



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
03.02.2020

Delivered on
06.02.2020

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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.820 of 2020
and
WMP No.1634,988,989 of 2019

1. All India Union Bank Officer Staff Association,
Rep. by its General Secretary,
AIBOA House, II Floor,
No.109, Angappan Naicken Street,
Chennai 600 001.
2. Gaurav Goyal,
Manager (Marketing),
Dream House, Sai Enclave,
Bhandari Farm, Chadayal Nayabad,
Gas Godam Road, Haldwani - 263 139.

.. Petitioners

.Vs.

1. Government of India,
Rep. by its Secretary,
Department of Financial Services,
Ministry of Finance, Jeevan Deep,
Parliament Street, New Delhi - 110 001.
2. The Chief Labour Commissioner (Conciliation),
Head Quarters, Government of India,
Ministry of Labour and Employment,
Office of Chief Labour Commissioner (Conciliation),
New Delhi.
3. Union Bank of India,
Rep. by its General Manager (HR),
No.239, Vidhan Bhawan Marg,
Nariman Point, Mumbai - 400 021.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the
Constitution of India, to issue a Writ of Declaration to



declare that the Specialist Officers, who have been promoted on 01.09.2017 as being qualified for promotion process conducted pursuant to circular No.7057, 7058, 7059, 7060 dated 21.11.2019, issued by the 3rd respondent Bank by rectifying the deemed date of promotion as 01.04.2017 for Specialist Officers as well and to consider by holding common written examination for both Generalist and Specialist Officers ignoring the written test held on 22.12.2019 and to consider and promote the Specialist officers as well on same basis as that of Generalist Officers.

For Petitioner : Mr.N.G.R.Prasad
for M/s.Row and Reddy

For Respondents: Dr.D.Simon,
Central Government Standing Counsel
for R1 & R2.
Mr.V.Karthick, Senior Counsel
for M/s.T.S.Gopalan and Co.,for R3.

O R D E R

The present writ petition has been filed seeking for the relief of declaration, to declare the Specialist officers, who have been promoted on 01.09.2017 to be qualified for the promotion process conducted by the 3rd respondent Bank and to permit the Specialist Officers to participate in the selection.

2. The petitioner is an Association, which consists of the officers belonging to the respondent bank. The case of the petitioner is that the 3rd respondent bank has two categories of officers viz., (a) Generalist Officers and (b) Specialist Officers. These two categories of officers are appointed and considered for promotion separately up to a particular scale. Originally, as per the promotion policy issued by the 3rd respondent bank, the specialist category were entitled to be considered up to scale IV (the present case involves specialists, who are working as Marketing officers). Thereafter, the promotion policy was reviewed in the year 2016 and these officers were eligible for promotion only up to the Scale III. This policy was further reviewed in the year 2019 and now these officers are eligible for promotion only up to Scale II. Beyond this scale, any officer belonging to the Specialist category must compete along with the generalist category and seek for further promotion.

3. The further case of the petitioner is that keeping in view the fact that both categories of officers will be able to participate in a common promotion after a particular level, a



decision was taken to fix a common cut-off date for consideration of promotion as the 1st of April of every promotion year. This policy was implemented from the year 2017 onwards. The grievance of the petitioner is that the 3rd respondent bank fixed the same cut-off date for both categories in the year 2017 (01.04.2017) and the promotion was completed for the officers in the generalist category by 01.04.2017 and whereas for the Specialist officers, it was completed only on 01.09.2017. As a result of this, when the next promotion was considered in the year 2020, where both the categories will compete together, only those falling under the generalist category were found to be eligible fulfilling the three years minimum service as on 01.04.2020 and the entire specialist category who were promoted in the year 2017, were found ineligible on the ground of not fulfilling the minimum service period of three years. According to the petitioners, this resulted in exclusion of 177 Specialist Officers from participating in the promotion process. Aggrieved by the same, the present writ petition has been filed before this Court to declare the specialist officers to be eligible to participate in the promotion process.

