

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.2659 OF 2011

Haryana State Warehousing Corporation ... Petitioner

Vs.

Jagat Ram & Anr. ... Respondents

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.451 OF 2011

Ram Kumar ... Petitioner

Vs.

Jagat Ram & Anr. ... Respondents

J U D G M E N T

ALTAMAS KABIR, J.

1. Two Special Leave Petitions have been filed against the judgment and order dated 11th October,

2010, passed by the Division Bench of the Punjab & Haryana High Court in L.P.A. No.490 of 2010, setting aside the promotion granted to the Petitioner in Special Leave Petition (Civil) No.451 of 2011. While Special Leave Petition (Civil) No.451 of 2011 has been filed by Ram Kumar, the Respondent No.3 before the High Court, setting aside his promotion to the post of Assistant Manager (Administration) in the Haryana State Warehousing Corporation, Special Leave Petition (Civil) No.2659 of 2011 has been filed by the Warehousing Corporation challenging the same order.

2. The facts briefly stated disclose that the Haryana State Warehousing Corporation, hereinafter referred to as "the Corporation", framed its Rules and Regulations known as the Haryana Warehousing Corporation (Officers & Staff) Regulations, 1994, hereinafter referred to as "the 1994 Regulations" in exercise of the powers conferred by Section 42

of the Housing Corporation Act, 1962, with the previous sanction of the State Government. Regulation 8 of the 1994 Regulations deals with promotions in the Corporation. Regulation 8(2) of the 1994 Regulations provides as follows :-

"8(2). All promotions unless otherwise provided, shall be made on seniority-cum-merit basis and seniority alone shall not confer any right to such promotions."

3. The Respondent No.3, Ram Kumar, was promoted to the post of Assistant Manager (Administration) in the Corporation on account of his excellent service record in comparison to that of Jagat Ram, who is Respondent No.1 in both the Special Leave Petitions. Challenging the said decision, Jagat Ram filed a Writ Petition before the Punjab & Haryana High Court on 17.11.2009. The learned Single Judge dismissed the Writ Petition filed by Jagat Ram after taking into consideration the service records of both Jagat Ram and Ram Kumar and upon holding that the service record of Ram Kumar

was superior to that of Jagat Ram and that the Corporation had not committed any error in granting promotion to Ram Kumar.

4. Against the order of the learned Single Judge, Jagat Ram filed a Letters Patent Appeal, being 490 of 2010, before the Division Bench of the Punjab & Haryana High Court, which was allowed. The Division Bench while allowing the Letters Patent Appeal filed by Jagat Ram held that although promotion to the post of Assistant Manager (Administration) is to be effected on the basis of seniority-cum-merit and not seniority alone, the promotion given to Ram Kumar was based on his gradings and on a comparative assessment of his merit as against the merit of the Respondent No.1, Jagat Ram. The Division Bench further held that since the criterion for promotion to the post of Assistant Manager (Administration) was seniority-cum-merit and not merit-cum-seniority, the

promotion given to Ram Kumar was not sustainable since such promotion had been made predominantly on the principle of merit, in contravention of the provisions of the Regulations. The Division Bench directed the concerned Respondents to redo the exercise for promotion to the post of Assistant Manager in accordance with the provisions of the Regulations in force.

5. Appearing for the Special Leave Petitioner in Special Leave Petition (Civil) No.451 of 2011, Mr. D.P. Mukherjee, learned Advocate, contended that the Division Bench of the High Court had misunderstood and consequently misapplied the regulation governing appointments on the ground of seniority-cum-merit, particularly, since it provided that seniority alone could not confer right to promotions on the basis of seniority-cum-merit. Mr. Mukherjee submitted that if it was only a question of seniority-cum-merit, then the

reasoning of the Division Bench may have been acceptable. However, such not being the case and a stipulation having been made that seniority alone would not govern promotions on the basis of seniority-cum-merit, the Division Bench of the High Court had erred in giving emphasis to seniority when the Petitioner, Ram Kumar, possesses far superior qualifications than the Respondent No.1, Jagat Ram.

