



2025:DHC:93



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

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Decided on: 08.01.2025+ **W.P.(C) 87/2025****SHAILESH KUMAR JHA**

.....Petitioner

Through: **Mr. Ajit Kakkar, Advocate.**

versus

UNION OF INDIA AND ORS

.....Respondents

Through: **Mr. Rajesh Kumar Gautam, Mr. Anant Gautam, Mr. Dinesh Sharma, Ms. Deepanjali Choudhary, Mr. Kushagra Nilesh Sahay & Mr. Likivi K. Jakhalu, Advocates for R-2 & 3.****CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)**

1. The petitioner, by way of this petition under Article 226 of the Constitution, assails an order dated 02.12.2024, by which the respondent Nos. 2 and 3- Punjab National Bank ["Bank"] has rejected his representation dated 05.04.2024, with regard to his promotion from Senior Management Grade Scale-V to Top Executive Grade Scale-VI.
2. I have heard Mr. Ajit Kakkar, learned counsel for the petitioner, and Mr. Rajesh Kumar Gautam, learned counsel for the respondent Nos. 2 and 3-Bank, who appears on advance notice.
3. The petitioner joined the service of United Bank of India ["UBI"] on 04.05.2010. UBI was later merged with Punjab National Bank. The petitioner was promoted to Scale V as Assistant General Manager on



2025:DHC:93



01.10.2020. He applied for promotion to Scale VI pursuant to a circular issued on 06.10.2023. He participated in a written examination on 10.12.2023 and was called for interview on 09.03.2024. However, the petitioner found that he was unsuccessful, when the result of the promotion process was declared on 01.04.2024. He submitted representations to the respondent on 03.04.2024 and 05.04.2024, which were rejected by an order dated 13.08.2024.

4. The petitioner challenged the rejection of his representation before this Court by way of W.P.(C) 14591/2024. The writ petition was disposed of on 18.10.2024, holding that the communication dated 13.08.2024 was non-speaking and unreasoned, and therefore directing the respondents to revisit the matter and pass a reasoned speaking order.

5. The impugned letter dated 02.12.2024 has been issued pursuant to these directions. In the communication dated 02.12.2024, the following decision of the competent committee dated 30.11.2024 has been quoted:

“That Shri Shailesh Kumar Jha (Empl ID 5139948), Asstt. General Manager, ELCB. Delhi after qualifying in the online written test appeared for interview on 09.03.2024 for consideration of the internal promotion from SMG Scale V to TEG Scale VI. He was not approved for promotion. Since he was not approved for promotion, he submitted a representation dated 05.04.2024 against non-approval, highlighting his performance during the relevant period and requested for reconsideration of his case for promotion from SMG Scale V to TEG Scale-VI.

The marks obtained by Shri Jha in the promotion process are as under:

PARTICULARS	MARKS OBTAINED	MAXIMUM MARKS
APAR	34.93	40
Written Test (Online)	7.40	20



2025:DHC:93



<i>Interview</i>	<i>26</i>	<i>40</i>
<i>Total</i>	<i>68.33</i>	<i>100</i>

Cut Off marks of last candidate empanelled/waitlisted for promotion to Scale VI was 70.10

*Now, on revisiting the representation of Shri Shailesh Kumar Jha, the Competent Committee after due deliberation and critical examination of the submissions made in the representation by Shri Jha and the facts on record observed that Shri Jha secured a total marks of 68.33 whereas the last qualified candidate secured 70.10 marks for promotion. **Since Shri Jha had secured marks below the cut-off point/ marks, he was not selected for promotion to TEG Scale VI.***

The Competent Committee observed that the Interview Committee had already considered the performance of Shri Shailesh Kumar Jha during the relevant period, as contained in his performance appraisal reports (APARs). Marks were awarded to each of the candidates including Shri Jha based on the Performance Appraisal, Written Test and Interview and on the basis of the aggregate score selection of candidates for promotion was done.

In view of the aforesaid facts and deliberation, the Committee did not find any cause to alter the decision taken earlier. Hence, the representation of Shri Shailesh Kumar Jha is hereby rejected.”

