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probation of Offenders Act while granting the benefit of probation to the accused persons. Section 11 (1) of the Act empowers the appellate Court to pass an order regarding the payment of compensation as mentioned in Section 5(1) of the Act.

(15) In the light of the above discussion, the plea put forward by the learned counsel for the petitioners has no merit. The order of the appellate Court for the payment of compensation by the accused persons is a valid order in the light of Section 5(1) read with section 11 (1) of the Act.

(16) The petition has no merit and it is, therefore, dismissed.

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**R.N.R.**

*Before Arun B. Saharya, C.J. & V. K Bali, J*

P.N.B. THROUGH ITS CHAIRMAN-CUM-MANAGING DIRECTOR  
AND OTHERS,—*Appellants.*

*versus*

K.S. RAJPUT & ANOTHER,—*Respondents.*

L.P.A. No. 664 of 1996

23rd July, 1999

*Punjab National Bank (Officers) Service Regulations, 1979—Reg. 17—Promotions to all grades of officers in accordance with the policy laid down by the Court—Promotion policy providing process of selection for promotion—Marks fixed for different parameters—Can one parameter be ignored.*

*Held that*, a bare perusal of the criteria laid down for promotion from Scale IV to Scale V would demonstrate that it deals with two different heads, namely, (i) to assess job and general knowledge, personal characteristics and potential for shouldering higher responsibilities and (ii) assessment of performance. The interview is held to assess the performance with regard to job and general knowledge, personal characteristics and potential for shouldering higher responsibilities. The other assessment of performance is with regard to work done by a candidate in preceding two years. The maximum marks (60 and 40) for different parameters, i.e., assessment of performance with regard to work done by a candidate in preceding two years and performance in interview have been mentioned in the promotion policy. The word 'interview' is followed by words 'to assess job and general

knowledge, personal characteristics and potential for shouldering higher responsibilities' in bracket. We find no arbitrariness whatsoever in promotion policy. The performance of a candidate for the work done by him in preceding two years is irrelevant in finding out the respective merit of the candidates. If that be so, how could work and conduct of an officer be assessed by those who were only to interview a candidate, in all probability, had never seen any candidate performing their duties in preceding two years from the date of interview..

(Paras 18 and 19)

*Further held*, that there was no necessity of the records of the case to be made available to the Board of Directors when the said Board was only to ratify the decision recorded by the Promotion Committee, particularly when the reasons recorded by the Promotion Committee were before the Board of Directors. One may again imagine a situation where, after analysing the reasons recorded by the Promotion Committee the Board of Directors, might feel the necessity of perusing the records and in that case might even call for the records but to say, as a matter of law, that if the records were not available with the Board of Directors, ratification of the decision of Promotion Committee would be illegal, would not be correct.

(Para 24)

H.L. Sibal, Sr. Advocate, with Rita Kohli, Advocate *for the Appellant*.

H.C. Arora, Advocate *for the Respondent*.

## JUDGMENT

V.K. BALI, J.

(1) Appellant-Punjab National Bank, in this Letters Patent Appeal filed under Clause X of the Letters Patent against judgment dated 14th May, 1996 rendered by learned Single Judge, Calls in question the conclusions on two points as raised by the counsel representing the petitioner and as noticed by the learned Single Judge. The conclusions on the said two points, as drawn by the learned Single Judge, read as follows :—

- (1) The Directors' Promotion Committee had to itself assess and evaluate the performance of the candidates. It would not have mechanically adopted or followed the rating given by the Assessing and Reviewing Officers. It acted illegally in adopting the rating given by the various officers to different candidates and in selecting candidates on the basis.

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- (2) The records relating to the selection of the candidates should have been placed before the Board of Directors so as to ensure a proper consideration of the petitioner's representation and review of the proceedings of the Directors' Promotion Committee. The failure to do so vitiates the order."