6. Mr. Mukherjee urged that on account of the addition of the expression "seniority alone would not confer right to promotion", it must be understood that merit would also require consideration for the purpose of granting promotion, even on the basis of seniority-cum-merit. Mr. Mukherjee urged that since Ram Kumar had been assessed as "outstanding" over 10 years, while Jagat Ram had been assessed "outstanding" only for one year, it was in keeping with

Regulation 8 of the 1994 Regulations that Ram Kumar had been preferred to Jagat Ram. In support of his submissions, Mr. Mukherjee referred to the decision of this Court in Jagathigowda C.N. & Ors. Vs. Chairman, Cauvery Gramina Bank & Ors. [(1996) 9 SCC 677], in which this Court held that while granting promotion on the basis of seniority-cum-merit, the totality of the service record of the eligible candidates had to be considered and consequently since Ram Kumar had superior credentials in comparison to Jagat Ram, he had been rightly promoted to the post of Assistant Manager and the judgment and order of the Division Bench was erroneous and was liable to be set aside and that of the learned Single Judge was liable to be sustained.

7. The same stand was taken on behalf of the Corporation in Special Leave Petition (Civil) No.2659 of 2011 and it was urged by Mr. Alok

Sangwan, learned Advocate, appearing for the Corporation, that the promotion of Ram Kumar had been effected in accordance with Regulation 8(2) of the 1994 Regulations and while considering the seniority of the eligible candidates, the Corporation had given effect to the second part of the Regulation which categorically indicated that seniority alone would not be the criteria for promotion. Mr. Sangwan also urged that the order of the Division Bench of the High Court was liable to be set aside.

8. The submissions made by Mr. D.P. Mukherjee and Mr. Alok Sangwan were opposed on behalf of the Respondent No.1 in both the Special Leave Petitions, Jagat Ram, and it was urged by Mrs. Kanwaljit Kochar, learned Advocate, that the Division Bench had rightly interpreted the principle in relation to promotions made on the basis of seniority-cum-merit. Mrs. Kochar submitted

that if merit was to play a larger role than seniority in effecting such promotions, then the procedure to be adopted would have been merit-cum-seniority and not seniority-cum-merit. According to her, the decision in Jagathigowda C.N.'s case (supra) does not really help the case of the Petitioners since this Court had merely indicated in the facts of that case, based on the NABARD Circular dated 7.4.1986, that the selection of the eligible candidates should be based on performance of the respective candidates in the Bank. It was further observed that the instructions of NABARD being in the nature of guidelines, the promotions made by the Bank could not be set aside unless the same were arbitrary and unfair.

9. The law relating to promotions to be granted on the basis of seniority-cum-merit has been settled by this Court in various decisions, including the case of the State of Mysore vs. Syed Mahmood [AIR

1968 SC 1113], wherein it was observed that when promotion is to be made by selection on the basis of seniority-cum-merit i.e. seniority subject to the fitness of the candidates to discharge the duties of the post from amongst any person eligible for promotion, the State Government had erred in promoting juniors ranking below the candidates in order of seniority and that such promotions were irregular. Of course, the question posed in these Special Leave Petitions gives rise to another question regarding the latter part of Regulation 8(2) of the 1994 Regulations which indicates that seniority alone would not confer any right to be promoted. In that regard, this Court held in the above-mentioned case 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. 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.

10. That principle has been followed ever since and was reiterated by a Three-Judge Bench of this Court in the case of B.V. Sivaiah & Ors. Vs. K. Addanki Babu & Ors. [(1998) 6 SCC 720], wherein the criterion for promotion on the basis of seniority-cum-merit fell for consideration with regard to the same-day appointees. It was held that seniority-cum-merit in the matter of promotion contemplates that given the minimum necessary merit requisite for efficiency of administration, a senior candidate, even though less meritorious, would have priority and a comparative assessment of merit is not required to be made. The said view was again repeated in the case of K. Samantaray vs. National Insurance Co. Ltd. [(2004) 9 SCC 286]. While considering the concepts relating to promotion on the basis of seniority-cum-merit and merit-cum-seniority, reference was made to an earlier

decision of this Court in Sant Ram Sharma vs. State of Rajasthan [AIR 1967 SC 1910], in which it was observed that the principles of seniority-cum-merit and merit-cum-seniority are completely different. For the former, greater emphasis is laid on seniority though it is not the determinative factor while in the latter merit is the determining factor. A third mode described as "hybrid mode of promotion" contemplates a third category of cases where seniority is duly respected and at the same time merit is also appropriately recognized. In yet another decision in the case of Harigovind Yadav vs. Rewa Sidhi Gramin Bank [(2006) 6 SCC 145], this Court reiterated the principles explained in B.V. Sivaiah's case (supra) holding that where procedure adopted does not provide the minimum standard for promotion, but only the minimum standard for interview and does selection with reference to comparative marks, it is contrary to the rule of "seniority-cum-merit".

