

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9615 OF 2018

1	Kumar Shailendra Sinha,	
2	Vijayprakash M. Pasbola,	
3	Anurag Kumar Govil,	
4	Kamlakar Daulatrao Deshmukh,	
5	Paul Anthonydass Marien,	
6	Rajappa Rajasekar,	
7	Kannampuzha John Joseph,	
8	Rajendranath D. Mishra,	
9	Manoj Kumar Shukla,	
10	Nalamari Rami Reddy,	
11	Gopakumar B.Tilak,	
12	Nand Lal Pal,	
13	Saumitri Das,	
14	Vangari Hari Babu	
15	Nayakanti Nagesh,	
16	Prafulla V. Taranekar,	
17	Subash Chandra Puan,	
18	Prasanna Kumar Mansingh	
19	Rajesh Kumar Srivastava,	Petitioners

V/S

1	Union of India, Department of Economic Affairs,
2	Security Printing and Minting Corporation of India Ltd.,
3	Director-Technical, Security Printing and Minting Corporation of India Ltd.,
4	Director-Human Resource (HR), Security Printing and Minting Corporation of India Ltd.,
5	General Manager, Currency Note Press,
6	General Manager, India Security Press,

7 Padmajaksan K.S.
A.M. (T.O.)
8 Gadde Srinivasa Rao,
A.M. (T.C.)
9 Piyush Kumar Khare,
A.M. (T.C.)
10 Ramkesh Singh,
A.M. (T.C.)

....Respondents

...

Mr. Rahul G. Walia for the Petitioners.

Ms. Padmaja Dholakia with Ms. Charushila More, Ms. Sarika Gharat i/b M/s. Dholakia Law Associates for Respondent Nos.1 to 10.

...

CORAM : **S.V. GANGAPURWALA, ACJ & SANDEEP V. MARNE, J.**

RESERVED ON : 26 APRIL 2023.

PRONOUNCED ON : 02 MAY 2023.

JUDGMENT (Per – SANDEEP V. MARNE, J.):

1 Rule. Rule is made returnable forthwith. Heard finally with the consent of the learned Counsel for Petitioners and the learned Counsel for Respondents.

2 This Petition is filed by Petitioners challenging promotion order dated 20th January 2017 issued by Security Printing and Minting Corporation of India Limited (**SPMCIL**) effecting promotions to E-2 level (Executive-2) posts. Petitioners are essentially aggrieved by the action of SPMCIL in effecting promotions to the E-2 level post by applying the criteria of merit. They seek

grant of promotions to E-2 level posts on the basis of date of entry into S-2 level post. The short issue that therefore arises for our consideration in present case is about the method of effecting promotions to E-2 level post-merit or seniority.

3 Petitioners belong to Control cadre and Technical cadre of the erstwhile Currency Note Press and India Security Press at Nashik. Before formation of SPMCIL, there were 9 units of the Government of India engaged printing of security documents, minting of coins, etc viz. (1) Currency Note Press-Nashik, (2) Bank Note Press-Dewas, (3) India Security Press-Nasik, (4) Security Printing Press-Hyderabad, (5) Security Paper Mill-Hoshangabad, (6) India Govt. Mint-Calcutta, (7) India Govt. Mint-Mumbai, (8) India Govt. Mint-Hyderabad and (9) India Govt. Mint-Noida.

4 The Government of India merged the said 9 Units by corporatizing them and formed SPMCIL in the year 2006. Initially all the employees working in the said 9 Units were sent on deemed deputation pending settlement of their terms and conditions. A Tripartite Agreement/Memorandum of Settlement was effected between SPMCIL and representative Unions on 15 September 2008. This is how the employees and officers of the 9 units came to be absorbed in the Respondent-Corporation with effect from 1st November 2018.

5 In order to provide relief to Supervisors of the Respondent-Corporation holding substantive posts of S1 and S2, who had not received promotions and as per the understanding with the recognized Unions, a policy (Terms of Understanding) was executed between the Respondent Corporation and representatives of the recognized Unions. The same was approved by the Board of Directors of the Respondent-Corporation on 8 December 2015. Under those Terms of Understanding, a one time measure was adopted under which S-1 and S-2 level staff who had completed 15 and 20 years of service were made eligible for promotion to E-1 and E-2 level posts respectively in the Control and Technical cadre.

