

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10304 of 2012

1. Sri Sunil Kumar Singh S/O Late Bindeshwari Prasad Singh R/O P.O.- Pandarak Baba Ghar, District - Patna, Presently Posted As Manager, Allahabad Bank, Belwa, Gulab Bagh, District - Purnea
2. Sri Sanjiva Narayan Singh S/O Late Shayam Narayan Presently Posted As Branch Manager, Allahabad Bank, Matihani Branch, District - Begusarai

... .. Petitioner/s

Versus

1. The Union Of India.
2. Chairman -Cum -Managing Director, Allahabad Bank, Head Office,2, Netaji Subhas Road, Kolkatta
3. General Manager (HR), Allahabad Bank, Head Office,2, Netaji Subhas Road, Kolkatta
4. Assistant General Manager, Allahabad Bank, Devdoot Complex, First Floor, 15, Radha Rani, Sinha Road, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bipin Bihari Singh, Advocate
	:	Mr. Shyama Kant Singh, Advocate
For the Resp. Indian Bank	:	Dr. Binod Kr. Jha, Advocate
	:	Mr. Devendra Prasad, Advocate
For the Union of India	:	Mr. Amish Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 06-05-2024

Office is directed to place on record the supplementary counter affidavit filed on behalf of the respondents no.1 to 4, as the consideration has been made on basis of photostat copy of the said supplementary counter affidavit, having been made available by the learned counsel appearing on behalf of the bank.

2. Heard Mr. Bipin Bihari Singh, along with Mr. Shyama Kant Singh, learned counsels appearing on behalf of the



petitioners; Dr. Binod Kr. Jha along with Mr. Devendra Prasad, learned counsel appearing on behalf of the Respondent Indian Bank and Mr. Amish Kumar, learned counsel appearing on behalf of the Union of India.

3. The petitioners have *inter alia* prayed for following reliefs in the paragraphs No.1 of the writ petition:-

i) For Issuance of Writ in the nature of Mandamus Commanding upon the Respondents Authorities to consider the candidature of the Petitioner in the List of Provisionally Eligible Candidates for On-Line Test for Promotion from MMG Scale-II to SMG Scale-III, for "Mainstream Officers", (Promotion Process 2012-2013) prepared On the basis of Instruction based on Circular No.11901/PA/2012-2013/15 Dated; 19.05.2012, and the abovementioned list was prepared on the basis of recommendation and marks granted on the basis of APAR Report send by the Zonal Office of Allahabad Bank and as per notification the minimum qualified mark in APAR Report should be 60% for appearance in the examination.

ii) For Issuance of Writ in the nature of Mandamus directing the Respondents Authority specially Respondent No.4 i.e. A.G.M Bhagalpur to reconsider the APAR Report of Petitioner and grant marks in the APAR Report as per the eligibility, Criteria affixed and Work done by the Petitioner, Whereas the A.G.M Bhagalpur maliciously granted Petitioner less than 60% marks without considering the outstanding performance of the Petitioner throughout his service Period.

iii) For Quashing the Circular No. 11810/PA/2011-2012/37 Dated; 22.03.2012 and 11897/PA/2012-2013/11 Dated; 19.05.2012, Whereby and Whereunder Officers was required to obtain minimum 60% marks in APA Report for each of the Service required for eligibility for promotion and the aforesaid circular was required to be implemented from retrospective effect, where as in most of the cases the APA report has already been prepared by the respective AGM as according to the previous guideline.

iv) For Granting Stay to the entire process of the Test conducted on the basis of list prepared by the Respondent Authority.

v) For issuance of any other relief or reliefs.

4. Petitioners are aggrieved on account of the fact that in spite of the better service record, their cases were not considered and only on the basis of Annual Performance Appraisal Report (APAR), pertaining to the year 2009-10 to



2011-12, they were disqualified for promotion from MMG Scale II to MMG Scale III.

5. The Allahabad Bank merged into Indian Bank in the year 2020. The petitioners were initially the employees of the Allahabad Bank and were guided by the guidelines for promotion of officers in the Public Sector Banks, as per the guidelines of the Government of India, the Ministry of Finance, the Department of Finance Service. In this regard, Allahabad Bank has issued circular in year 2012 with respect to promotion policy and subsequently *vide* instruction contained in circular dated 24.03.2022, issued vacancy for promotion for MMG Scale II to MMG Scale III, which are as follows:-

- a. Normal Channel/seniority channel.
Total Number of vacancies available was 380.*
- b. Merit Channel/Fast Track – Total
Number of vacancies available was 253.*

6. In this regard, it is relevant to quote paragraph nos. 11 to 14 of the writ petition, which are as follows:-

“11. That it is further relevant to state here that as per the Revised Promotion Policy and Instruction circular No.11866/PA/2011-2012/38 Dated:24.03.2012, total number of vacancies issued for Promotion from MMG Scale II- MMG Scale III were as follows;

- a) Normal Channel/Seniority Channel.- Total number of vacancies available was 380.*



b) Merit Channel/Fast Track- Total number of vacancies available was 253.

