

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

Date of Decision: January 31, 2018

+ **W.P.(C) 7578/2017**

SHARWAN KUMAR VIGMAL Petitioner

Through: Mr. Shanti Prakash, Advocate

Versus

GENERAL MANAGER (NW-II)/(APPOINTING AUTHORITY)
STATE BANK OF INDIA & ORS.Respondents

Through: Mr. Anil Kumar Sangal,
Mr. Siddharth Sangal and Mr. Abhay Kumar
Tayal, Advocates for respondent-SBI

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Petitioner is Deputy Manager in Middle Management Grade Scale-II with respondent-Bank, who had sought promotion from MMGS-II to MMGS-III in the year 2017-18. Vide Announcement of 1st July, 2017, written test for the said promotion stood waived and the list of Zone of Selection (*Annexure P-5*) was drawn on 12th July, 2017 and thereafter, interviews were held and the Final Result (*Annexure P-7*) was declared on 31st July, 2017. Since petitioner was not in the zone of consideration because he did not have mandatory two years' rural service to his credit, therefore, he was not called for the interview. The case of petitioner is that he was never given an opportunity to undertake rural service.

2. Learned counsel for petitioner submits that petitioner is presently posted in the rural branch and he would be completing two years on 30th March, 2018. In the short counter affidavit filed by respondent-Bank, the stand taken is that petitioner has been given a chance as a special case to participate in the promotional exercise to be held in the year 2018-19 and petitioner may be considered for back-dated promotion to MMSG-III for the years 2016-17 and 2017-18, subject to his meeting the eligibility criteria. Learned counsel for petitioner submits that many similarly placed employees, who had not completed their rural assignment, have been promoted though the promotion was actually given only after they had completed the rural assignment.

3. Learned counsel for respondent-Bank submits that eligibility criteria consists of participation in the Written Objective Type Examination, followed by interview and if petitioner clears the said Examination, then he would be given back-dated promotion.

4. Learned counsel for petitioner relies upon Supreme Court's decision in *Union of India and Anr. V. Hemraj Singh Chauhan &Ors.*, AIR 2010 SC 1682 and *Major General H.M. Singh, VSM v. Union of India and Another*, (2014) 3 SCC 670 to submit that the right of an eligible employee for promotion is a fundamental right and since the Examination for the last year was waived, therefore, it is required to be waived for this year also.

5. Vide order of 18th December, 2017, respondent was called upon to consider petitioner's Representation for waiver of Written Examination and the said Representation has been dismissed by respondent by maintaining that the Written Test cannot be waived. Vide last order,

respondent was called upon to explain as to why the written test cannot be waived for this year, when it was waived for the last year.

6. Learned counsel for respondent has placed on record copy of the Memorandum of the *Executive Committee of the Central Board of respondent-Bank* for the year 2017-18 to show that Written Test for the last year was waived due to merger of five Associate Banks and it is submitted that since written test is an integral part of the eligibility criteria, therefore, it cannot be waived and that the Written Test is to take place on 4th February, 2018.

7. Upon hearing and on perusal of material on record and the decisions cited, I find that right of an eligible employee to be considered for promotion cannot be negated. However, petitioner cannot claim promotion from MMGS-II to MMGS-III in the year 2017-18 as a matter of right because he had not undergone the mandatory rural posting of two years and so, his name was not put in the zone of consideration. According to petitioner's counsel, some employees who had not undergone rural posting, have been granted promotion but that too, after they have completed the rural posting.

8. It is a settled legal position that entitlement to promotion is always subject to fulfillment of eligibility criteria. In *Major General H.M. Singh (Supra)*, Supreme Court had directed that promotion be granted because the appointing authority had rejected the recommendation of Selection Board for promotion, without disagreeing with the findings of the selection board. In the counter affidavit filed by respondent-Bank, it has been undertaken to consider petitioner's case for promotion from back date provided he fulfills the eligibility criteria. The eligibility criteria for

promotion as per promotion policy (*Annexure P-4*) requires petitioner to undergo objective type written examination, followed by interview. Petitioner seeks waiver of written test which is purportedly slated for 4th February, 2018 because it stood waived last year. Respondent-Bank has clarified that the written test was waived last year due to merger of five associate banks. There was a valid reason for waiving the written test last year, but there is no justification to now waive the written test for the promotions to be made this year.

9. In view of aforesaid, this petition is disposed of with direction to respondent-Bank to consider petitioner for promotion from back date, provided he undertakes the written test and appears in the interview.

JANUARY 31, 2018

sk/r

**SUNIL GAUR
(JUDGE)**

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