4. Mr.N.G.R.Prasad, learned counsel appearing for the petitioner submitted that where a common cut-off date has been fixed as 1st of April of the promotion year, both categories of officers must be treated equally and the administrative delay caused in completing the promotion process of the Specialist Officers should not be put against them. The learned counsel further submitted that a representation was given by the petitioner association as early as on 20.06.2017, requesting the respondent bank to complete the promotion process at the earliest, since any delay will have a cascading effect on their career progression. The learned counsel submitted that even after this representation was given, the process was completed by the respondent bank only on 01.09.2017. The learned counsel submitted that this delay which is attributable to the 3rd respondent bank, should not be put against the officers belonging to the Specialist category.

5. The learned counsel further submitted that already a representation was given by the petitioner association to the 3rd respondent bank to consider the promotion of 177 Specialist Officers to the next higher scale and since it was not done, a representation was made to the Chief Labour Commissioner (Conciliation). When this conciliation proceedings were pending, the 3rd respondent bank has proceeded further to conduct the written test and prepared the list for promotion to the next higher post. The learned counsel submitted that this promotion



list does not contain even a single officer belonging to the Specialist category, who participated in the earlier promotion in the year 2017 and it contains only officers belonging to the generalist category.

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6. The learned counsel in order to substantiate his submissions, relied upon the following judgment of this Court:-

(a) [Tamil Nadu Electricity Workers Vs. Madras State Electricity Board] reported in 1964(11) LLJ 392.

(b) [All India Union Bank Officer staff Association and another Vs. The Government of India and others] in WP No.14543 of 2014 dated 28.11.2014.

(c) [Arul Anand Vs. The Oil and Natural Gas commission and others] in WA No.731 of 1999 dated 10.12.2003.

7. Per contra, Mr.V.Karthick, learned Senior Counsel appearing on behalf of the 3rd respondent bank submitted that an option is given to the Specialist officers to get into the scale of Generalist officers at a certain level, since their chances of promotion is limited. The learned Senior counsel further submitted that the minimum qualifying service for both the generalist and specialist officers is fixed as three years and this should be fulfilled on the cut-off date i.e on 01.04.2020, for being considered for promotion to the next promotion scale. The learned senior counsel submitted that the two sets of officers are treated differently in the matter of promotion.

8. The learned Senior Counsel further submitted that the earlier promotion process was completed on 01.09.2017 and the petitioners, if they are aggrieved, should have challenged the same immediately and till date, the same has not been challenged. The learned senior counsel submitted that the present promotion process commenced on 21.11.2019 and the eligible officers were required to submit the application on or before 30.11.2019. Thereafter, the written examination was held on 22.12.2019 and the results were also published on 08.01.2019. It is only thereafter this writ petition was filed on 13.01.2020 and the entire promotion process has been stalled by the petitioners.

9. The learned Senior Counsel further developed his arguments by submitting that it is the 1st petitioner, who had earlier filed a writ petition before this Court in WP No.14543 of 2014, challenging the promotion process conducted by the Bank in the year 2014-2015 and the case went up to the stage of Writ Appeal and as a result of the same, the promotion process from the year 2014-2015 got derailed. Only thereafter, the bank had



initiated five promotion processes, out of which, three pertains to the Generalist and two pertains to the Specialist. The processes initiated for the Specialists up to 2016-2017 was completed only in March 2017. Thereafter, the selection process for 2017-2018 was taken up and it was completed on 01.09.2017. The learned Senior counsel submitted that the petitioner association having kept quiet for such a long time and having chosen not to challenge the promotion process from the year 2017, has approached this Court belatedly and an attempt is again being made to stall the entire promotion process.

10. The learned Senior counsel submitted that the respondent bank does not have the power to relax the eligibility criteria with regard to the qualifying experience prescribed under the promotion policy. The learned Senior counsel further submitted that the relief as claimed by the petitioner is not sustainable and only five officers belong to the petitioner association and they are now stalling the entire process, wherein 4082 persons have participated. The learned Senior Counsel submitted that there are absolutely no merits in the present writ petition and the same is liable to be dismissed by this Court.