6 Accordingly, a Circular was issued by Respondent-Corporation on 15 May 2015 inviting applications from employees holding S1 and S-2 level posts for filling up 42 posts of E-1 and E-2 level. The Supervisors with 15 years' experience were to be considered for E-1 level post whereas Supervisors with 20 years' experience were to be considered for E-2 level posts. The Circular directed that interviews would be conducted to assess suitability of each employee in technical area. 42 posts were identified to be filled up with the caveat that the same were likely to be increased. Accordingly, several eligible employees submitted their applications in pursuance of the Circular. Petitioners also participated in selection for E-2 level posts. The Respondent-

Corporation subjected the eligible candidates to interview. Merit list was prepared on the basis of marks obtained in the interview and accordingly promotion orders were effected. Petitioners are aggrieved by the exercise of comparative assessment undertaken by Respondents by conducting interviews. According to Petitioners, interview ought to have been held only for determining suitability and not for making comparative assessment. Petitioners are not selected for promotion on the basis of their performance in the interview and have accordingly filed present Petition challenging the promotion order dated 20th January 2017.

7 Appearing for Petitioners Mr. Walia the learned counsel would submit that the Circular dated 15th May 2015 specifically provided that the interview was to be conducted only for assessing suitability of the candidates. He would also place reliance on para 5.0 (d) of the Terms of Understanding executed with the recognized Unions, under which also interviews were to be conducted only for the purpose of assessing suitability. He would submit that Petitioners were found suitable in the interview. That upon found suitable in the interviews, promotions ought to have been effected on the basis of seniority. Respondents however wrongly assigned marks in interviews to the candidates and effected promotion based on marks scored in interviews. This enabled

junior employees to supersede their counterparts. He would place reliance on Office Memorandum dated 8th February 2022 issued by the Department of Personnel and Training (**DOPT**) in support of his contention no supersession is permitted in the matter of promotions. That the Office Memorandum dated 8 February 2002 is fully binding on SPMCIL. He would further submit that SPMCIL ought not to have conducted any interview and promotions were required to be effected strictly on the basis of seniority. In support of his contentions Mr. Walia would rely upon following judgments:

- i) **Praveen Singh vs. State of Punjab & Ors.**, (2000) 8 SCC 63,
- ii) **K. Manjusree vs. State of Andhra Pradesh & Anr.**, (2008) 3 SCC 512,
- iii) **Director General, Indian Council for Agricultural Research & Ors. vs. D. Sundara Raju**, (2011) 6 SCC 605.

8 *Per contra* Ms. Dholakia, the learned counsel appearing for Respondents would oppose the Petition. She would draw our attention to para 4.1 of the Terms of Understanding in support of her contention that relative merit of the candidates was also required to be taken into consideration while effecting promotions to E-2 level posts. That a one-time measure was adopted by SPMCIL for creating promotional avenues to Supervisors who had stagnated for long period. That SPMCIL received 123 applications against 55 posts of E-1 and E-2 level. 122 candidates were found eligible, out of whom 108 candidates participated in the interview process. On account of participation of such large

number of employees in the interview process, their relative merit was required to be assessed by taking into consideration marks obtained by them in the interviews. That the action of SPMCIL is strictly in accordance with the Terms of Understanding entered into with the recognized Unions. She would pray for dismissal of the Petition. In support of her contentions Ms. Dholakia would rely upon judgment of Apex Court in **The Central Council for Research in Ayurveda & Siddha & Anr. vs. Dr. K. Santhakumari**, AIR 2001 SC 2306.

9 We have considered the submissions canvassed by both the sides. The short issue that is required to be adjudicated in the present Petition is about the method by which promotions to E-2 level posts are to be effected. Whether seniority would be the sole criteria for effecting such promotions or whether merit can also be taken into consideration.

10 Strong reliance is placed on stipulation in the Circular dated 15th May 2015 which reads thus:

“2. Interview shall be conducted to assess the suitability of such Employees in Technical Area which includes Production, Maintenance, Workshop, Control and other Technical Areas for which initially 42 posts have been identified and likely to increase/decrease depending on the functional requirement. The promotion by selection shall be in IDA Pay-scale of Rs.16,400-40,500/20,600-46,500 and individuals so selected shall be liable to transfer in any of the Units or the Corporate Office where the vacancy exist.”

(emphasis supplied)

11 Reliance is also placed on clause 5.0(b) of the Terms of Understanding which reads thus:

“b An interview shall be conducted to decide the suitability of such employees for technical operations, technical control and technical support areas.”

12 Relying on the aforesaid clauses in the Circular and Terms of Understanding, Petitioners contend that there was no room for SPMCIL to assign marks in the interview. They contend that interview ought to have been conducted only for assessing suitability of the candidates.

13 However, clause 4.1 of the Terms of Understanding provide as under:

“4.1 The promotions in the Company shall be based on **merit cum suitability and seniority** of the incumbent by holding DPC.”

(emphasis supplied)

14 Thus under clause 4.1, recognized Unions of employees agreed that the promotions in the Company shall be based on ‘merit-cum-suitability and seniority’. It therefore cannot be contended that seniority would be sole factor for effecting promotions to E-2 level posts.