11. In applying the principle of granting promotion on the basis of seniority-cum-merit, what is important is that the *inter se* seniority of all candidates who are eligible for consideration for promotion should be identified on the basis of length of service or on the basis of the seniority list as prepared, inasmuch as, it is such seniority which gives a candidate a right to be considered for promotion on the basis of seniority-cum-merit. As was indicated in Syed Mahmood's case (supra) where the promotion is based on seniority-cum-merit, the officer cannot as a matter of right claim promotion by virtue of his seniority alone, which principle is also reflected in Regulation 8(2) of the 1994 Regulations. Consequently, the candidate had to be fit to discharge the duties of the higher post and if his performance was assessed not to meet such a requirement, he could be passed

over and those junior to him could be promoted despite his seniority in the seniority list.

12. In the instant case, the only feature which weighed with the Corporation in granting promotion to Ram Kumar was a comparative assessment between his performance and that of Jagat Ram. While Jagat Ram had got only one "outstanding" remark in 10 years, Ram Kumar had obtained "outstanding" remark in all the 10 years. Accordingly, he was preferred to Jagat Ram, whose qualifications were inferior to that of Ram Kumar by comparison. But, as has been rightly held by the Division Bench of the High Court, in cases of seniority-cum-merit, the comparative assessment is not contemplated and is not required to be made.

13. There is nothing on record to indicate that Jagat Ram was not capable of discharging his functions in the promoted post of Assistant Manager (Administration). He was denied promotion only on

the ground of the superior assessment that had been made in favour of Ram Kumar, which, in our view, runs contrary to the concept of seniority-cum-merit.

14. There is, therefore, no reason to differ with the views of the Division Bench of the High Court and both the Special Leave Petitions, filed by Ram Kumar and the Corporation, are accordingly dismissed.

15. There will, however, be no order as to costs.

.....J.
(ALTAMAS KABIR)

New Delhi
Dated:23.02.2011

2. The dispute in these Special Leave Petitions relates to the claim of Jagat Ram [Respondent No.1 in S.L.P. (C) No. 2659 of 2011] for appointment to the post of Assistant Manager (Administration) in Haryana State Warehousing Corporation [Petitioner No.1 in S.L.P. (C) No.2659 of 2011].

3. Jagat Ram had filed Civil Writ Petition No.18891 of 2009 in the High Court of Punjab and Haryana, challenging the appointment of Ram Kumar [Petitioner in S.L.P. (C) No.451 of 2011 and respondent No.2 in S.L.P. (C) No.2659 of 2011] as Assistant Manager (Administration) and seeking a direction to Haryana State Warehousing Corporation (hereinafter referred to as "the Corporation") to promote Jagat Ram as Assistant Manager (Administration) w.e.f. 1.8.2009. The said Writ Petition was dismissed by a Single Bench of the High Court on 9.12.2009. Thereupon, Jagat Ram filed Letters Patent Appeal No.490 of 2010 before a Division Bench of the High Court and vide judgment dated 11.10.2010, the Division Bench allowed the L.P.A. and set aside the promotion of Ram Kumar, with a direction to the Corporation to redo the exercise and complete the same as expeditiously as possible. Aggrieved by the judgment of

the Division Bench, the Corporation and Ram Kumar have filed these Special Leave Petitions.

4. Jagat Ram was first appointed as Godown Attendant-cum-Watchman in the Corporation and he joined the service on 25.4.1979. He was promoted as Clerk-cum-Typist on 23.12.1981. He was further promoted as Establishment Assistant on 16.5.1996.

