

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10767 of 1996

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1. Mahesh Srivastava, Branch Manager, Siwan Kshetriya Gramin Bank, Branch- Barkagaon, son of Sri Dharamdeo Lal, resident of Village and PO- Machakna, PS- Husainganj, Distric- Siwan.
 2. Anil Kumar Singh (Branch Manager), Siwan Kshetriya Gramin Bank, Branch Champ, son of late Rambihari Singh, resident of Village- Devapur, PS- Barauli, District- Gopalganj.
 3. Anil Kumar Sinha, Siwan Kshetriya Gramin Bank, Branch- Risaura, son of late Nawal Kishore Prasad, resident of Gola Road, Mahabir Asthan, Muzaffarpur.
 4. Sachidanand Singh, Branch Manager, Siwan Kshetriya Gramin Bank, Branch- Muriyari, son of Suba Singh, resident of Village- Tikri, PO- Pratappur, PS- Hussainganj, District- Siwan.
 5. Umakant Singh, Branch Manager, Siwan Kshetriya Gramin Bank, Branch Ranibari, son of Sri Raj Kishore Singh, resident of Village- Baburban, PS- Baruraj, District- Muzaffarpur.
 6. Prabhat Kumar Arun, Branch Manager, Siwan Kshetriya Gramin Bank, Branch Marthui, son of late Deo Dayal Rai, resident of A/101, PCS Colony, Kankarbagh, Patna-20.
 7. Nawal Kishore Sinha, Branch Manager, Siwan Kshetriya Gramin Bank, Karchui Branch, son of Sri Bachcha Prasad Sinha, resident of Village- Mishrawalia, PO- Sakari, PS- Jalalpur, District- Chapra.
 8. Kamlesh Kumar Singh, Branch Manager, Siwan Kshetriya Gramin Bank, Tari Bazar Branch, son of Sri Satish Sinha, Retd. Principal, resident of Dahiawa Ka Tola, PS- Chapra Town, District- Chara.
 9. Narendra Singh, Branch Manager, Siwan Kshetriya Gramin Bank, Kachnar Branch, son of Sri Rajeshwar Singh, resident of village- Kausar, PS- Raghunathpur, District- Siwan.
 10. Jai Prakash Singh, Branch Manager, Siwan Kshetriya Gramin Bank, Paltuhata Branch, son of Sri Bishwanath Singh, resident of Village- Ekederwa, PS- Thabe, District- Gopalganj.

.... Petitioner/s

Versus

1. The Siwan Gramin Kshetriya Bank, a Company incorporated under Companies Act, having its office at Siwan through its Chairman.
2. The Chairman, Siwan Gramin Kshetriya Bank.
3. Bhupendra Kumar, Scale I Officer posted at Head Office at Siwan.
4. Birendra Kumar Singh, Branch Manager, Chauri.
5. Anup Kumar Barar, posted as Scale I Officer, Head Office at Siwan.
6. Om Prakash Upadhya, posted as Branch Manager at Bharthari.
7. Jitendra Narayan Singh, posted as Scale I Officer, Head Office at Siwan.
8. Vinod Kumar, posted as Branch Manager, Branch Siwan.
9. Gopal Narayan posted as Branch Manager at Amlori.
10. Hemant Kumar posted as Branch Manager at Branch Japo Bazar.
11. Satish Chandra Jaiswal, posted as Branch Manager, at Champ.
12. Ashok Kumar Singh, posted as Officer Scale-I, Head Office, at Siwan.

All respondents be issued notice through the Management of Bank.

13. National Bank for Agriculture and Rural Development through General Manager, Dr. A.B. Road, Worli, Mumbai-400015.

.... Respondent/s



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Appearance :

For the Petitioner/s : None
For the Respondent-Bank : None
For the Private Respondents : Mr. Ajay Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 08-02-2018

Re: I.A. No.10170 of 1999:

This interlocutory application was in fact filed in CWJC No.11767 of 1996 and has been wrongly attached with the present proceedings. In the circumstances, let I.A. No.10170 of 1999 be detached from the present proceeding and be placed in the records of CWJC No.11767 of 1996.

Re: CWJC No.10767 of 1996:

None appears of behalf of the petitioners nor there is any representation on behalf of the respondent Bank. Mr. Ajay Kumar Sinha, learned counsel has appeared for the private respondents.

I have perused the records and heard Mr. Ajay Kumar Sinha, learned counsel appearing for the private respondents on the contest raised herein.

Perusal of the record would reflect that this case was admitted for hearing on 3.9.1997 and has remained pending until it was dismissed for non-prosecution on 20.8.2008. The writ petition was restored vide order passed on 25.11.2009 in MJC No.2659 of



2008 and has been taken up for hearing and disposal today when there is no representation for the petitioners.

Perusal of the record would confirm that the petitioners who are 10 in number have questioned memo dated 9.8.1996, whereby the private respondents have been granted promotion which, according to the petitioners, is in violation of the criteria laid down by the respondent authorities. The petitioners have also questioned the resolution dated 4.8.1995, whereby the criteria has been laid down for promotion of officers from Junior Manager Scale I to Junior Manager Scale II. A consequential prayer has been made for reconsidering the promotion of the petitioners.