11. The learned Counsel appearing on behalf of the petitioner by way of reply submitted that the individual rights of the concerned specialist officers regarding his or her promotion is involved in this case and there is no requirement for a majority union to support the same. The learned counsel further submitted that there was no occasion to challenge the promotion process that took place in the year 2017 and the entire cause of action arose only due to the change in promotion policy, wherein, the Specialist officers can now only reach up to Scale II in the career path and thereafter, they must necessarily compete along with the Generalist and therefore, equal treatment of both the officers becomes essential, in order to ensure that the specialist officers are not deprived from being considered for promotion.

12. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

13. It is seen from records that as per the promotion policy issued in the year 2012, the Marketing officers (Specialist) were given a career path up to Scale IV. Thereafter, there was a revision in the promotion policy in the year 2016, whereby the career path was restricted up to Scale III. By virtue of the subsequent promotion policy which has now



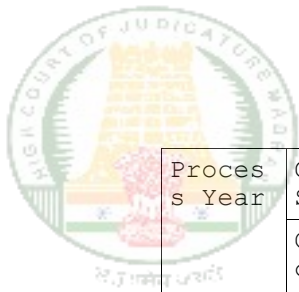
been brought into force in the year 2019, the career path has been restricted only up to Scale II. After reaching this Scale, the Specialists can either continue in the same scale or if they aspire to get further promotions, they must compete with the Generalist and move forward in their career. It is true that the Generalist and Specialist are two different classes all together and their career progression is also different up to a particular scale. Therefore, the respondent bank has taken a stand that the two sets of officers will have to be treated differently even in the matter of promotion.

14. The entire dispute arises only where the specialists also hop in and start competing with the Generalist for further promotion. While doing so, the specialists will have to necessarily fulfill the qualifying service of three years prescribed under the Rules.

15. The Staff circular right from the year 2017 shows that the cut-off date is prescribed as the 1st of April of the relevant promotion year. The eligibility is decided on the basis of this cut-off date. It is for this reason, the promotion policy for the year 2019 provided that a common cut-off date must be fixed for considering the promotion in which officers belonging to both the categories participated. This was done to ensure that equal treatment is meted to the officers belonging to both the categories and they are not treated differently, when it comes to the qualifying service.

16. The earlier promotions that took place in the year 2014-15 became a subject matter of challenge before this Court and by the time it ended, the promotion processes up to 2016-2017 was stalled. Thereafter, the respondent bank had initiated five promotion processes, out of which three processes covered the generalist and two processes covered the Specialist. In order to get a birds eye view of the entire promotion processes that took place from the year 2009-2010, the following Tabular column as prepared by the respondent bank is extracted hereunder :-

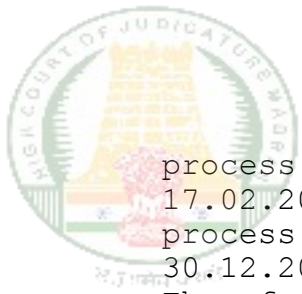
Union Bank of India, Central Office, Mumbai



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Process Year	General Banking Officers from Scale I to VII				Specialist Officers from Scale I to VI (Different Segments)			
	Cut off	Start Date / Period	Result	Effective Date of Promotion	Cut off	Start Date / Period	Result	Effective Date of Promotion
2009-10	31.03.10	22.03.10	10.04.10 to 25.08.10	Date of Result	01.11.10	22.12.10	08.03.11 to 13.08.11	Date of Result
2010-11	16.03.11	16.03.11	09.04.11 to 13.08.11		01.04.12	10.05.12 to 12.07.12	21.05.12 to 22.08.12	
2012-13	01.04.12	11.04.12 to 11.07.12	25.04.12 to 01.08.12		01.04.13	11.07.13	23.07.13 to 21.08.13	
2013-14	01.04.13	25.04.13 to 11.05.13	12.05.13 to 18.07.13		01.04.14	08.12.14	09.01.15 to 17.01.16	
2014-15	01.04.14	11.03.14 to 07.05.14	05.04.14 to 15.02.16		01.04.15	27.05.16 to 19.09.16	12.08.16 to 20.10.16	
2015-16	01.04.15	11.02.16 to 26.05.16	31.03.16		01.04.16	19.12.16	17.02.17 to 04.03.17	
2016-17	01.04.16	11.02.16 to 01.10.16	11.04.16 to 29.12.16		01.04.17	22.06.17	01.09.17	
2017-18	01.04.17	19.12.16 to 30.12.1116	01.04.17		01.04.18	22.01.2018	01.04.18	
2018-19	01.04.18	18.11.18	01.04.18		01.04.19	17.12.18	01.04.19	
2019-20	01.04.19	17.12.18	01.04.19		01.04.20	21.11.19	On going	
2020-21	01.04.20	21.11.19	Ongoing					