6. The principal ground urged by Mr. Kakkar is that the respondent Nos. 2 and 3 have been misled by an erroneous communication of his supervisor, Mr. Gaurav Gupta, General Manager, who was then the Branch Head of Extra Large Corporate Branch, New Delhi. The misinformation, allegedly out of personal bias, was to the effect that the petitioner had not worked independently. According to the petitioner, he had already served as a branch head in two different branches for a cumulative period of approximately three years. It is averred in the petition that, after the petitioner's interview, the Head Office made



2025:DHC:93



enquires with the Regional Office, and in this process was erroneously informed by Mr. Gupta that the petitioner had not served independently. Learned counsel submits that, after the intervention of the petitioner, Mr. Gupta endorsed his representation dated 03.04.2024 with the note that the petitioner was a deserving candidate. Although it is not included as a part of the writ petition, in the course of hearing, learned counsel has also produced a communication dated 03.04.2024 addressed by Mr. Gupta to the Managing Director and CEO of the Bank. In the said communication, Mr. Gupta supports the petitioner's case for promotion, including on the ground of his competence, "*connections*" and potential. A copy of the communication is taken on record.

7. The only other ground urged in the writ petition is that the petitioner was "*expecting 38 or 39 marks, out of 40, in the Interview and was well confident to be top in the Merit List*".

8. Mr. Gautam, who appears on advance notice, has handed over a copy of the Promotion Policy for Officers issued by the Bank on 04.10.2023 ["Policy"]. He submits that, for selection from Scale V to Scale VI, the promotion is confined to merit based promotion under Clause 3(5) of the Policy, which reads as follows:

"5. SELECTION PROCESS FOR PROMOTION FROM SMG SCALE-V TO TEG SCALE-VI

Vacancies in TEG Scale-VI shall be filled up by promotion from SMG Scale-V through Merit Channel only as per the following criteria:

<i>PARTICULARS</i>	<i>Merit Channel</i>
<i>Eligibility Criteria:</i>	
- <i>Length of service in SMG Scale V</i>	<i>3 Years</i>
- <i>Minimum total length of</i>	<i>15 Years in Officer</i>



2025:DHC:93



<i>service</i>	<i>Cadre</i>
<i>Selection parameters:</i>	<u>Marks</u>
- APAR	40
- Written Test (online)	20
- Interview	40
<i>TOTAL</i>	<i>100</i>

Minimum qualifying marks in interview as well as in written test shall be 50 % for all category candidates.

The candidates securing minimum 70 % aggregate cut-off marks in the selection process shall only be considered for promotion.”

9. Mr. Gautam contests the petitioner’s assertions with regard to misinformation provided to the competent authority on facts, and submits that, in any event, the question of independent experience as a branch head is not a specific criterion for promotion at this level. He contrasts the criteria for promotion from Scale V to Scale VI, with the criteria for promotion at more junior levels. For example, the criteria for promotion from Scale I to Scale II in Clause 3(1) of the policy, includes allocation of marks for job responsibility/branch experience. The same is the case for promotion from Scale II to Scale III, Scale III to Scale IV, and Scale IV to Scale V. However, the criteria for promotion at the more senior level, from Scale V to Scale VI, are limited to the Annual Performance Appraisal Report [“APAR”], online written test, and interview. He therefore submits that, even assuming the petitioner’s allegations are correct, they concern an element which was not relevant to the assessment of the petitioner for the purposes of promotion at this level.

10. Before entering into the merits of the respective cases of the parties, the limitation of the writ jurisdiction, when it comes to



assessment of the candidates for the purposes of promotion, must be borne in mind. In general, it is for the employer to assess the suitability of candidates for promotion; a candidate has a right to be considered, but no more. The judgment of the Supreme Court in *State Bank of India & Ors. v. Mohd. Mynuddin* [*“Mohd. Mynuddin”*]¹ lays down this principle in the following terms:

“5. Whenever promotion to a higher post is to be made on the basis of merit no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors are promoted. It is not sufficient that in his confidential reports it is recorded that his services are “satisfactory”. An officer may be capable of discharging the duties of the post held by him satisfactorily but he may not be fit for the higher post. Before any such promotion can be effected it is the duty of the management to consider the case of the officer concerned on the basis of the relevant materials. If promotion has been denied arbitrarily or without any reason ordinarily the court can issue a direction to the management to consider the case of the officer concerned for promotion but it cannot issue a direction to promote the officer concerned to the higher post without giving an opportunity to the management to consider the question of promotion. There is good reason for taking this view. The court is not by its very nature competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled up by selection. The duties of such posts may need skills of different kinds — scientific, technical, financial, industrial, commercial, administrative, educational etc. The methods of evaluation of the abilities or the competence of persons to be selected for such posts have also become nowadays very much refined and sophisticated and such evaluation should, therefore, in the public interest ordinarily be left to be done by the individual or a committee consisting of persons who have the knowledge of the