(2) Obviously, if the appellant-Bank succeeds in its endeavour to set aside the conclusions noted above, it also prays for setting aside the directions issued by the learned Single Judge that followed in the operative part of the judgment on the basis of the conclusions, referred to above. The directions issued by the learned Single Judge, read as follows :—

"In view of the conclusion at No. (1), it is directed that the Directors' Promotion Committee shall now assess and evaluate the performance of all the candidates who had been interviewed by the Committee in December, 1991. It shall assess and evaluate the performance and award marks to the candidates in respect of their performance for the preceding two years, *de novo*. It shall then prepare an aggregate of the marks awarded by the Committee on the basis of the assessment of the performance and the marks which had been awarded to the candidates at the time of their interview in the year 1991. On that basis, a final merit list shall be prepared. If it is found that a person with lesser score than that of the petitioner had been promoted, the petitioner's case for appointment with effect from the same date shall be considered. The order rejecting the petitioner's representation, a copy of which has been produced as Annexure P-12, with the writ petition, is quashed".

(3) Even though the facts have been given in sufficient details in the judgment rendered by the learned Single Judge, it shall yet be essential to reiterate the same, though in brevity.

(4) In the year 1984, K.S Rajput—respondent (hereinafter to be referred to as "petitioner") was promoted to the Senior Management Grade Scale IV. Through writ petition filed by him, culminating into impugned judgment by the learned Single Judge, he claimed that he had brilliant service record and had shown excellent results. In the year 1991, appellant Bank (hereinafter referred to as "respondent") considered the claims of various officers for promotion to Senior Management Grade Scale V. The petitioner was one amongst the candidates to be interviewed by the Directors' Promotion Committee on 24th December, 1991. He was, however, looked for promotion. Constrained, he made a representation on 29th December 1991. His

representation aforesaid was, however, rejected on 8th May, 1992. Before, order of rejection could be ratified or conveyed to him, petitioner filed the present writ on 16th July, 1992. The order of rejection was, however, ratified on 16th July, 1992 and reached the petitioner during the pendency of writ petition, as observed by the learned Single Judge. Consequently, he amended the writ petition. Petitioner, thus, challenged the proceedings of the Directors' Promotion Committee and order rejecting his representation. He also challenged the order passed by the Review Committee and prayed for issuance of writ in the nature of mandamus directing the respondents to promote him to Senior Management Grade V with all consequential benefits.

(5) The respondent-Bank seriously contested the issues raised by the petitioner in its detailed written statement that came to be filed by it. It was, *inter alia*, pleaded that the petitioner was duly considered for promotion in accordance with the promotion policy. As he was not found upto the mark, he was not promoted. It was further pleaded that the Court would not substitute its own judgment over the experts regarding the *inter se* merit of the petitioner and the candidates who had been selected and that the petitioner had been considered in the year 1988 also when too he was not selected. The performance of the petitioner for the years 1989-90 and 1990-91 was assessed and reviewed as satisfactory. In merit based promotion, getting merely satisfactory reports was not sufficient and further that the promotion policy did not provide for any statutory appeal or review. The case of petitioner was considered by the Directors' Promotion Committee which consisted of the Chairman and the Managing Director, the Government Director and the Director from the Reserve Bank of India, who was on the Board of the Bank. The Committee had examined the petitioner's case thoroughly and objectively and in accordance with the promotion policy. The representation submitted by the petitioner was placed before the Directors, Promotion Committee which reconsidered the matter in accordance with the promotion policy. Thereafter, the decision was placed before the Board of Directors of the respondent Bank. The Board had also ratified the decision taken by the Committee. It was conveyed to the petitioner,—*vide* letter dated 16th July, 1992. The petitioner also filed replication whereafter both the sides filed various other affidavits. From the voluminous record consisting of 367 pages, the learned Single Judge, however, did not consider necessary to give details of the pleadings of the affidavits filed by the parties as it was not necessary for consideration of the limited questions that were raised before learned Single Judge by the parties. We too, have not been taken through the detailed pleadings of the parties as it is only on the two points culminating into conclusions arrived at by the learned Single

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Judge, reproduced above, that learned counsel for the parties have raised their respective contentions.

(6) Before, we might take into consideration the points urged by Mr. H. L. Sibal Senior Advocate, representing the respondent Bank, in his endeavour to show that the conclusions arrived at by the learned Single Judge are not in consonance with the relevant rules or the promotion policy, it shall be useful to extract the contentions raised before the learned Single Judge and the material, on the basis of which the said conclusions were arrived at by the learned Single Judge.

(7) It was argued before the learned Single Judge on behalf of the petitioner that "the Directors' Promotion Committee had erred in assessing the petitioner's merit. It had accepted the reports made by the Zonal Manager mechanically and had not perused the relevant data which was on record to assess the performance of the petitioner and allocate marks therefore". It was further submitted that "the records which had been taken into consideration by the Promotion Committee were not placed before the Board of Directors and consequently the Board of Directors could not consider the matter while ratifying the decision".

(8) While evaluating the merits of the contentions of learned counsel for the petitioner, as noted above, learned Single Judge noted that "Punjab National Bank was nationalised and taken over by the Union of India under the Banking Companies (Acquisition & Transfer of Undertaking) Act, 1970. Under Section 19 of this Act, the Board of Directors were empowered to make regulations and to lay down the terms and conditions of service of the officers/officials. In exercise of this power, the Bank has framed regulations called the Punjab National Bank (Officers) Service Regulations, 1979. Regulation 4 provides for the 'Grades' and 'Categorisation of posts' Scale I constitutes the Junior Management Grade. Scale II and III are the Middle Management Grade. Scales IV and V constitute the Senior Management Grade and Scales VI and VII are the top executive grades. Regulation 17, *inter alia*, provides that the "promotions to all grades of officers in the Bank shall be made in accordance with the policy laid down by the Board from time to time having regard to the guidelines of the Government, if any". The learned Single Judge further noticed that "in accordance with the provisions in Regulation 17 and the guidelines issued by the Government. of India, a promotion policy has been framed". Relevant provisions of this policy were also noticed and it was further observed that "a person with three years of satisfactory service in Senior Grade Scale IV was eligible for promotion to Scale V". The

procedure for selection, as prescribed in the said policy is as under :—

*“Process of Selection :—*

Officers will be called for interview in the order of seniority. The marks for different parameters shall be as under :—

	<i>Max. Marks</i>	<i>Min Marks</i>
Performance	60	30
Interview	40	15

(to assess job and general knowledge, personal characteristics and potential for shouldering higher responsibilities).

The assessment of performance shall be made after evaluation of performance for the preceding 2 years and the rating of marks shall be as under :—

<i>Rating</i>	<i>Marks</i>
Very good	30
Good	22
Satisfactory	15
Unsatisfactory	0”

(9) Learned Single Judge further observed that “provision for constitution of Interview Committee and the Competent Authority to approve promotions had also been made for different categories of posts. In the case of promotion from Senior Management Grade Scale IV to Scale V and above, the Directors’ Promotion Committee had been authorised to interview and approved the candidates for promotion”. Besides what has been said above, learned Single Judge also noticed another provision,—vide which an officer who felt that his case had not been properly considered could file an appeal. In respect of promotion to Scale V and above, it had been provided that “there shall be no appeal against the decision of the Committee of Directors. However, an officer aggrieved with the decisions of the Committee may make a representation to the said Committee within a period of three months from the date on which the decision was announced. The Committee had to consider the said representation as soon as it was received and in any case not later than six months from the receipt of representation and review or modify its earlier decision, if considered necessary. The decision of the committee had to be recorded in writing and placed before the Board of Directors

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for recommendations. It was further observed that "the officers were selected for promotion from Grade IV to Grade V on the basis of their performance and interview and the assessment of performance had to be made 'after evaluation of performance for the preceding 2 years'. If on evaluation on the relevant date, an officer's performance during a year is rated as very good he gets 30 marks. If it is found to be good, he gets 22 marks and if his performance is adjudged as satisfactory, he gets only 15 marks. In other words, if the performance of an officer during the 2 years preceding the date of selection was assessed as Very Good, he would get 60 marks out of 60 and so on. The marks were also allotted for performance in the interview. Final selection was made on the basis of evaluation of performance and 'interview'. Any person aggrieved by the decision of the Promotion Committee was entitled to represent and seek a review".

(10) Insofar as petitioner is concerned, his performance for the years 1989-90, 1990-91 had been assessed as Satisfactory by the Assessing and Reviewing Authorities. On that basis, petitioner was awarded 15 marks for each of two years, thus, making a total of 30 marks. Petitioner was awarded 25 marks out of 40 in interview. He was, thus, awarded a total of 55 marks.

(11) The contention of learned counsel for the petitioner that Directors' Promotion Committee had mechanically awarded marks to the petitioner for the two reports on the basis of the rating awarded by the Assessing and Reviewing Authorities, was then taken to its logical end by returning a finding that "on perusal of the provision, it appears to be clear that the Selection Committee was not only required to assess the suitability and the potential of the officer for the job at the time of interview, but it had also to make an assessment of performance after evaluation of performance for the preceding two years. The provision, it was further observed, did not lay down that the marks for performance shall be awarded on the basis of the rating given by the Assessing or Reviewing Authorities. On the contrary, the assessment had to be made by the Committee constituted to interview the candidates and approve them for promotion". To support this conclusion, learned Single Judge further observed that "there was a clear rationale behind this Rule. The officers in Scale IV were already in the Senior Management Grade. They had to be considered for promotion to a higher post in the same grade. The officers in Scale IV were working all over the country. Their performance had to be adjudged by different assessing and (reviewing authorities). They had not been adjudged by one authority. If marks were to be mechanically awarded on the prescribed Scale, the job could have been performed by any functionary of the Bank. However, this

would not have been fair. It would not have ensured 'equality' in selection. The Directors' Promotion Committee would have been merely interviewing the candidates. It would not have been selecting and approving the candidates for promotion by following a uniform standard. It is to obviate such a situation that a provision had been made by which the duty to assess and evaluate the performance for the preceding two years and to interview the candidates, had been placed on the Directors' Promotion Committee. This ensured assessment of all candidates by a single and uniform standard. It effectuates the guarantee of 'equality' of opportunity' as enshrined in the Constitution".

(12) On the basis of the pleadings of the parties, it was held that "the Promotion Committee did not assess or evaluate the performance of the candidates. It merely awarded marks for the assessment made by the Assessing/Reviewing Authorities. This was not in conformity with the provisions of the Promotion Policy. It was contrary to the plain language of the relevant clause in the promotion policy. The assessment made by another person or authority was not required to be mechanically accepted or followed by the Selecting Authority".

(13) With regard to second conclusion arrived at by the learned Single Judge, the contention of learned counsel for the petitioner that the order rejecting his representation was not in conformity with the provisions of the Promotion Policy, learned Single Judge noted that "the interviews had commenced on 21st December, 1991. The petitioner had been interviewed on 24th December, 1991. On 28th December, 1991, he had come to know of his rejection. Consequently, he had submitted the representation on 29th December, 1991. In his representation, the petitioner had pointed out that he had worked during the last 42 months at Amritsar when terrorism prevailed in the State of Punjab. None else had faced such trying situation. He was at Sr. No. 17 in the seniority list and had been superseded by the persons, who were at Sr. Nos. 30, 31, 44, 50 and 52 in spite of the fact that those persons had no field experience. 8 minutes interview could not wipe out the performance of 8 years. His representation was placed before the Review Committee which met on 18th April, 1992. It found no reason for modification of its earlier finding. Consequently, it ordered its rejection. A resolution in this behalf was recorded on 8th May, 1992. The decision was put up for ratification of the Board of Directors as Item No. 11 on 3rd July, 1992. The minutes which were recorded on that date read as follows :—

"Item No. 11 : Decision of the Directors' Promotion Committee on the representation of the officers against their non-approval for promotion to SMG Scale V-General Manager (VPT) note

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dated 9th June, 1992 ratified. Shri Salamat Ullah, Director, however, dissented and expressed the view that since records pertaining to Interviewees selected for promotion by Departmental Promotion Committee have not been made available, as such it is not possible for him to consider the item”.

The minutes were placed before the Board of Directors on 25th July, 1992 for confirmation and following resolution was passed on that date :—

“Item No. 11 : Decision of the Directors’ Promotion Committee on the representation of the officers against their non-approval for promotion to SMG Scale V.

Shri Salamat Ullah, Director, pointed out that there had been a discussion on the Item but at no stage did he express his dissent on the decision of the Directors’ Promotion Committee. As such the following may be substituted in place of the recorded minutes :

“Ratified”.