5. Ram Kumar was first appointed in the Corporation as Junior Scale Stenographer and he was promoted as Establishment Assistant on 10.11.2004.

6. Thus, admittedly, Jagat Ram was senior to Ram Kumar in the cadre of Establishment Assistant.

7. A vacancy of Assistant Manager (Administration) arose on 1.8.2009 due to the retirement of one V.K. Chakarvarty, Assistant Manager (Administration) on 31.7.2009. Appointment to the post of Assistant Manager (Administration) is governed by the provisions of Haryana State Warehousing Corporation (Officers and Staff) Regulations, 1994 (hereinafter referred to as "the Regulations"). According to Regulation 8(1) of the

Regulations, the method of recruitment to the post of Assistant Manager (Administration) is by promotion from amongst Establishment Assistants. Regulation 8(2) of the Regulations provides as follows :

"All promotions, unless otherwise provided, shall be made on seniority-cum-merit basis and seniority alone shall not confer any right to such promotions."

According to Regulation 6 of the Regulations, no person shall be appointed to any post in the service unless he is in possession of qualification and experience specified in Appendix-B to the Regulations. As per clause 19 of Appendix-B to the Regulations, for promotion to the post of Assistant Manager (Administration) 5 years' experience as Establishment Assistant is required. Thus, it is not in dispute that as per the Regulations the vacancy in the cadre of Assistant Managers (Administration) was to be filled by promotion on the basis of seniority-cum-merit from among Establishment Assistants having the required experience of 5 years.

8. As already indicated, a vacancy of Assistant Manager (Administration) arose on 1.8.2009. As on that date Ram Kumar did not have 5 years' experience as Establishment

Assistant, as he was promoted to the post of Establishment Assistant only on 10.11.2004. However, Jagat Ram had more than 5 years' experience as he was promoted to the post of Establishment Assistant on 16.5.1996. The vacancy of Assistant Manager (Administration) which arose on 1.8.2009 was filled up only on 17.11.2009 by promoting Ram Kumar as Assistant Manager (Administration). By 17.11.2009, Ram Kumar also had acquired experience of 5 years in the cadre of Establishment Assistants. But Jagat Ram was admittedly senior to Ram Kumar.

9. In the Writ Petition filed by Jagat Ram, he had contended that the promotion of Ram Kumar to the cadre of Assistant Managers (Administration) was illegal as he did not possess the required experience of 5 years on the date of occurrence of the vacancy i.e. 1.8.2009. It was alleged that the vacancy which arose on 1.8.2009 was deliberately kept vacant for more than 3 months and that the filling up of the vacancy was purposefully delayed to enable Ram Kumar to acquire the minimum required experience of 5 years as Establishment Assistant. It was also alleged that since Ram Kumar was working as Junior Scale Stenographer-cum-Personal Assistant to the Managing Director of the

Corporation, the action of the respondents in delaying the filling up of the vacancy of Assistant Manager (Administration) was mala fide. Jagat Ram also claimed that being the senior-most and meritorious amongst the Establishment Assistants, he was the only eligible candidate for promotion to the post of Assistant Manager (Administration) when it fell vacant on 1.8.2009.

10. The Writ Petition filed by Jagat Ram was dismissed on 9.12.2009 by a Single Bench of the High Court apparently even without issuing notice to the respondents. In the judgment dated 9.12.2009, the learned Single Judge held that Ram Kumar was eligible for promotion on the date when the case for promotion was considered. It was also observed that the service records placed on record by the petitioner (Jagat Ram) clearly showed that the record of Ram Kumar was much better than that of Jagat Ram. The learned Single Judge rejected the contention that undue favour was shown to Ram Kumar by the Managing Director. Aggrieved by the judgment of the learned Single Judge, Jagat Ram filed L.P.A. No. 490 of 2010 which was allowed by the Division Bench of the High Court.