12. That it is further relevant to state here that the minimum experience requirement in both the process of promotion were as follows:

a) Normal Channel/Seniority Channel - Total % of vacancies allotted were 60% and minimum experience requirement was of 5 years and maximum permissible relaxation by the Board was of 1 year.

b) Merit Channel/Fast Track- For this Total % of vacancies allotted were 40% and minimum experience requirement was of 3 year and maximum permissible relaxation by the Board was of 1 year.

13. That it is further relevant to state here that for MMG Scale II to MMG Scale III the promotion process in both the manner i.e Normal/Seniority Channel and Merit Fast Track were required to be conducted on the basis of following factors/Parameters, with weightage assigned against each factors as follows:

Factors/parameter: Normal/Seniority Channel Merit/Fast Track

Written on line test 40 40

Performance Appraisal 30 40

(Average APA Marks for Last three years).

Interview 20 20

Educational Qualifications. 10 N.A

Total: 100 100

14. That it is further relevant to state here that the only difference in the required eligibility for the promotion in between Normal/Seniority Channel and Merit/Fast Track were that the Officers should obtain minimum 75% marks in the APA Report for each of the years of service required for eligibility for promotion under Merit Channel/Fast Track. And the same was not a criteria under Normal Seniority Channel and as per clause 10.1 of the Revised Promotion Policy issued vide Instruction circular No.11810/PA/2011-2012/37 Dated;22.03.2012 and further Clause 10.14 of the abovementioned Promotion Policy further states that Officers who fulfill the minimum experience requirement for both



the channels, may submit their applications for consideration in the promotion process under both the channels, and it has been further stated that only such officers will be permitted to participate in the Merit/Fast Track Channel provided that they fulfill the criteria regarding APA marks and if the candidate has not obtained the required APA Marks i.e 75%, then in such conditions the candidates will be allowed to participate in the Normal/Seniority Channel only.”

7. The petitioners had submitted an application along with required documents for Promotion from MMG Scale II to MMG Scale III on 05.04.2012, being eligible to be considered to participate in both the channels of promotion, i.e., normal channel, as well as, seniority – cum – merit/fast-track. Petitioner no.1 had worked in rural areas for 2 years and 2 months, whereas, petitioner no.2 had worked for more than 4 years. A Departmental Instruction was issued on 25.04.2012 for submission of APAR's report by 12.05.2012. In the said circular, it has been further informed that Ministry has stipulated five ratings as per the APAR's, which are as follows:

- | | |
|------------------|------------|
| A. Outstanding | – 90 – 100 |
| B. Very Good | – 75 – 89 |
| C. Good | – 60-74 |
| D. Average | – 40-59 |
| E. Below Average | – below 40 |

8. It has been further clarified that if below average is rated by the Reporting Authority or the Reviewing Authority



or by both then the Appraiser Officer should be advised by the concerned authority in writing about his/her shortcomings in that regard, so that he/she gets an opportunity to improve.

9. Petitioner no.1 was posted as the Branch Manager, Sahebpur Kamal Branch, District – Begusarai and petitioner no.2 was posted as the Branch Manager, Mathani Branch, District – Begusarai and both of the branches were under the Zone- Bhagalpur and reporting officers of the petitioners were the Assistant General Manager, Bhagalpur, who had reported their performance as remarkable for the financial year 2011-12, as would appear from the appreciation letter dated 10.04.2012. In this regard, statement has been made in paragraph no.20 to the writ petition. Vide circular no.11901/PA/2012-13 dated 19.05.2012, the list of officers, who were eligible to appear in an online test for promotion for MMG Scale II to MMG Scale III (For main Stream Officers), was published and the aforesaid list was prepared on the basis of APAR, in which, the names of petitioners were not found. Aggrieved by the same, petitioners made complaint before the Chairman and the Managing Director of the Allahabad Bank, Kolkata, alleging therein that the complaint was made by them against previous Assistant General Manager, who had callous



attitude and had misbehaved with the clients. A similar complaint was also made by the United Forum of Bank Employees to the Chairman and the Managing Director. The petitioners were disqualified to appear in online test, in spite of having remarkable service record. The grievance of the petitioners is that their cases were not considered and only on the basis of APAR, they were disqualified and the same was prepared by the Assistant General Manager, Bhagalpur Zone, who was in inimical terms with the petitioners. The petitioners have not stated in the writ petition, as to, in what manner, the present Management of the Indian Bank has considered their grievance, however, the petitioners have also questioned the legality of the communication dated 29.05.2012, to the fact that the same contains “On scrutiny, it is found that the officers has mentioned in communication have secured less than 60% marks in their APAR, either for the year 2009-10 or 2010-11 and they have become ineligible for participating in the promotion process under merit channel/fast-track and their candidature has been cancelled under Merit channel for current promotion process”.