¹ (1987) 4 SCC 486.



requirements of a given post, to be nominated by the employer. Of course, the process of selection adopted by them should always be honest and fair. It is only when the process of selection is vitiated on the ground of bias, mala fides or any other similar vitiating circumstances other considerations will arise....”²

11. Similarly, the Supreme Court in *K. Samantaray v. National Insurance Co. Ltd.*³, has held that it is always permissible for the employer to formulate a policy for promotion and set out conditions on all aspects governing such a policy, as long as it is not a colourable exercise of power, holding thus:

“11 [Ed. : Para 11 corrected vide Corrigendum No. F.3/Ed.B.J./20/2004 dated 12-2-2004] . While laying down the promotion policy or rule, it is always open to the employer to specify the area and parameter of weightage to be given in respect of merit and seniority separately so long as policy is not colourable exercise of power, nor has the effect of violating any statutory scope of interference and other relatable matters. The decision in *B.V. Sivaiah* case [(1998) 6 SCC 720 : 1998 SCC (L&S) 1656] is clearly distinguishable on facts and in law. That was a case where statutory rules governed the field. This Court, inter alia, held that fixing terms which are at variance with the statutory rules is impermissible. In the case at hand, prior to the formulation of policy in February 1990, there were no codified prescriptions. It was the stand of the respondent employer that prior to the formulation of the policy, certain guidelines existed and the objectives of the policy were to rationalize and codify the existing guidelines relating to promotions within officers' cadre. There is no statutory rule operating. It is for the employer to stipulate the criteria for promotion, the same pertaining really to the area of policy-making. It was, therefore, permissible for the respondent to have their own criteria for adjudging claims on the principle of seniority-cum-merit giving primacy to merit as well, depending

² Emphasis supplied.

³ (2004) 9 SCC 286.



upon the class, category and nature of posts in the hierarchy of administration and the requirements of efficiency for such posts.⁴

12. More recently, the judgment in *Mohd. Mynuddin* has been followed by the Division Bench of this Court in *Hindustan Petroleum Corporation Ltd. & Ors. v. Vipin Kumar*⁵.

13. Applying these principles to the fact of the present case, I find no ground to interfere with the impugned order of the respondents. The respondents' committee has clearly explained the reasons for his non-promotion. In terms of the Policy quoted above, the cut-off for candidates who were successful in the promotion process from Scale V to Scale VI was 70 marks on a scale of 100. The order records that the last candidate promoted or waitlisted, obtained a score of 70.10 out of 100. Unfortunately, the petitioner appears to have fallen short, with a total score of 68.33. The assessment of a candidate at an interview is also a matter for the interview board and cannot lightly be interdicted by the writ Court. There is no basis for any allegation of malice or *malafides* in this regard, which would lead the Court to exercise judicial review.

14. As far as the petitioner's allegation with regard to miscommunication as to his prior experience is concerned, the competent authority admittedly had his APAR before it, which would reflect the posts and nature of duties. The averments in the writ petition are not supported by any factual basis with regard to the alleged miscommunication or misinformation. In fact, the endorsement on the petitioner's representation dated 03.04.2024 and the letter dated

⁴ Emphasis supplied.

⁵ LPA 172/2019 decided on 08.11.2019.



2025:DHC:93



03.04.2024 produced by learned counsel before the Court, are from the very same Mr. Gaurav Gupta, against whom the petitioner has made allegations of bias and malice. In any event, as pointed out by learned counsel for the respondent, this was not one of the factors required to be considered by the respondents for the purposes of promotion from Scale V to Scale VI.

15. Mr. Kakkar submits, at this stage, that the Policy itself has been given a go-by, as the petitioner proceeded to the interview stage, although he secured less than 50% marks in the written test. For this purpose, he draws my attention to the Policy which requires minimum qualifying marks in the interview and in the written test of 50 % for all categories of candidates. First, it may be noted that this contention finds no place in the writ petition. In any event, if at all it appears to be a departure from the Policy, it enured to the benefit of the petitioner, and cannot give the petitioner a vested right to promotion, if he does not meet the criteria for promotion.

16. For the aforesaid reasons, I do not find any grounds to interfere with the impugned order in the exercise of jurisdiction of this Court.

17. The writ petition is, therefore, dismissed.

PRATEEK JALAN, J

JANUARY 8, 2025/ 'pv' /MR/Adhiraj/