11. In the impugned judgment dated 11.10.2010 in L.P.A. No.490 of 2010, the Division Bench of the High Court held that as per the Regulations governing promotion to the post of Assistant Manager (Administration), the criterion for promotion is seniority-cum-merit, but Ram Kumar was wrongly and illegally given promotion following the criterion of merit or even merit-cum-seniority. Relying on the judgment of this Court in *State of Mysore and another v. Syed Mahmood and others* (AIR 1968 SC 1113), the Division Bench pointed out that when promotion is to be made on the basis of seniority-cum-merit, a senior can be overlooked only when he is found unfit for the higher post. The Division Bench rejected the contention of the Corporation that the words "seniority alone shall not confer any right to such promotions" appearing in Regulation 8(2) of the Regulations indicated that a junior can be preferred to a senior on the basis of merit. According to the Division Bench, the words quoted above only clarify and fortify that promotion is required to be made by applying the criterion of seniority-cum-merit. The Division Bench found that the selection and promotion of Ram Kumar was predominantly on the principle of merit and hence it was in contravention of the provisions contained in the Regulations. Accordingly, the

promotion of Ram Kumar was set aside and the Corporation was directed to redo the exercise and complete the same as expeditiously as possible but strictly in accordance with the Regulation in force. It may be observed that the Division Bench did not consider the question whether eligibility of the candidates should have been considered with reference to the date of occurrence of the vacancy.

12. The first issue that arises for consideration in these Special Leave Petitions is the effect of the words "seniority alone shall not confer any right to such promotions" appearing in Regulation 8(2) of the Regulations.

13. The learned counsel for the petitioners in the Special Leave Petitions contended that those words gave freedom or right to the Corporation to prefer a junior to his senior on the basis of better merit. It was contended that in view of those words, quoted above, seniority should yield to merit. The contention of the learned counsel for the petitioners is devoid of merit. As rightly held by the Division Bench of the High Court, the words "seniority alone shall not confer any right to such promotions" only clarify the earlier part of Regulation 8(2), which

stipulates that "all promotions, unless otherwise provided, shall be made on the seniority-cum-merit basis". The clear mandate of Regulation 8(2) is that promotions shall be made on seniority-cum-merit basis and not on the basis of seniority alone or merit alone. To emphasise that promotion cannot be claimed as a matter of right on the basis of seniority and that along with seniority, merit also will be considered, it is clarified in the Regulation itself that "seniority alone shall not confer any right to such promotions". The above quoted words do not in any way dilute or vary the principle that promotions shall be made on seniority-cum-merit basis. They only clarify the meaning or implication of the expression "seniority-cum-merit". In this context, it may be pointed out that in *State of Mysore and another v. Syed Mahmood and others* (AIR 1968 SC 1113), this Court has held as follows:

"(4) 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. 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."

14. The next issue that arises for consideration is whether the impugned promotion of Ram Kumar was on the basis of seniority-cum-merit as required by Regulation 8(2) of the Regulations. For deciding the said issue, it is necessary to understand the meaning of the expression "seniority-cum-merit".

15. In *State of Kerala and another v. N.M. Thomas and others* [(1976) 2 SCC 310], this Court held that seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though less meritorious shall have priority.

16. In *B.V. Sivaiah and others v. K. Addanki Babu and others* [(1998) 6 SCC 720], a three Judges' Bench of this Court considered the question "what is meant by seniority-cum-merit?" and held as follows :

"18. 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."

17. In *Union of India and others v. Lt. Gen. Rajendra Singh Kadyan and another* [(2000) 6 SCC 698], this Court held that "seniority-cum-merit" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed, and subject to fulfilling the said requirement, the promotion is based on seniority. It was also held that the requirement of assessment of comparative merit was absent in the case of "seniority-cum-merit".

18. Following the decision in *B.V. Sivaiah (supra)*, this Court in *Harigovind Yadav v. Rewa Sidhi Gramin Bank and others* [(2006) 6 SCC 145] held that where the procedure adopted did not provide the minimum standard for promotion, but only the minimum standard for interview, and did the selection with reference to comparative marks, it was contrary to the rule of "seniority-cum-merit". This Court in that case found that the procedure was not one of

ascertaining the minimum necessary merit and then promoting the candidates with the minimum merit in accordance with seniority, but assessing the comparative merit by drawing up a merit list, the assessment being with reference to marks secured for seniority, performance, postings at rural/difficult places and interview.

