities to apprise the Court re: loss of the record at the earliest. No such attempt was ever made. Thirdly, no plea was taken before the learned Single Judge in the year 2013 that the original record was destroyed in any such incident. Fourthly, it is unlikely that in a case of collapse of a wall or part of the building, the original record would be destroyed like it may happen in the case of 'fire' or 'floods'. Fifthly, the selection criteria, if any, could be reproduced/ disclosed in the written statement which was filed on 11.05.1993. However, except the selection list alongwith Rules nothing was disclosed to render assistance to the Court.

[14] Taking into consideration the totality of the circumstances, coupled with the fact that the private respondent-writ petitioners were admittedly seniors to the proforma respondents in the appeal, we are not

inclined to interfere with the order passed by learned Single Judge.

[15] Dismissed.

(SURYA KANT)
JUDGE

January 10, 2017
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(SUDIP AHLUWALIA)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |