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B.V. SIVAIAH AND ORS.

v.

K. ADDANKI BABU AND ORS.

JULY 17, 1998

B

[S.C. AGRAWAL, S.P. BHARUCHA AND B.N. KIRPAL, JJ.]

*Service Law :*

C

*Promotion—Rule prescribing seniority-cum-merit criterion—Authority making promotion, on the basis of officers securing highest marks amongst eligible officers—Challenged—Held, seniority-cum-merit implies prescribing minimum standard for assessing merit and from amongst those fulfilling the minimum standard making promotion on the basis of inter se seniority—Comparative assessment of merit not required—Requirement of interview and assessment of service in Rule cannot be construed as permitting comparative assessment—Principle laid down applied to promotions in different Regional Rural Banks—Regional Rural Banks (Appointment and Promotions of Officers and other Employees) Rules, 1988—Second Schedule, Para 7.*

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E

*Promotion—Employees appointed on same date and having same length of service—Inter se seniority—Determination of—Held, it is determined on the basis of placement in the Select List for appointment—Such determination confers certain rights—Seniority-cum-merit criterion gives effect to such rights flowing from seniority—Select list.*

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*Promotion—Seniority-cum-merit and merit-cum-seniority—Comparison of—Held, seniority-cum-merit lays greater emphasis on seniority and comparative assessment of merit not required, whereas merit-cum-seniority lays greater emphasis on merit and ability and comparative assessment of merit required.*

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*Delay/Laches—Promotion challenged after five years—Persons promoted acquiring certain rights—Held, persons cannot be deprived of such rights—Petition rightly rejected—Constitution of India—Article 226.*

*Words & Phrases—‘Seniority-cum-merit’ & ‘Merit-cum-seniority’—Meaning of in Service Law.*

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**Appellants are the Regional Rural Banks in the States of Andhra**

Pradesh and Madhya Pradesh and Officers promoted by these banks to the post of Area/Senior Manager. "Seniority-cum-merit" was the criterion prescribed for promotion to the post of Area/Senior Manager under the Regional Rural Banks (Appointment & Promotion of Officers and Other employees) Rules, 1988. The various Regional Rural Banks laid down the promotion process according to which selection was to be made on the basis of marks awarded for seniority, qualification, performance, interview, etc. Generally selections were made on the basis of total number of marks obtained and officers who secured highest number of marks were promoted.

The unsuccessful persons challenged the promotions in various writ petitions in the High Courts of Andhra Pradesh and Madhya Pradesh. In the case of Rayalseema Grameena Bank, promotions made on May 3, 1988 were only challenged in 1993 alongwith subsequent promotions to the said post. Single Judge allowed the writ petitions and declared the promotions illegal and improper. Writ petition challenging the promotions made on May 3, 1988 was, however, dismissed on the ground of laches. Against the judgment of the Single Judge, the Regional Rural Banks and the promoted officers preferred appeals in the High Court. Division Bench dismissed the appeals and confirmed the judgement of the Single Judge. The view of both the High Courts was that the method of selection was contrary to the principle of 'seniority-cum-merit' prescribed by the Rules as Seniority had not been given due weight and held that the senior most eligible employee should have been assessed for the minimum required merit for holding the higher post and only on his not being found suitable or fit, his immediate junior could be tested. Aggrieved by the order of the Division Bench, the Regional Rural Banks and the promoted officers have filed the present appeals.

The appellants contended that the criterion of 'seniority-cum-merit' allowed comparative merit to be assessed for the purpose of promotion by placing reliance on Para 7(c) of the Second Schedule to the Rules; that among officers who were appointed on the same date and have the same length of service seniority cannot have any bearing and promotions have to be made on the basis of comparative assessment of merit of such officers; and that though not challenging the promotions made on May 3, 1998 in Rayalseena Grameena Bank in this court, but since subsequently some appellants have also been promoted, the *inter se* seniority on the post of Area/Senior Manager should be restored.

This Court explained the criterion of 'seniority-cum-merit' and applying

A the said criterion to each Regional Rural Bank with regard to its peculiar facts and circumstances.

B **HELD : 1.** In the matter of formulation of a policy for promotion to a higher post, the two competing principles which are taken into account are *inter se* seniority and comparative merit of employees who are eligible for promotion. 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. On the other hand, the criterion of 'seniority-cum-merit' lays greater emphasis on seniority. Comparative assessment of merit is required to be made while applying the criterion of 'merit-cum-seniority' and for 'seniority-cum-merit' no such comparative assessment is required. [789-H; 790-A, D; 791-B]

*Union of India v. Mohan Lal Capoor & Ors.*, [1974] 1 SCR 797, affirmed.

D *Sant Ram Sharma v. State of Rajasthan & Ors.*, [1968] 1 SCR 111, referred to.

*State of Mysore v. C.R. Seshadri & Ors.*, [1974] 3 SCR 87, distinguished.

E 2. While applying the principle of seniority-cum-merit for the purpose of promotion what is required to be considered is *inter se* seniority of the employees who are eligible for consideration. Such seniority is normally determined on the basis of length of service, but as between employees appointed on the same date and having the same length of service, it is generally determined on the basis of placement in the select list for appointment. Such determination of seniority confers certain rights and the principle of seniority-cum-merit gives effect to such rights flowing from seniority. It cannot, therefore, be said that in the matter of promotion on the basis of seniority-cum-merit seniority has no role where the employees eligible for promotion were appointed on the same date and have the same length of service. [794-D-E]

G 3. The criterion of 'seniority-cum-merit' in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit the competent authority can lay down the minimum standard that is required and also prescribe the mode of

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assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit. [794-F-G] A

*State of Kerala & Anr. v. N.M. Thomas & Ors.*, [1976] 1 SCR 906, B followed.

*State of Mysore & Anr. v. Syed Mahmood & Ors.*, [1968] 3 SCR 363, relied on.

*Jagathigowda C.N. & Ors. v. Chairman, Cauvery Gramina Bank & Ors.*, [1996] 9 SCC 677, explained and affirmed. C

*State of Mysore v. C. R. Seshadri & Ors.*, [1974] 3 SCR 87, distinguished.

4. Para 7 (c) of the Second Schedule to the Rule does not lend support to the contention that the criterion of seniority-cum-merit envisaged by the Rule making authority involves assessment of comparative merit for purpose of promotion. The word 'selection' has been used in the sense of selecting an officer for promotion on the basis of the criterion of seniority-cum-merit. The requirement that such selection shall be made on the basis of interview and assessment of performance reports for the preceding three years is consistent with the criterion of seniority-cum-merit and enables an assessment to be made about the minimum necessary merit requisite for efficiency of administration and it cannot be construed as importing assessment of comparative merit of the officers eligible for promotion. D  
[792-B-D] E

5. Since there was no challenge to the promotions made on May 3, 1988 till 1993, the promoted officers had been working for nearly five years by then and had acquired right to seniority on the basis of such promotion and they cannot be deprived of the said right. The High Court has rightly held that the belated challenge to the promotions made on May 3, 1988 cannot be entertained. [798-D-E] F

6. In the facts and circumstances, the appeals filed by the Rayalaseena Grameena Bank, Pinakini Grameena Bank, Baster Kshetriya Gramin Bank, Rewa Sidhi Gramin Bank the officers promoted by these banks are dismissed as selection has not been made by these banks in accordance with the principle of 'seniority-cum-merit' by prescribing minimum standard for H

A assessing the merit. Selection was made by these banks, of officers who secured highest number of marks amongst the eligible officers which virtually amounts to application of the principle of merit-cum- seniority. [801-E]

B 6.1. In the facts and circumstances, the appeal pertaining to Chhindwara-Seoni Kshentriya Gramin Bank succeeds as minimum standard was prescribed by the bank for assessing the merit of the candidates and those who fulfilled the said minimum standard were selected for promotion on the basis of seniority. [804-F-G]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3798 of 1996 Etc. From the Judgment and order dated 23. 9. 94 of the Andhra Pradesh High Court in W.A. No. 422. of 1994

D P.P. Rao, R. Venkat Ramani, S.B. Sanyal, H.S. Garurafa Rao Sr. Adv. , Ms. C.K. Sucharita, R. Santhanakrishnan, G. Nageshwar Reddy, K.R. Nagaraja, Prakash Srivastava, S.K. Kulkarni, Ms. Sangeeta Kumar, Amrendar Sharan, Shree Prakas Shina, Ms. Ambika Pratap Singh, Satish k. Agnihotri, Ms. Yogamaya, Ms. Madhur Dadlani, Sandeep Narian, P. Niroop, S. Murlidhar, G. Prabhakar, Amitabh Verma, Ashok Mathur, Anoop Choudhary, Amarendra Sharan, Ms. Pratibha Jain, A.P. Dhamija, O.P. Gaggar, Pramod Swarup, Shiv Sager Tiwari, T.G. Narayanan Nair and P.R. Ramasesh for the appearing parties.

E The Judgment of the Court was delivered by

S. C. AGRAWAL, J. Leave granted in all Special Petitions.

F What is meant by "seniority - cum-merit", the criterion prescribed for promotion to the post of Area Manager/Senior Manager in the Regional Rural Banks under the Regional Rural Banks (Appointment & Promotions of Officers and Other Employees) Rules, 1988 [hereinafter referred to as 'the Rules'] ? This is the common question which falls for consideration in these appeals.

G The regional Rural Banks have been established under the provisions of the Regional Rural Banks Act, 1976 [hereinafter referred to as 'the Act']. Section 17 of the Act empowers a Regional Rural Bank to appoint such number of officers and other officers as it may consider necessary or desirable, in such manner as may be prescribe, for the efficient performance of its functions and to determine the terms and conditions of their appointment and service. Section 24 of the Act lays down that in the discharge of its functions H a Regional Rural Bank shall be guided by such directions, in regard to matters

of policy involving public interest, as the Central Government may, after consultation with the national Bank for Agricultural and Rural Development [hereinafter referred to as 'the National Bank'], give. Under Section 29 of the Act the Central Government has been empowered to make rules, after consultation with the National Bank and sponsor Bank, for carrying out the provisions of the Act, By clause (ba) of sub-section (2) of section 29, which was inserted by the Regional Rural Banks (Amendment) Act, 1987, the Central Government was empowered to make Rules relating to manner in which the officers and other employees of the Regional Rural Bank shall be appointed. In exercise of the powers conferred under Section 29 read with Section 17 of the Act the Central Government framed the Rules which were published vide Notification dated September 28, 1988.

Rule 3 of the Rules provides that the Board of Directors of each Regional Rural Bank may, in consultation with its sponsor Bank, create such number of posts as are specified in the second schedule to the Rules from time to time. Rule 4 prescribes that the Board of Directors may, in consultation with the sponsor Bank, determine the number of vacancies in each post keeping in view the guidelines issued by the Central Government from time to time. Rule 5 makes provision for filling of vacancies and provides that all vacancies determined under Rule 4 by the Board of Directors shall be filled by deputation, promotion or direct recruitment in accordance with the provisions contained in the Second Schedule to the Rules. With regard the post of Area/Senior Manager the following provision is made in the Second Schedule to the Rules:-

#### **"7. Area Managers or Senior Managers**

- (a) Source of Recruitment : Hundred per cent by promotion from amongst confirmed officers working in the bank. Promotions will be on the basis of seniority-cum-merit. If suitable officers are not available internally, these posts could be filled by taking temporarily officers of the sponsor banks and other banks or organisations on deputation.
- (b) Qualification & Eligibility : ( i) A Graduate of recognized University or any equivalent qualifications recognized as such by Government

A of India, preference being given to Agriculture or Commerce or Economics graduates.

B (ii) Eight years service as an officer in the regional rural bank concerned, provided that the Board may, with the prior approval of National Bank, relax the period of service by a period not exceeding two years, if suitable candidates of requisite experience are not available.

C Note: The post of Area Managers and Senior Managers will be equivalent in rank and will be interchangeable.

(c) Mode of Selection :

D Interview and assessment of performance reports for the preceding three years period as officer for promotion."

E Prior to the making of the Rules appointment on the post of Area/Senior Manager in Regional Rural Banks was governed by circulars issued by the Central Government and the National Bank. By circular dated October 10, 1987 addressed to the Deputy General manager of the National Bank, the Central Government indicated the criterion that was required to be followed in the matter of promotion of Branch Managers to the post of Area Managers/Senior Managers in Regional Rural Banks in the following terms :-

G "..... It is, therefore, requested that the Chairman of all the RRBs may be apprised that since the posts of Area Managers/Senior Managers are promotional posts to be filled up 100% by promotion from only one source, the non-selection rule of seniority cum merit has to be applied. *This rule envisages promotion by seniority with due consideration to minimum merit/fitness prescribed.* Fitness implies that there is nothing against the officer. No disciplinary action is pending against him and none is contemplated. The officer has neither been reprimanded nor any adverse remarks have been conveyed to him in the reasonably recent past. The promotions are meant to be

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made on the above mentioned consideration.”

[emphasis supplied]

In accordance with the said circular the National Bank issued a circular dated December 1, 1987 whereby all the Regional Rural Banks were apprised that the matter relating to the promotion of Branch Managers to the posts of Area/Senior Managers had been examined by it consultation with the Government of India and the Regional Rural Banks were advised as under :-

“The posts of Area Managers/Senior Managers are promotional posts to be filled up by 100% promotion from only one source and non-selection rule of seniority-cum-merit has to be applied. This rule envisages promotion by seniority with due consideration to minimum merit/fitness prescribed. Fitness implies that there is nothing against the officer; no disciplinary action is pending against him and none is contemplated. The officer has neither been reprimanded nor any adverse remarks have been conveyed to him in the reasonably recent past. The promotions are meant to be made on the above mentioned consideration only. In other words, if a manager satisfies the qualifications and eligibility criteria and there is nothing adverse against him, his due promotion should not be denied to him.”

These appeals can be categorised in two groups, viz., the Andhra Pradesh group and the Madhya Pradesh group. The Andhra Pradesh group of appeals are directed against the judgment of the Division Bench of the Andhra Pradesh High Court dated September 23, 1994 in various writ appeals. The Madhya Pradesh group of appeals have been filed against the judgments of the Madhya Pradesh High Court. The main judgment, which has been followed by the said High Court in other cases, is in L.P.A. No. 151 of 1993 and connected matters decided on October 9, 1996. In the impugned judgments, the High Courts of Andhra Pradesh and Madhya Pradesh have taken the view that if “seniority -cum-merit criterion is adopted for the purpose or promotion then first the senior most eligible employee has to be tested to find out whether he possesses the minimum required merit for holding the higher post and only if he is not found suitable or fit, his immediate junior may be tested for the purpose of promotion. The said view has been assailed by the various Regional Rural Banks as well as the promoted officers whose promotions have been set aside by the impugned judgments.

In the matter of formulation of a policy for promotion to a higher post,



A the two competing principles which are taken into account are inter se seniority and comparative merit of employees who are eligible for promotion. In *Sant Ram Sharma v. State of Rajasthan & Ors.*, [1968] 1 SCR 111, this court has pointed out that the principle of seniority ensures absolute objectivity by requiring all promotions to be made entirely on grounds of seniority and that

B if a post falls vacant it is filled by the person who had served longest in the post immediately below. But the seniority system is so objective that it fails to take any account of personal merit. It is fair to every official except the best ones, an official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. The criterion of merit, on the other hand, lays stress on meritorious performance

C irrespective of seniority and even a person, though junior but much more meritorious than his seniors, is selected for promotion. The Court has expressed the view that there should be a correct balance between seniority and merit in a proper promotion policy. The criteria of 'seniority cum-merit' and 'merit-cum-seniority' which take into account seniority as well as merit seek to achieve such a balance.

D 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. In the context of Rule 5(2) of the Indian Administrative Service/Indian Police Service

E (Appointment by promotion) Regulations, 1955 which prescribed that "selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority" *Mathew. J. in Union of India v. Mohan Lal Capoor & Ors.*, [1974] 1 SCR 797, has said :-

F ".... for inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play 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." [p.801]

G Similarly, Beg J. (as the learned Chief Justice then was) has said :-

H "Thus, we think that the correct view, in conformity with the plain meaning of words used in the relevant rules, is that the "entrance" or "inclusion" test for a place on the select list, is competitive and comparative applied to all eligible candidates and not minimal like

pass marks at an examination. The Selection Committee has an unrestricted choice of the best available talent, from amongst eligible candidates, determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority is the governing factor.” [p.817] A

On the other hand, as between the two principles of seniority and merit, the criterion of ‘seniority-cum-merit’ lays greater emphasis on seniority. In *state of Mysore & Anr. v. Syed Mahmood & Ors.*, [1968] 3 SCR 363, while considering Rule 4(3)(b) of the Mysore State Civil Services General Recruitment Rules, 1957 which required promotion to be made by selection on the basis of seniority-cum-merit, this Court has observed that the rule required promotion to be made by selection on the basis of “seniority subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion”. It was pointed out that where the promotion is based on seniority-cum-merit the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted. B C D

In *State of Kerala & Anr. v. N.M. Thomas & Ors.*, [1976] 1 SCR 906, A.N. Ray CJ. has thus explained the criterion of ‘seniority-cum-merit’:-

“With regard to promotion the normal principles are either merit-cum-seniority or seniority-cum-merit. seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority.” [p.930] E

The learned counsel for the Regional Rural Banks and the promoted officers have, however, placed reliance on Para 7(c) of the Second Schedule to the Rules which prescribes that the mode of selection for promotion would be interview and assessment of performance reports for the preceding three years periods and have submitted that under the criterion of ‘seniority-cum-merit’, as prescribed under the Rules, comparative merit has to be assessed for the purpose of promotion. Reliance has been placed on the following observations in *State of Mysore v. C.R. Seshadri & Ors.*, [1974] 3 SCR 87 :- F G

“However, if the criterion for promotion is one of the seniority-cum-merit, comparative merit has to be assessed if length of service is equal or an outstanding junior is available for promotion.” (p. 89)

The learned counsel for the Regional Rural Banks and the promoted H

A officers have also placed reliance on the decision of this Court in *Jagathigowda, C.N. & Ors. v. Chairman, Cauvery Gramina Bank & Ors.*, [1996] 9 SCC 677.

Para 7(c) of the Second Schedule to the Rules does not, in our opinion, lend support to the contention that the criterion of seniority-cum-merit envisaged by the Rule making authority involves assessment of comparative merit for the purpose of promotion. The word “selection” has been used in the sense of selecting an officer for promotion on the basis of the criterion of seniority-cum-merit. The requirement that such selection shall be made on the basis of interview and assessment of performance reports for the preceding three years is consistent with the criterion of seniority-cum-merit as explained in the state of *Kerala & Anr. v. N.M. Thomas & Ors.*, (supra) that “given the necessary merit requisite for efficiency of administration” the senior though the less meritorious shall have priority. The said mode enables an assessment to be made about the minimum necessary merit requisite for efficiency of administration and it cannot be construed as importing assessment of comparative merit of the officers eligible for promotion.

D In *C.R. Seshadri* (supra) the Court was considering the question whether the High Court could have given a direction to the State to give to the respondent therein notional promotion to the post of Deputy Secretary with effect from the date on which his junior secured such promotion. This Court said that such a direction could not be given by the High Court because promotion of a government servant was basically in government’s discretionary power and that in the absence of positive proof of the relevant service rules it was hazardous to assume that by efflux of time the respondent would have spiralled upto Deputy Secretaryship and that the proper direction could only be that government would reconsider the case of the respondent afresh for purpose of notional promotion. In that context, this Court pointed out that if the rule of promotion is one of ‘sheer seniority’ it may well be that promotion is a matter of course and that if seniority-cum-merit is the rule, promotion is problematical. Since the relevant rule governing promotion to the post of Deputy Secretary had not been placed before it, the Court was not required to define the criterion of ‘seniority-cum-merit’ and to delineate the fine distinction between the criterion of ‘seniority-cum-merit’ and the criterion of ‘merit-cum-seniority’ in the matter of promotion. In the observations on which reliance has been placed by the learned counsel for the Rural Banks and the promoted officers the distinction between ‘seniority-cum-merit’ and ‘merit-cum-seniority’ has been obliterated and both the criterion have been equated. Since comparative assessment of merit is required to be made while

applying the criterion of 'merit-cum-seniority' and for 'seniority-cum-merit' no such comparative assessment is required, the aforementioned observations in the case of *C.R. Seshadri* (supra) on which reliance has been placed cannot be regarded as correctly reflecting as to what is meant by the criterion of 'seniority-cum-merit'. A

In *Jagathigowda, C.N.* (supra) this Court was dealing with promotion made to the post of senior Manager in a rural bank which promotion was made prior to the Rules and was governed by circulars of the National Bank dated December 31, 1984 and April 7, 1986. Circular dated December 31, 1984 provided that promotion to the post of Area Manager/Senior Manager should be on the basis of seniority-cum-merit. By circular dated April 7, 1986 it was prescribed that selection of the eligible candidates should be based on performance of respective candidates in the bank to be assessed by a Staff Selection Committee after interviewing the candidates. The selection was made by the selection Committee after calling the eligible officers for interview in accordance with their seniority and in the interview the marks were awarded according to the performance appraisal forms. The officers who obtained 85 marks out of 150 were shortlisted for promotion. The performance appraisal comprised of matters such as dimension of work, general intelligence, job knowledge, initiative and resourcefulness etc. The service record of the officers who assailed the promotion before the High Court was adverse. In the judgment under appeal the High Court had set aside the promotion on the ground that service record of the recent past should have been taken into consideration and in case there was nothing adverse against an officer he could not be denied promotion on the ground that some other junior to him was more meritorious and that promotions were made on the basis of selection inasmuch as marks were assigned on the basis of performance appraisal and interview. The said judgment of the High Court was reversed by this Court. It was observed that the circular dated April 7, 1986 issued by the National Bank specifically provided that 'the selection of the eligible candidates should be based on performance of respective candidates in the bank'. It was held that the High Court was not justified in holding that the performance appraisal could not be taken into consideration while considering the officers for promotion to the higher rank. It was also observed that "while making promotion on the basis of seniority-cum-merit the totality of the service record of the officer concerned has to be taken into consideration". This judgment, in our opinion, does not make a departure from the law laid down by this Court in the earlier judgments explaining the criterion of 'seniority-cum-merit' because in this case the selection had been made by taking into B  
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- A account the seniority as well as performance and performance was appraised by assigning marks on the basis of performance appraisal and interview. Those who secured 85 marks out of 150 marks were shortlisted for promotion which shows that securing 85 marks out of 150 marks was treated as the minimum standard of merit for purposes of promotion and those who satisfied the said minimum standard were selected for promotion on the basis of seniority.

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- On behalf of the promoted officers it was urged that for the purpose of promotion on the basis of seniority-cum-merit, seniority means the length of service and that among officers who were appointed on the same date and have the same length of service seniority can have no bearing and promotion has to be made on a comparative assessment of merit of such officers. We are unable to agree. While applying the principle of seniority-cum-merit for the purpose of promotion what is required to be considered is inter se seniority of the employees who are eligible for consideration. Such seniority is normally determined on the basis of length of service, but as between employees appointed on the same date and having the same length of service, but as between employees appointed on the same date and having the same length of service, it is generally determined on the basis of placement in the select list for appointment. Such determination of seniority confers certain rights and the principle of seniority-cum-merit gives effect to the such rights flowing from seniority. It cannot, therefore, be said that in the matter of promotion on the basis of seniority-cum-merit seniority has no role where the employees eligible for promotion were appointed on the same date and have the same length of service.

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- We thus arrive at the conclusion that the criterion of 'seniority-cum-merit' in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.

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- We may now examine whether the aforesaid criterion has been correctly followed by the concerned Banks in making the impugned promotions. We

will first take up the Andhra Pradesh group of appeals which have been field A  
against the judgment of the Andhra Pradesh High Court dated September 23,  
1994. These appeals relate to two banks, namely, the Rayalaseema Grameena  
Bank and the Pinakini Grameena Bank. It Would be convenient to deal with  
the appeals relating to each bank separately.

*Rayalaseema Grameena Bank* :- In March 1988 the Rayalaseema B  
Grameena Bank decided to create four posts of senior Managers and four  
posts of Area Managers. The Senior Managers work in the office whereas the  
Area Managers work in the field. By circular dated March 3, 1988 the Board  
of Directors of the Rayalaseema Grameena Bank laid down the following  
promotion process:- C

“(A) ELIGIBILITY :- The Officers who have put in 8 (Eight) years of  
service in the Bank in the cadre of branch Manager as on 31-  
12-1987 are eligible to be considered for the promotion process.

(B) MODALITIES : D

(a) Seniority - 45 marks (0.5 marks for each completed  
month of service over and above  
the minimum qualifying service)

(b) Qualif-ication - 5 marks (Minimum qualification applicable E  
to the cadre shall not be reckoned)

Post Graduation	- 1 mark
Diploma/s	- 1 mark
CAIIB - Part I	- 1 mark
CAIIB - Part II	- 2 Marks

(c) Leave - record - 5 marks F

(d) Interview - 30 marks

(e) Performance - 65 marks

02. These promotions will be effective from 1st May, 1988.

03. The eligible candidates will be called for the interview directly G  
(candidates need not submit any application in this regard)”

Following the said promotion process eight Branch managers were promoted  
with effect from May 1, 1988 in proceedings dated May 3, 1988. The Branch  
Managers who were promoted as Area/Senior Managers on May 3, 1988 H

- A assumed office and their promotions were not questioned by any employee at that time.

After the Rules framed by the Central Government vide Notification dated September 28, 1988 came into force the Rayalaseema Grameena Bank, in September 1989, decided to create five posts of Area/senior Managers and, by circular dated September 27, 1989, formulated the following promotion process for filling up of these five posts: -

“1. ELIGIBILITY :

- C All the Officer (Branch Managers) who have joined the service of the Bank on or before 1-4-1981 are eligible to be considered for the promotion process.

2. MODALITIES :

- D (a) Seniority - 34 marks ( 0.75 mark for each completed month of service over and above the minimum qualifying service)

- (b) Qualifications - 10 marks (Minimum qualification applicable to the cadre shall not be reckoned)

- E Post Graduation - 3 marks  
Double Graduation - 1 mark  
(like BL, LLB, B.ED.)

- Any Diploma/s. - 2 marks  
CAIIB - Part I - 2 marks  
F CAIIB - Part II - 2 marks

- (c) Interview - 20 marks

- (d) Performance - 56 marks

- G All the eligible candidates will be called for the interview directly. (Candidates need not submit any applications in this regard).”

- H Following that process, five Branch managers were promoted -two as Area Managers and three as Senior managers - in the proceedings dated December 1, 1989.

Promotions made in the proceedings dated December 1, 1989 were challenged before the Andhra Pradesh High Court by one K.V.T. Prasanna Kumar (by filing Writ Petition No. 17263 of 1989 on December 11, 1989), G. Anantha Raju, P. Sainath Reddy and C. Vijayakumar Reddy (by filing Writ Petition No. 17279 of 1989 on December 12, 1989) and P.V. Krishna Murthy (by filing Writ Petition No. 3546 of 1990 on February 16, 1990). During the pendency of the said writ petitions P.V. Krishna Murthy filed another Writ Petition (Writ Petition No. 9692 of 1993) on July 13, 1993 in the High Court wherein he assailed the promotions made on May 3, 1988 but none of the candidates promoted during the year 1988 to the posts of Area/Senior Manager was impleaded as party respondent. All the four Writ Petitions were heard together by a learned single judge of the High Court who, by his judgment dated September 7, 1993, allowed Writ Petitions Nos. 17263 and 17279 of 1989 and 3546 of 1990 and declared that the promotions made on December 1, 1989 to the post of Area/Senior managers from the post of Branch Manager in the Rayalaseema Grameena Bank were illegal and improper. Writ petition No. 9692 of 1993 filed by P.V. Krishna Murthy, in which the promotions made on May 3, 1988 were assailed, was, however, dismissed on the ground of laches. Against the said judgement of the learned single judge Writ Appeals Nos. 1242 of 1993, 1232 of 1993 and 1238 of 1993 were filed by the Chairman, Rayalaseema Grameena Bank, and Writ Appeals Nos. 1233 of 1993 and 1234 of 1993 were filed by the five Branch Managers whose promotions as Area/Senior Managers made on December 1, 1989 had been quashed by the learned single Judge. Writ Appeals Nos. 1142 of 1993 and 1224 of 1993 were filed by P.V. Krishnamurthy, the petitioner in Writ Petition No. 3546 of 1990 and Writ Petition No. 9692 of 1993 and Writ Appeal No. 1210 of 1993 was filed by two of the petitioners in Writ Petition No. 17279 of 1989. These appeals related to the promotions made on May 3, 1988.