17. It can be seen from the above Tabular Column that the cut-off date for each promotion was fixed as 1st April of the relevant promotion year in both the categories. For the purpose of this case, it is enough to focus upon the promotions that took place during 2016-2017 and 2017-2018. In the promotion year 2016-2017, it was started on 11.02.2016 for the Officers under the generalist category and it ended on 01.10.2016 and the results were declared from 11.04.2016 to 29.12.2016. When it came to the officers belong to the specialist category, the

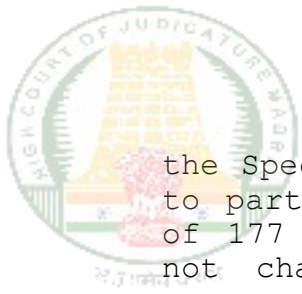


process started on 19.12.2016 and it ended between the period 17.02.2017 to 04.03.2017. Similarly in the year 2017, the process for the generalist started on 19.12.2016 and ended on 30.12.2016 and the results were declared on 01.04.2017. Therefore, the officers who fell under this category got their promotion well within the cut of date on 01.04.2017 and as a result of the same, they fulfilled the requirement of three years qualifying service as on 01.04.2020. Whereas, when it come to the Specialist officers, the process itself started only on 22.06.2017 and it ended on 01.09.2017. The promotion will obviously take effect only from 01.09.2017 i.e from the date of assuming the promoted post. If this date is taken into consideration, none of the Specialist officers who participated in the promotion process in the year 2017 will fulfill the qualifying service of three years as on 01.04.2020. According to the petitioners, this administrative delay on the part of the 3rd respondent bank should not be put against the specialist officers and the specialist officers, who were otherwise qualified for promotion should be deemed to have assumed the promoted post on 01.04.2017 and they must also be permitted to participate in the selection.

18. When this anomaly was brought to the notice of the 3rd respondent bank, it can be seen for the promotion years 2018-2019 and 2019-2020 that there is no delay in completing the process beyond the 1st April of the Promotion year for both the categories.

19. The promotion policy requires a person to have a minimum three years qualifying experience in the feeder post. The cut-off date has been fixed as the 1st April of every promotion year. This cut-off date is only fixed to decide the eligibility criteria with regard to the minimum service that is required to be put in by an officer. According to the learned counsel for the petitioner, this eligibility criteria of qualifying service can be relaxed by the 3rd respondent bank pertaining to the year 2017, since only due to the administrative delay, the promotion process for the officers belonging to the specialist category ended only on 01.09.2017.

20. The majority union had infact addressed a letter on 26.11.2019 to the respondent bank and has requested the bank to consider the 2017-2018 batch for promotion. Therefore, even the majority union has addressed this issue to the respondent bank and requested them to relax the qualifying service for this batch alone in order to ensure that the specialist officers belonging to 2017-2018 batch are considered for promotion. What is to be borne in mind is that none of the officers belonging to



the Specialists category of the year 2017-2018, will be eligible to participate in the promotion process and this list consists of 177 officers. It is true that the specialist officers have not challenged the delay that took place in the promotion process in the year 2017-2018. The officers were attempting to redress this grievance with the 3rd respondent bank and were hoping to find a solution with the bank. It is for this reason, an attempt was also made to resolve the dispute through conciliation proceedings. However, the 3rd respondent bank went ahead with the promotion process which contained officers belonging to only Generalist category for the relevant year 2017-2018.