19. In *Rajendra Kumar Srivastava and others v. Samyut Kshetriya Gramin Bank and others* [(2010) 1 SCC 335], while considering the question "whether minimum qualifying marks could be prescribed for assessment of past performance and interview, where the promotions are to be made on the principle of seniority-cum-merit?", this Court observed as follows :

"11. It is also well settled that the principle of seniority-cum-merit, for promotion, is different from the principle of "seniority" and the principle of "merit-cum-seniority". Where promotion is on the basis of seniority alone, merit will not play any part at all. But where promotion is on the principle of seniority-cum-merit, promotion is not automatic with reference to seniority alone. Merit will also play a significant role. The standard method of seniority-cum-merit is to subject all the eligible candidates in the feeder grade (possessing the prescribed educational qualification and period of service) to a process of assessment of a specified minimum necessary merit and then promote

the candidates who are found to possess the minimum necessary merit strictly in the order of seniority. The minimum merit necessary for the post may be assessed either by subjecting the candidates to a written examination or an interview or by assessment of their work performance during the previous years, or by a combination of either two or all the three of the aforesaid methods. There is no hard-and-fast rule as to how the minimum merit is to be ascertained. So long as the ultimate promotions are based on seniority, any process for ascertaining the minimum necessary merit, as a basic requirement, will not militate against the principle of seniority-cum-merit.

12. xxx xxx xxx

13. Thus it is clear that a process whereby eligible candidates possessing the minimum necessary merit in the feeder posts is first ascertained and thereafter, promotions are made strictly in accordance with seniority, from among those who possess the minimum necessary merit is recognised and accepted as complying with the principle of "seniority-cum-merit". What would offend the rule of seniority-cum-merit is a process where after assessing the minimum necessary merit, promotions are made on the basis of merit (instead of seniority) from among the candidates possessing the minimum necessary merit. If the criteria adopted for assessment of minimum necessary merit is bona fide and not unreasonable, it is not open to challenge, as being opposed to the principle of seniority-cum-merit. We accordingly hold that prescribing minimum qualifying marks to ascertain the minimum merit necessary for discharging the

functions of the higher post, is not violative of the concept of promotion by seniority-cum-merit."

20. In *Rupa Rani Rakshit and others v. Jharkhand Gramin Bank and others* [(2010) 1 SCC 345], the Bank did not subject eligible candidates to any process of assessment to ascertain any specified minimum merit, for the purpose of promoting candidates who possessed the minimum merit, on the basis of seniority. On the other hand, the Bank proceeded to assess their *inter se* merit with reference to four criteria (period of service, educational qualification, performance during three years and interview) by allocating respectively maximum marks of 40, 6, 24 and 30 and thus proceeded to promote those who had secured higher marks in the order of merit. This Court held that such promotions were not on seniority-cum-merit basis.

21. Though learned counsel for the petitioners relied on the decision of this Court in *Jagathigowda, C.N. & Others v. Chairman, Cauvery Gramina Bank & Others* [(1996) 9 SCC 677], the said decision cannot support the case of the petitioners, because, in the said case the guidelines applicable to the promotions had specifically provided that

"the selection of the eligible candidates should be based on performance of the respective candidates in the Bank". However, learned counsel invited our attention to the following observation in paragraph 8 of the judgment:

"... It is settled proposition of law that even while making promotions on the basis of seniority-cum-merit, the totality of the service record of the officer concerned has to be taken into consideration. ..."

The above observation only means that, for the purpose of considering whether the officer fulfils the requirement of minimum merit or satisfies the benchmark previously fixed, the totality of his service record has to be taken into consideration. It does not mean that a further assessment of comparative merit on the basis of the service record is warranted even after the officers are found to fulfil the requirement of minimum merit and satisfy the benchmark previously fixed.

22. Thus it is the settled position that the criterion of seniority-cum-merit is different from the criterion of merit and also the criterion of merit-cum-seniority. 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. 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. Seniority-cum-merit means that, given the minimum necessary merit required for efficiency of administration, the senior, though less meritorious, shall have priority in the matter of promotion and there is no question of a further comparative assessment of the merit of those who were found to have the minimum necessary merit required for efficiency of administration. 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 employees. 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 considered for promotion on the basis of seniority-cum-merit. The concept of "seniority-cum-merit" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed and, subject to fulfilling the said requirement, promotion is based on seniority. There is no further assessment of the comparative merits of those who fulfil such requirement of minimum merit or satisfy the benchmark previously fixed. On the other hand, the

principle of "merit-cum-seniority" puts greater emphasis on merit and ability and seniority plays a less significant role. Seniority is given weightage only when merit and ability are more or less equal among the candidates considered for promotion.