15 True it is that there is some anomaly in stipulations of clause 4.1 and 5.0(b) of the Terms of Understanding. In service jurisprudence, there is a marked difference between ‘suitability’ and ‘merit’. An employee crossing a set

benchmark would be considered 'suitable' and his entitlement for promotion would then be on the basis of relative seniority amongst the suitable candidates. As against this, in pure 'merit' criteria, the selection of candidates would be made only on the basis of marks obtained in the selection. In the present case, though it is provided both in the Terms of Understanding and Circular that interviews would be conducted only for determining suitability, no benchmark for determining suitability is prescribed. Large number of candidates applied in pursuance of the selection process and interviews. In absence of fixation of any benchmark, how suitability of candidates for promotion could be determined is questionable. In these circumstances, the methodology adopted by SPMCIL is to determine suitability with reference to completion of prescribed years of eligibility service for promotion. By doing so, SPMCIL may have confused the concept of 'suitability' with that of 'eligibility'. It has considered every candidate putting in 20 years' of service as 'suitable' for E-2 level post. Therefore, it became impossible for SPMCIL to throw out any candidate out of selection process as being 'unsuitable'. It has thereafter conducted interviews for determining relative merit. Such action may appear to be *prima facie* in contravention of Clause 2 of the Circular and Clause 5.0(b) of the Terms of Settlement. However upon harmonious reading of those clauses with clause 4.1 of the Terms of Understanding, the methodology

adopted by SPMCIL cannot be treated as irrational or arbitrary. On the contrary, if the method suggested by Petitioners was to be adopted, seniority alone would become the criteria for promotions as all eligible candidates were treated as suitable. The word 'merit' occurring in clause 4.1 of the Terms of Understanding would then be rendered otiose.

16 It is not the case of the Petitioners that the promotions are to be effected only on the ground of seniority. The method of effecting of promotions is undoubtedly by 'selection'. The manner in which selection could be conducted is the hotbed of controversy between the parties. While it is contended by Mr. Walia that after determining suitability of the candidates by holding interviews of promotions ought to have been effected strictly in order of seniority. As against this Ms. Dholakia has contended that comparative assessment of merit of candidates is an essential ingredient 'selection' process. In **The Central Council for Research in Ayurveda & Siddha & Anr.** (supra) the Apex Court has dealt with the principle of merit-cum-seniority and has held as under:

"6. The principle of merit-cum-seniority is an approved method of selection and this Court in *Sant Ram Sharma vs. State of Rajasthan*, **AIR 1967 SC 1910** held that promotion to 'selection grade posts' is not automatic on the basis of ranking in Gradation list and the promotion is primarily based on merit and not on seniority alone. At page 1914 of the Judgment, it is stated as under (para 6):-

"The circumstance that these posts are classed as 'Selection Grade Posts' itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the Gradation List but the question of merit enters in promotion to selection posts. In our opinion, the respondents are right in their contention that the ranking or position in the Gradation List does not confer any right on the petitioner to be promoted to selection post and that it is a well established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is, therefore, available."

7. The Court further held that such mode of selection is not violative of Article 14 of the Constitution.

8. In *State of Orissa vs. Durga Charan Das*, AIR 1966 SC 1547, the Constitution Bench of this Court held that the promotion to a selection post is not a matter of right which can be claimed merely by seniority.

9. In *Union of India vs. Mohan Lal Capoor* (1973) 3 SCC 836 at p. 856, (AIR 1974 SC 87 at p. 99 : 1974 Lab IC 338) it was held as under (para 37):

"For inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play only a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale."

10. In *B.V. Sivaiah vs. K. Addanki Babu* (1998) 6 SCC 720 : (1998 AIR SCW 2577 : AIR 1998 SC 2565 : 1998 Lab IC 2749), this Court held that the principle of "merit-cum-seniority" lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal.

11. In *Union of India vs. Lt. Gen. Rajendra Singh Kadyan* (2000) 6 SCC 698 : (2000 AIR SCW 2692 : AIR 2000 SC 2513 : 2000 Lab IC 2664) in paragraph 12 at page 707, it was observed as under (at page 2699 of AIR SCW):-

"Wherever fitness is stipulated as the basis of selection, it is regarded as a non-selection post to be filled on the basis of seniority subject to rejection of the unfit. Fitness means fitness in all respects. "Seniority-

cum-merit" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed. Subject to fulfilling this requirement the promotion is based on seniority. There is no requirement of assessment of comparative merit both in the case of Seniority-cum-fitness and seniority-cum-merit. Merit-cum-suitability with due regard to seniority as prescribed in the case of promotion to All-India Services necessarily involves assessment of comparative merit of all eligible candidates, and selecting the best out of them."