As would confirm from the pleadings these petitioners as well as the private respondents were appointed as Junior Manager Scale I in the Bank in the year 1982. A seniority list was published in the year 1995 vide resolution dated 4.8.1995. A decision was taken by the respondent-Bank to grant promotion to the officers in Junior Manager Scale I to the post of Junior Manager Scale II. 30 officers of the Junior Manager Scale I fulfilled the criteria for such consideration and thus they were considered for such promotion which was based on assessment on 100 marks distributed under different heads.

It is obvious from the nature of relief prayed that in the



exercise undertaken for promotion to the Junior Manager Scale II, the private respondents have taken a march over the petitioners and thus this writ petition.

According to the petitioners, the respondent-Bank while promoting the private respondents had adopted the policy and guidelines as per their convenience. According to the petitioners, since the representations drawing the attention of the respondents have gone asking hence they were forced to move this Court.

The counter affidavit of the respondent-Bank through its Chairman is on record. It is stated in paragraph 5 of the counter affidavit that in exercise of power conferred under section 29 of the Regional Rural Banks Act, 1976 (hereinafter referred to as 'the Act') the Central Government after consultation with the National Bank and the sponsor bank framed a rule for promotion known as Regional Rural Bank (Appointment and Promotions of Officers and other Employees) Rules, 1988 (hereinafter referred to as 'the Rules') and a notification to such effect dated 28.9.1988 was issued by the Ministry of Finance (Banking Division), Government of India. According to the respondents, the statutory provisions present in 'the Rules' provides for filling up of the post of Area Manager/Senior Manager and it further provides that 100% of these posts would be filled up by promotion from amongst the confirmed Scale I officers



working in the Bank based on seniority –cum- merit.

Paragraph 8 of the counter affidavit further explains that under the promotion policy framed by the sponsor bank i.e. the Central Bank of India for giving promotion of Scale I Officer to Scale II, it was decided to grant weightage on the following factors:

(a) Seniority	- 40 marks
(b) Performance	- 40 marks
(c) Interview	- 20 marks
Total	- 100 marks

It is further explained that every officer was entitled to get 4 marks for every completed period of service over and above the minimum 8 years required, with a maximum of 40 marks. It is further explained that against the head ‘Performance’, the rating had to be done for the remarks earned by each officer in the previous 3 years on a 5 point scale which is as under:

<u>Rating</u>	<u>Weightage marks</u>
Excellent	40
Very Good	32
Good	24
Average	16
Below Average	8

The promotional policy was circulated through letter dated 28.6.1995 and was adopted by the Bank in its meeting held on



4.8.1995 for giving promotion to its officers from Scale I to Scale II. According to the Bank, this policy was never put to challenge by any of the officers including the present petitioners at any stage. It is further the stand of the Bank that the petitioners and respondents were appointed in the same exercise and their respective cases were considered under the same policy decision and thus there is no infirmity in the application of the policy. According to the Bank since the marks earned by the private respondents was better than the petitioners that they have been given promotion.

A similar stand has been taken by the private respondents in the counter affidavit so filed in the present proceeding and Mr. Sinha, learned counsel appearing on their behalf has submitted that the petitioners at no stage did question this policy followed by the Bank and since they did not succeed in the exercise that they have turned around to question the very policy. According to the learned counsel, the writ petitioners they are precluded to challenge the policy after having participated in the same with open eyes.

I have perused the records and heard Mr. Ajay Kumar Sinha, learned counsel appearing for the private respondents who informs that there is no rejoinder to the counter affidavit either of the Bank or the private respondents by the petitioners. In other words, the explanation given by the Bank in their counter affidavit as well



as by the private respondents in their counter affidavit has gone uncontested. According to Mr. Sinha, since the petitioners as well as the private respondents are appointees of the same batch and thus carry the same seniority by length, the criteria so fixed for promotion was equally applicable to all and no infirmity or arbitrariness can be attached to the process.

While referring to a decision of this Court passed in **CWJC No.1099 of 1992 (Rajesh Kumar Sinha Vs. The State of Bihar)**, a copy of which is enclosed at Annexure R/1 to the counter affidavit so filed on behalf of the private respondents he submits that this issue raised has been settled by a Bench of this Court.

As I have observed, the explanation given by the Bank in defence of the promotion has gone uncontested as no rejoinder has been filed by the petitioners either to the stand so taken by the Bank or the private respondents. Even otherwise the issue raised by the petitioners does not warrant indulgence in view of the law so well settled by the Courts that it is only a right to consideration for promotion, which is enforceable and not a right to promotion. It is also well settled that where a policy has been equally applied to the candidates participating in a process either relatable to appointment or promotion, neither the stipulations present therein can be questioned on arbitrariness nor on reasonableness because the



provisions equally applies to each candidate. A candidate having undergone a selection process held in terms of any policy/guidelines in force, cannot be permitted to turn around to question the outcome of such exercise complaining of arbitrariness. It is again well settled that settled positions should not be disturbed after long duration and in the present case the promotion took place in the year 1996.

In the circumstances noted, neither the promotion so granted to the private respondents requires interference on merits in view of the explanation so well articulated by the respondents in their respective counter affidavits which goes uncontested, nor it requires interference on the principle of estoppel for the petitioners have participated in the promotional exercise with open eyes and having not succeeded in the process, they cannot be permitted to turn around to question the very policy/guidelines/rules followed in the Bank to carry out such exercise. The issue raised lacks merits and is not worthy of indulgence.

The writ petition is dismissed accordingly.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05-03-2018
Transmission Date	NA