In Writ Appeal No. 1142 of 1993 a contention was raised that the promotions made on May 3, 1988 had been questioned in Writ Petition No. 17263 of 1989. The said contention was rejected by the Division Bench of the High Court and it was observed that the prayer in the said writ petition was clear and categorical and no relief was sought for in respect of the promotions made on May 3, 1988. In Writ Appeal No. 1210 of 1993 an application was made seeking amendment of the prayer in Writ Petition No. 17279 of 1989 to challenge the promotions made on May 3, 1988 but the said application was rejected by the learned judges on the Division Bench of the High Court. As regards challenge to the validity of promotions made on May 3, 1988 the learned judges held that Writ Petition No. 9692 of 1993 had been filed after



- A a lapse of about four years after the promotions were effected in the year 1988 and the conduct of the writ petitioners in keeping quiet and submitting themselves to the promotion process undertaken by the Bank for filling up the posts in the 1989 disentitled them to seek relief in respect of promotions made in the year 1988 inasmuch as some rights had accrued in favour of the employees promoted on May 3, 1988 and if their promotions were to be set
- B aside subsequent to the promotions made on December 1, 1989 it would cause them irreparable loss. The learned judges on the Division Bench of the High Court, therefore, dismissed Writ Appeal Nos. 1142 of 1993, 1224 of 1993 and 1210 of 1993. Civil Appeals Nos. 3804-3808 of 1996 have been filed against that part of the judgment of the High Court relating to the promotions made on May 3, 1988.
- C

- The learned counsel for the appellants in these appeals has submitted that now the appellants do not challenge the promotions that were made on May 3, 1988 since they have also been promoted as Area/Senior Managers and they are only raising the question regarding restoration of the inter se seniority of the appellants and the promoted officers on the post of Area/Senior Manager. We do not find any merit in this contention. Since there was no challenge to the promotions made on May 3, 1988 till 1993, the promoted officers had been working for nearly five years by then and had acquired right to seniority on the basis of such promotion and they cannot be deprived of the said right. The High court, in our opinion, has rightly held that the belated
- D challenge to the promotions made on May 3, 1988 raised by the appellants in these appeals cannot be entertained. Civil Appeals Nos. 3804-3808 of 1996 are, therefore, liable to be dismissed.
- E

- Writ Appeals Nos. 1242 of 1993, 1232 of 1993 and 1238 of 1993 filed by the Rayalaseema Grameena Bank and Writ Appeals Nos. 1233 of 1993 and
- F 1234 of 1993 filed by the five Branch Managers who were promoted as Area/Senior Managers on the basis of proceedings dated December 1, 1989 were dismissed by the Division bench of the High Court on the view that the Bank had considered the cases of all the eligible officers for promotion to the posts of Area/Senior Managers and only those who secured highest number of marks amongst them were ultimately promoted and that this method of selection
- G is contrary to the principle of 'seniority-cum-merit'. Civil Appeals Nos. 3799-3803 of 1996 have been filed by the Rayalaseema Grameena Bank, while Civil Appeals Nos. 3811-3812 of 1996 have been filed by five Branch Managers who have been promoted as Area/Senior managers in the proceeding on December 1, 1989 against this part of the judgment of the High Court.

- H Having heard the learned counsel for the Rayalaseema Grameena Bank

as well as five Branch Managers who had been promoted as Area/Senior Managers in the proceeding on December 1, 1989, we find that no case is made out for interference with the said view of the High Court. The promotion process laid down by the Rayalaseema Grameena Bank in its circular dated September 27, 1989, on the basis of which the selection for promotion had been made on December 1, 1989, sets apart 34 marks for seniority, 10 marks for qualifications, 20 marks for interview and 56 marks for performance which shows that out of a total number of 120 marks the maximum number of marks that could be awarded for seniority is 34 and that 0.75 mark was to be given for each completed month of service over and above the minimum qualifying service. In other words, if two persons are appointed on the same day, the same number of marks had to be awarded for seniority. Moreover, out of a total number of 120 marks more than 50% marks were set apart for interview and performance. The High Court has found that only those officers who had secured the highest number of marks were ultimately promoted. It is not a case where minimum qualifying marks are prescribed for assessment of performance and merit and those who secure the prescribed minimum qualifying marks are selected for promotion on the basis of seniority. In the circumstances, it must be held that the High Court has rightly come to the conclusion that the mode of selection that was in fact employed was contrary to the principle of 'seniority-cum-merit' laid down in the Rules. Civil Appeals Nos. 3799-3803 of 1996 filed by the Rayalaseema Grameena Bank as well as Civil Appeals Nos. 3811-3812 of 1996 filed by the promoted officers are, therefore, liable to be dismissed.

**PINAKINI GRAMEENA BANK :-** On February 19, 1992 the Board of Directors of the Pinakini Grameena Bank decided to create two posts of Area Managers and four posts of Senior Managers. The Board formulated the promotion policy and communicated it to all the branches through its circular No. 37/PSD/13/92 dated March 16, 1992 which laid down the following promotion process :-

**"ELIGIBILITY :** The officers (managers) who have completed 8 years of service as on 31.03.1992 are eligible for considering the promotion to Area/Senior Manager posts.