12. In the instant case, the selection was made by Departmental Promotion Committee. The Committee must have considered all relevant facts including the inter-se merit and ability of the candidates and prepared the select list on that basis. The respondent though senior in comparison to other candidates, secured a lower place in the select list, evidently because the principle of "merit-cum-seniority" held been applied by the Departmental Promotion Committee. The respondent has no grievance that there was any mala fides on the part of the Departmental Promotion Committee. The only contention urged by the respondent is that the Departmental Promotion Committee did not follow the principle of "seniority-cum-fitness". In the High Court, the appellants herein failed to point out that the promotion is in respect of a 'selection post' and the principle to be applied is "merit-cum-seniority".

Had the appellants pointed out the true position, the learned Single Judge would not have granted relief in favour of the respondent. If the learned Counsel has made an admission or concession inadvertently or under a mistaken impression of law, it is not binding on his client and the same cannot ensure to the benefit of any party."

17 The Respondents have conducted interview to determine suitability of candidates. Their suitability was required to be determined for testing their knowledge of technical operations, technical control and technical support areas. We have gone through the assessment sheet, which shows that every candidate who appeared for the interview was declared suitable. The learned Counsel for the Respondent Corporation has clarified that their suitability is determined with reference to completion of number of years of services as

mandated under clause 5.0(a). The Supervisors completing 15 years of service were held suitable for the post of E-1 level, whereas Supervisors completing 20 years were considered suitable for E-2 level posts. Thereafter, the candidates were subjected to interviews and the interview committee consisting of four officials assigned marks to the candidates. On the basis of marks so secured by candidates, a merit list was prepared and promotions have been effected. If this was not done, the promotions would be purely on the basis of seniority as all candidates have been found suitable and the same would fall foul of clause 4.1 of the Terms of Understanding. We do not find any error being committed by SPMCIL in doing so as clause 4.1 of the Terms of Understanding clearly provided that the promotions were to be effected by 'merit cum suitability and seniority'. Since main thrust is on 'merit-cum-suitability', the word 'seniority' would be relevant only in the event two candidates scoring same marks. This would be the correct and harmonious reading of criteria prescribed in the Terms of Understanding.

18 Reliance of Petitioners on the DOPT Office Memorandum dated 8th February 2002 is of little assistance to their case. The said Office Memorandum provides for prescription of benchmarks for promotions, for which the method of promotion is 'selection', 'selection cum seniority' and 'selection by merit'. The Office Memorandum provides that once a candidate crosses the prescribed

benchmark, there can be no supersession. The provisions of the Office Memorandum dated 8 February 2002 would be wholly inapplicable to the present case. The recognized Unions of the employees have arrived at specific Terms of Understanding under which promotions are to be effected on the criteria of 'merit cum suitability and seniority'. Since the word 'merit' is used in clause 4.1 of Terms of Understanding, the Respondent Corporation cannot be faulted for arranging the candidates who appeared for interview in the order of marks secured by them in interview.

19 Mr. Walia has relied upon the judgment of the Apex Court in **Praveen Singh** (supra) in support of his contention that interview alone cannot be a criteria for effecting promotions. However, in the instant case not only the Terms of Understanding but also the Circular dated 15th May 2015 envisaged conduct of interview without any demur. Petitioners participated in the selection process and subjected themselves for interview. After having failed to clear the selection on the basis of merit, they cannot be now take a volte-face and permitted to contend that their interview alone could not have been a criteria for selection. For the same reasons, reliance of Mr. Walia on judgment in **Director General, Indian Council for Agricultural Research and Others** (supra) holding allocation of 50% marks for interviews as excessive is misplaced.

20 Mr. Walia has also relied upon the judgment of the Apex Court in **K. Manjusree** (supra) in support of his contention that rules of the game cannot be changed during the currency of selection. The contention of Mr. Walia is referable to para 2 of the Circular dated 15th May 2015 in which it was communicated to the candidates that the interview would be conducted for determining suitability. Mr. Walia has contended that the criteria of comparative assessment of merit of candidates was not made known to them by the Circular dated 15th May 2015 and that therefore the Respondents could not have altered the criteria of selection. There can be no dispute to the proposition that rules of the game cannot be changed once the game begins. In the present case however Petitioners are signatories to the Terms of Understanding through their recognized Unions and they agreed to the criteria of 'merit-cum-suitability and seniority' for effecting promotions. True it is that the Circular dated 15th May 2015 was silent about use of 'merit' criteria. However, the selection process was a one time exception as per the Terms of Understanding. Therefore, all the stipulations provided for in the Terms of Understanding would apply to the selection. Petitioners cannot feign ignorance of use of 'merit' criteria when there are signatories to the Terms of Understanding to their recognized Unions. Therefore, we are not impressed by the submission that the criteria for selection has been altered by the

Respondents. Reliance of Mr. Walia on the judgment of **K. Manjusree** (supra) is therefore of no avail.

21 Resultantly, we do not find any merit in the Petition filed by Petitioners. The Writ Petition is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

SUDARSHAN
RAJALINGAM
KATKAM

Digitally
signed by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
2023.05.02
18:34:44
+0530