21. The status of majority union or minority union does not require any consideration in this case. From the records it is seen that even the majority union has addressed a letter to the 3rd respondent bank to redress the grievance of the specialist officers belonging to the promotion year 2017-2018. Even otherwise, the promotion is an individual right of each employee and therefore, every employee who is deprived of the same is entitled to independently seek for redressal. The representation of the union on behalf of the employee is not very relevant to decide the present issue.

22. The 3rd respondent bank is the ultimate authority, who decides on the promotion policy. Such an authority also has the right to relax the condition, when the situation so warrants. After all the 3rd respondent bank is expected to act neutral for both the Generalist and Specialist category of officers. When the process of promotion was taken up during the year 2017-2018, it should have been taken simultaneously for both category of officers. However, the 3rd respondent bank took up the process first for the officers belonging to the generalist category and complete it by 01.04.2017. However, when it come to the Specialist officers, the process itself was only taken up on 22.06.2017 and was completed on 01.09.2017. Whatever may be the reason for this delay, it should not be put against the officers belonging to the specialist category. In view of this delay, the entire bunch of officers belonging to the specialist category are deprived of their right to be considered for promotion in the year 2020, since the cut-off date for consideration has been fixed as 01.04.2020. The 3rd respondent bank as a Model employer should have taken this into consideration and relaxed the qualifying service for the Specialist officers falling within the promotion year 2017-2018. The avenue of promotion has almost come to an end for the specialist officers and hereafter they have to compete along with the generalist officers and therefore, fairness demands



that both category of officers are treated equally. The promotion process involves various steps and ultimately, only those who successfully fulfil all the qualifications can be considered for the next level of promotion. The Officers belonging to the specialist category should not be deprived of this opportunity even at the threshold stage. If 177 officers belonging to the Specialist category miss an opportunity to participate in the promotion process this time, many may retire from service or many may have to wait for a long time for their next promotion and thereby, it will have a cascading effect on their career progression. When representation was made in the year 2017 itself in this regard, the 3rd respondent bank ought to have taken a decision. Till now, only the written examination has been completed and nothing more has taken place. Therefore, the 3rd respondent bank can do well by permitting the officers belonging to the specialist category promoted in the year 2017-2018, also to participate in the present promotion process and conduct another written examination. By giving this opportunity to 177 officers belonging to the Specialist category, it can be ensured that they are not thrown away at the threshold stage. Interest of justice will be served by giving such an opportunity to the Specialist officers also to participate in the promotion process.

23. It is an admitted case that all those persons, who were considered for promotion from the specialist category in the year 2017-2018, satisfied the eligibility of minimum qualifying service as on 01.04.2017. The delay in completing the promotion process cannot be attributed to these officers and it will be unfair to completely deny the opportunity of promotion for nearly 177 officers belonging to the Specialist category and therefore, in the interest of justice, they must be considered for promotion during the present promotion process by considering the fact that they were eligible for earlier promotion on 01.04.2017 and therefore, they are also eligible for the present promotion as on 01.04.2019.

24. In the result, this writ petition is allowed and the 3rd respondent bank is directed to permit the officers belonging to the Specialist category, who were promoted in 2017-2018 to participate in the promotion process conducted vide circular dated 21.11.2019. The 3rd respondent bank is directed to hold the common written examination once again for all the eligible candidates and proceed further with the promotion process.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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1. The Secretary, Government of India,
Department of Financial Services,
Ministry of Finance, Jeevan Deep,
Parliament Street, New Delhi - 110 001.
2. The Chief Labour Commissioner (Conciliation),
Head Quarters, Government of India,
Ministry of Labour and Employment,
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+1cc to M/s.Row & Reddy, Advocate sr.9315
+1cc to M/s.T.S.Gopalan & Co, Advocate sr.9232

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