**WEIGHTAGE OF MARKS :**

(a) Seniority : 55 marks

Officers (Managers) who have

A	completed 8 years of service as per SSR of the Bank.	
	(b) For passing CAIIB Part - I	: 2 marks
	CAIIB Part - II	: 3 marks
	(c) Performance	: 25 marks
B	(d) Interview	: 15 marks
	Total	<u>100 marks</u>

C Further, we observe that many of the Officers (Managers) have not submitted the performance appraisals for the years 1989, 1990 and 1991 to assess their performance. Such officers are advised to submit the performance appraisals so as to reach HO:PSD on or before 31.03.1992. Otherwise, we will be constrained to assess their performance based on the information available with us.

D A Committee is constituted for the purpose of conducting interview as per Government of India guidelines.

The dates of interview will be intimated to the candidates individually, in due course."

E In the proceeding held on April 20, 1992 five Branch Managers were promoted as Area/Senior Managers. Three Branch Managers, namely, K. Addanki Babu, P. Raghava Rao and V.C. Krishna Prasad filed Writ Petition No. 5204 of 1992 in Andhra Pradesh High Court wherein they challenged the order dated April 20, 1992 regarding the promotion of the said five Branch Managers as Area/Senior Managers. The said Writ Petition was allowed by the learned single judge by his judgment dated December 17, 1993 wherein he followed the earlier judgement of the learned single Judge dated September 7, 1993 given in the Writ Petitions relating to the Rayalaseema Grameena Bank. Writ Appeal No. 417 of 1994 was filed by the Pinakini Grameena Bank, while Writ Appeal No. 422 of 1994 was filed by the promoted officers whose promotions were set aside by the judgment of the learned single Judge. Both these

G appeals have been dismissed by the Division Bench of the High Court. The learned Judges have pointed out that the cases of all officers eligible for promotion to the posts of Area/Senior Managers were considered and only those who secured highest number of marks amongst them were ultimately promoted and that this method of selection is contrary to the principle of

H 'seniority-cum-merit'. Civil Appeal Nos. 3809-3810 of 1996 have been filed by

the Chairman, the Pinakini Grameena Bank, while Civil Appeal No. 3798 of 1996 has been filed by the promoted officers against that part of the judgment of the High Court. A

From the circular dated March 16, 1992 laying down the promotion process it is evident that selection was to be made on the basis of marks to be awarded by the Selection Committee and that out of total number of 100 marks, 55 marks were to be awarded for seniority while 25 marks were assigned for performance and 15 marks for interview. There was no indication in the said circular as to how 55 marks for seniority were to be given to the Branch Managers who were eligible for consideration for promotion on March 31, 1992. The said circular did not prescribe minimum qualifying marks for assessment of performance and merit on the basis of which an officer would be considered for being selected and, as pointed out by the High Court, the selection was made of only those officers who secured highest number of marks amongst the eligible officers. In the circumstances, the High Court, in our view, has rightly held that this method of selection was contrary to the principle of 'seniority-cum-merit' and it virtually amounts to the application of the principle of 'merit-cum-seniority'. We, therefore, do not find any merit in Civil Appeal Nos. 3809-3810 of 1996 and 3798 of 1996 and the same are also liable to be dismissed. B C D

We would now take up the Madhya Pradesh group of appeals which relate to three banks, namely, Bastar Kshetriya Gramin Bank, Rewa Sidhi Gramin Bank and Chhindwara-Seoni Kshetriya Gramin Bank. The appeals relating to these banks are also being dealt with separately. E

*Baster Kshetriya Gramin Bank:* - Selection process for the purpose of promotion to the post of Area Manager/Senior Manager in the Baster Kshetriya Gramin Bank was contained in the circular dated February 16, 1993. The said selection was made on the basis of interview of all the eligible officers by the Staff Selection Committee as per the Rules and a select list of five persons was prepared and on the basis of the said select list promotions were made. F G The said promotions were challenged by three officers who, though senior, were not promoted, by filing Writ Petition Nos. 43 and 45 of 1993 in the Madhya Pradesh High Court. The said Writ Petitions were allowed by the learned single Judge by judgment dated July 24, 1996 on the view that where Rules prescribed promotion on the basis of 'seniority-cum-merit' then seniority H

- A has to be given due place and merely because a person has a better merit, he cannot be promoted over and above the person senior to him unless he lacks in qualification or is otherwise found to be unfit, i.e., there is nothing against him, and that this was not the position in the instant case and that the concept of seniority had been given no weightage in this case. Letters
- B Patent Appeals (L.P.A. Nos. 150 and 152 of 1996) filed against the said judgment of the learned single Judge were dismissed by the Division Bench of the High Court by the impugned judgment dated October 9, 1996. The learned Judges on the Division Bench have found that the Bank has given weightage to merit first and second place has been given to seniority and that
- C this shows that the Selection Committee has acted contrary to the principles prescribed under the Rules and that the selections be made by way of merit-cum-seniority and not by way of seniority-cum-merit as required by the Rules. Civil Appeals arising out of Special Leave Petition (C) No. 17780-81 of 1997 have been filed against the said judgment of the High Court by the promoted officers whose promotion has been quashed by the High Court.
- D

- We have heard the learned counsel for the appellants. It is not disputed that the selection was made on the basis of marks assigned on the basis of interview by the Selection Committee and those who secured the highest marks were selected. The selection process adopted for the purpose of
- E promotion to the post of Area Manager/Senior Managers was thus not in consonance with the principle of 'seniority-cum -merit' and the promotions were not made in accordance with the Rules. Civil Appeals arising out of Special Leave Petition (C) No. 17780-81 of 1997 are, therefore, liable to be dismissed.