10. A counter affidavit has been filed on behalf of the respondent bank, in which, there is no denial of the fact and



the statement made in the writ petition, rather, a vague statement has been made therein, only with respect to the fact that, as to why, APAR has not been placed for the year 2009-10 to 2011-12, as the same could not be traced out. The concern of the petitioners is that they have been deprived from the merit channel/fast-track and also after the merger of the Allahabad Bank into the Indian Bank, their case in promotion channel has not been considered, on the basis of APAR for the year 2009-10 to 2011-12.

11. Learned counsel appearing on behalf of the Bank refers to the paragraphs no.6, 8 and 9 of the supplementary counter affidavit, and the same are reproduced hereinafter:

“6. That it is further stated that due to merger of Allahabad Bank into Indian Bank all the records were shifted from Allahabad Bank, Head office Kolkata to Indian Bank Head Office Chennai, As Such the Annual Performance Appraisal Report (APAR) of the Petitioner has been found even after continuous search of the Records as the matter pertaining to the year 2009-10 to 2011-12. The Present Position of the APAR of the Petitioner could not trace out, but after found the records of APAR the same shall be submitted before this H'n'ble Court if required.

8. That it is further stated that in terms of the bank promotion policy officer should obtained minimum 75 % marks in APAR for each year of service records for eligible for promotion under merit Channel/ Fast Track. This criteria has been relaxed by the Government of India Ministry of Finance to 60% marks in APAR in Each Year for only those scale where Passing of the examination conducted by the IBPS (Institute of Banking Personal Selection) is mandatory for promotion only for the Promotion Process for the Year 2012-13. That in view of the said Provision & as Per H.O instruction Circular no 12506/PA 2013 dated 24.6.2013 online tests was held on 2.6.2013 for promotion process from MMG Scale II to



Scale III (For Main Stream officers) and accordingly after due process declared the final result for successful officer of 147 officer in the bank service Vide Notified Circular dated 29.6.2013, in which petitioner name was mentioned in the final selected candidate list at sr no 91 Employees No 14705 at Agwanpur Ranabigha Branch in Patna Zone as a successful selected Candidate.

9. That in view of the above facts and circumstances it is stated that the grievances of the Petitioner has been redressed and he has been promoted in the subsequent year. Hence the present writ application may be disposed off in the light of petitioner has been promoted in the next subsequent year 2013.”

12. In view of the facts and circumstances, it has been stated that grievance of the petitioners has been redressed and they have been promoted in the subsequent year, without considering the penal consequence, which the petitioners have faced for the laches on the part of the respondents.

13. A reliance has been made on behalf of the respondent bank upon an order passed by the Bombay High Court dated 22.06.2012 in the case of **Bank of Maharashtra Officers Organization & Ors. Vs. Union of India and Ors.**

14. This Court is afraid in what manner, the said order can be considered in the case of the petitioners, which relates to before the merger of the Allahabad Bank with the Indian Bank and in that case, the appraisal report was considered, taking into consideration the guidelines relating to the Public Sector Bank, particularly on the point of promotion, wherein it has been stipulated that there should be minimum 75% marks in APAR for each year of service, which was



brought down to 60%. So far as APAR relating to the year 2009-10 and 2011-12, it has been admitted in paragraph no.6 of the supplementary counter affidavit that the same is trace-less and no appraisal can be made to determine whether the petitioners' marks are above 60% or below 60%, based on the APAR report to entitle the petitioners to be either eligible for the promotion during the period they became eligible from the post of MMG Scale II to MMG Scale III, as I have already observed that as a consequence of non-consideration of APAR with respect to the petitioners for the year 2009-10 and 2011-12, which have led to penal consequences and same can not be appreciated.

15. The petitioners, if so advised, may file a detailed representation before the concerned authority, who shall take corrective measures in accordance with the law, considering the fact that APAR for financial year 2009-10 and 2011-12, were not made available, while considering the case of the petitioners, at the same time, the petitioners have been denied due opportunity to appear in the examination, so held, for the said promotional post in terms of online objective test for promotion in Scale III, in view of the revised promotion policy and instruction contained in circular dated 24.03.2012, having become eligible in merit/fast-track channel, for which total



number of vacancies available as on the date of filing of the writ petition was 253.

16. With above observation, the writ petition is disposed of.

(Purnendu Singh, J)

Sanjay/
ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.05.2024
Transmission Date	NA