23. In the light of the above legal position with regard to the principle of "seniority-cum-merit", it is clear that the impugned promotion of Ram Kumar was not on the basis of seniority-cum-merit but was on the basis of merit. The written statement filed by the Corporation in L.P.A. No. 490 of 2010 reveals that while considering the candidates for promotion, both Jagat Ram and Ram Kumar were found suitable for promotion and that even though Jagat Ram was senior to Ram Kumar, Ram Kumar was given promotion on the ground that he had better merits. Justifying the promotion of Ram Kumar in preference to the appellant Jagat Ram, it was stated in the written statement as follows :

"2. xxx xxx xxx

As is evident from a perusal of Annexure P-4, all the Assistants who were eligible for promotion to the rank of Assistant Manager (Administration) having completed 5 years of service as Assistant were considered on the basis of seniority-

cum-merit by the competent authority. The senior most candidate i.e. Shri R.K. Nayyar had bad service record in as much as there were three charge-sheets pending under Rule-7 against him besides penalty imposed upon him. The second candidate in seniority was the petitioner Shri Jagat Ram, whose ACR dossier for the last 10 years contained one grading as Very Good and 9 were good. The third candidate, Smt. Pushpa Devi again has 8 very good, ½ outstanding, one good and ½ average grading in her ACR resume. Penalty of stoppage of one increment without cumulative effect was imposed upon her on 18.12.2008. She was also issued a warning on 04.12.2008. The respondent No.3, Shri Ram Kumar, had all the 10 Annual Confidential Reports as Outstanding and there were no departmental proceedings pending or concluded against him and thus on the basis of seniority-cum-merit as provided in the Regulations, the candidature of respondent No.3 was found to be most suitable and accordingly the competent authority, vide detailed and reasoned orders, promoted the respondent No.3 to the rank of Assistant Manager (Administration). ..."

In reply to Jagat Ram's contention that selection had to be made from a panel of three suitable officials and that Ram Kumar could not have been considered as he was at serial No.4, the Corporation stated in the written statement as follows :

"3. ...The contention is totally devoid of merits. The Chief Secretary Punjab vide Notification dated 28.06.1961, copy of

which is attached as Annexure R-1/1 had clarified the issue and has ordered that in the first instance, list of eligible officers/officials, who fulfil the prescribed experience etc. for promotion is to be drawn up and then out of this list, such officers/officials as are considered unsuitable for promotion are to be weeded out and a list of only those who are suitable for promotion has to be drawn up. Selection thereafter is to be confined to three suitable officers/officials of the list. ... Selection for every vacancy has, therefore, to be made from the slab of three officers/officials, who are considered fit for promotion and unless a junior among them happens to be of exceptional merit and suitability, the senior-most will be selected.

In the present case, in the Corporation there were only four Establishment Assistants who were eligible and the candidature of all the four was considered. Out of four, two were found unsuitable and out of the remaining two suitable officials, the respondent No.3 being most suitable and meritorious was selected and promoted to the post of Assistant Manager (Administration)."

Therefore, it is clear that even according to the Corporation, both Jagat Ram and Ram Kumar fulfilled the requirement of minimum merit and were suitable for promotion but Ram Kumar, though junior, was preferred as he was found to be more meritorious. This was obviously in violation of the principle of seniority-cum-merit. Since

both Jagat Ram and Ram Kumar fulfilled the requirement of minimum merit and were found suitable for promotion and since Jagat Ram was senior to Ram Kumar, Jagat Ram was entitled to be promoted on the basis of seniority-cum-merit. Consequently, the promotion of Ram Kumar was liable to be set aside as was rightly done by the Division Bench of the High Court.

24. In the light of the discussion above, the Special Leave Petitions are devoid of merit and hence they are dismissed.

25. There will, however, be no order as to costs.

.....J.
CYRIAC JOSEPH

New Delhi;
February 23, 2011.