- F *Rewa Sidhi Gramin Bank* : - On February 2, 1989 the Chairman of the Rewa Sidhi Gramin Bank issued the promotion policy for promotion of Field Supervisors and Officers of the bank to the higher posts. In paragraph 2.3 of the said policy it was prescribed that promotion from "Officer to Area/Senior Manager, subject to satisfaction of minimum period of service, shall be, at
- G present, on the basis of assessment of his overall performance based on appraisal reports on him and his potentiality to shoulder higher responsibilities assessed in the interview, duly supplemented by weightages for seniority, job responsibility, placement/posting/mobility". With regard to promotion from Officer to Area/Senior Manager the following promotion criteria were laid
- H down:

Promotion	Percentage Weightage				
	Seniority	Job responsibility	Placement/posting/mobility	Performance	Interview
Officer to Area/ Senior Manager	15	12	8	40	25

As regards weightage for seniority it was provided in Paragraph 2.4 that one mark for each completed year of service in the respective cadre/post, subject to a maximum of 15 marks in respect of promotion from Officer to Area/Senior Manager would be given. It was further laid down:-

“2.9. Candidates who have secured less than 40% marks in interview will not be considered for promotion and their names will not be included in the final merit list.

2.10 . The list of successful candidates *in the order of total marks obtained* will be placed by the staff selection committee before the Board, duly recommended for consideration for appointment or promotion.” (emphasis supplied)

In accordance with the aforesaid promotion policy selection was made for promotion to the post of Area/Senior Manager in the Bank and the selected officers were appointed as Area/Senior Managers vide order dated May 17, 1989. The said selection and appointment was challenged before the Madhya Pradesh High Court by officers who were not selected by filing Writ Petitions (M.P. Nos. 2268 of 1990 and 1937 of 1990). The said writ petitions were allowed by the learned single Judge by judgment dated June 2, 1997. Letters Patent Appeals Nos. 91 and 92 of 1997 filed against the said judgment of the learned single Judge were dismissed by the Division Bench of the High Court by judgment dated September 5, 1997. Civil Appeals arising out of Special Leave Petition (C) Nos. 19965-19966 of 1997 have been filed against the said judgment of the Division Bench of the High Court. The Division Bench of the High Court has followed its earlier judgment dated July 4, 1994 in L.P.A. No. 120 of 1997 which judgment was based on the earlier judgment dated October 9, 1996 passed in L.P.A. No. 151 of 1996 and other connected matters. Civil Appeals arising out of Special Leave Petition (C) Nos. 17780-81 of 1997 filed against the judgment dated October 9, 1996 have been dismissed. For the same reasons, Civil Appeals arising out of Special Leave Petition (C) Nos. 19965-19966 of 1997 are also liable to be dismissed inasmuch

- A as according to the promotion policy dated February 2, 1989 selection was made on the basis of total number of marks obtained by the eligible candidates. The criterion of the promotion policy cannot be regarded as being in consonance with the principle of 'seniority-cum-merit' as prescribed under the Rules. Civil Appeals arising out of Special Leave Petition (C) Nos. 19965-19966 of 1997 are, therefore, dismissed.
- B

- Chhindwara - Seoni Kshetriya Gramin Bank* : By order dated April 8, 1993 promotions were made to the post of Area/Senior Manager in the Chhindwara -Seoni Kshetriya Gramin Bank on the basis of the recommendations made by a Selection Committee. The said recommendations were made on the basis of marks awarded after interview and assessment of the performance of the candidates eligible for promotion. The said promotions were challenged before the Madhya Pradesh High Court by filing a Writ Petition (M.P. No. 1931 of 1993) which has been allowed by the learned single Judge by his judgment dated February 7, 1997 in view of the earlier judgment dated July 24, 1996 passed in M.P. No. 943 of 1993. The said judgment was based on the judgment of the Division Bench of the High Court in L.P.A. No. 151 of 1996. Civil Appeal arising out of Special Leave Petition (C) No. 7321 of 1997 has been filed by one of the promoted officers against the said judgment of the learned single Judge of the High Court.
- C
- D

- E During the course of hearing of the appeal the learned counsel for the respondent - Bank has placed before us the relevant documents relating to the impugned selection and promotion. On a perusal of the said documents we find that 50 marks out of the total of 100 marks were prescribed as the minimum qualifying marks for interview and only those who had obtained the qualifying marks in interview were selected for promotion on the basis of seniority. It was, therefore, a case where a minimum standard was prescribed for assessing the merit of the candidates and those who fulfilled the said minimum standard were selected for promotion on the basis of seniority. In the circumstances, it cannot be said that the selection has not been made in accordance with the principle of 'seniority-cum-merit'. We are, therefore, unable to uphold the impugned judgment of the High Court. The appeal has to be allowed and the impugned judgment of the High Court dated February 7, 1997 passed by the learned single Judge of the High Court has to be set aside and the promotion of the appellant on the post of Area/Senior Manager under order dated April 8, 1993 has to be affirmed.
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In the result, Civil Appeal Nos. 3798 of 1996, 3809-3810 of 1996, 3799- A  
3803 of 1996, 3811-3812 of 1996, 3804-3808 of 1996 and Civil Appeals arising  
out of Special Leave Petition (C) Nos. 17780-17781 of 1997 and 19965-19966  
of 1997 are dismissed. Civil Appeal arising out of Special Leave Petition (C)  
No. 7321 of 1997 is allowed and the judgment of the Madhya Pradesh High  
Court dated February 7, 1997 in M.P. No. 1931 of 1993 is set aside and the B  
said writ petition is dismissed. No order as to costs.

V.S.S.

Appeal dismissed.