(14) On the basis of the above material, learned Single Judge held that “it appears to be clear that the relevant record had not been placed before the Board before it ratified the proceedings of the Promotion Committee. Surely, the proceedings of the Committee were not placed before the Board of Directors for its mechanical approval. Since the officers working at senior level were involved, it was reasonable to assume that the Board had to properly consider the facts and take a final view in the matter. For this purpose, it was essential that the records were placed before it. In the circumstances of the present case, the proceedings recorded on 3rd July, 1992 clearly established that the record had not been placed before the Board of Directors, Accordingly, even the decision to reject the petitioner’s representation could not be said to have been taken after proper consideration of the matter”.

(15) Time is now ripe to notice the contentions raised by Mr. Sibal, learned counsel for the respondent Bank. It is urged before us, that the Promotion Policy as such was not under challenge. No substantial challenge to the policy, on the basis of Article 14 of the Constitution, was ever laid before the Court nor any material was placed for the said purpose. The learned Single Judge too while arriving at the two conclusions, reproduced above, did not hold the policy to be irrational or suffering from the vice of Article 14 of the Constitution. Further, if

the performance of two years preceding the selection is not to be done by the reporting officers and in turn is to be done by the Directors' Promotion Committee, it would result in assessing performance by a Committee which had never seen or observed the various candidates performing their duties for the last two years. That being so, one of the basic criterias for adjudging the performance of a candidate as enshrined in the promotion policy shall have to be given complete go-by. The observations of the learned Single Judge have virtually resulted into setting aside one out of two criterias of the promotion policy while arriving at the conclusions, mentioned above further contends the learned counsel.

(16) There appears to be considerable merit in the contentions of the learned counsel, noted above. Before, however, we arrive at a different conclusion on the issue, it would be relevant to mention that the respondent Bank was taken over by Union of India under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. Under Section 19 of this Act, the Board of Directors are empowered to make regulations. The Board of Directors, after consultation with the Reserve Bank and with the previous sanction of the Central Government, can make regulations which would not be inconsistent with the provisions of this Act or any scheme made thereunder, to provide for all matters. Clause (d) of Section 19 deals with regulations regarding conditions or limitations subject to which the corresponding new bank may appoint advisers, officers or other employees and fix their remuneration and other terms and conditions of service. Clause (2) of Section 12 of the 1970 Act provides that every officers or other employee of an existing bank shall become, on the commencement of this Act, an officer or other employee, as the case may be, of the corresponding new bank and shall hold his office or service in that bank on the same terms and conditions and with the same rights to person, gratuity and other matters as would have been admissible to him if the undertaking of the existing bank had not been transferred to and vested in the corresponding new bank and continue to do so unless and until his employment in the corresponding new bank is terminated or until his remuneration, terms or conditions are duly altered by the corresponding new bank. In exercise of powers conferred by Section 19 read with sub-section (2) of Section 12 of the Act of 1970, the Board of Directors of the Punjab National Bank, in consultation with the Reserve Bank of India and with the previous sanction of the Central Government framed regulations known as 'Punjab National Bank (Officers) Service Regulations, 1979, Regulation 17 of the said Regulations deals with promotions. Regulation 17 in turn, talks of policy to be laid down by the Board from time to time with

regard to promotions of all grades of the Bank. Clause (1) of Regulation 17 reads thus :—

“(1) Promotions to all grades of officers in the Bank shall be made in accordance with the policy laid down by the Board from time to time having regard to the guidelines of the Government, if any”.

(17) Promotion Policy, Annexure P-1 came into being in terms of Regulation 17 of the 1979 Regulations as is also our apparent from a reading of the policy annexed with the petition itself as Annexure P-1. The criteria for promotion from Senior Management Grade Scale IV to Senior Management Grade Scale V, which, in view, is relevant to decide the controversy involved in this case, runs thus :—

“IV. Promotion from Senior Management Grade Scale IV to Senior Management Grade Scale V (Rs. 3575—110.....3400)—

**ELIGIBILITY :**

3 years of satisfactory service in SMG Scale IV.

**PROCESS OF SELECTION :—**

Officers will be called for interview in the order of seniority. The marks for different parameters shall be as under :—

	<i>Max. Marks</i>	<i>Min Marks</i>
Performance	60	30
Interview	40	15

(to assess job and general knowledge, personal characteristics and potential for shouldering higher responsibilities).

The assessment of performance shall be made after evaluation of performance for the preceding 2 years and the rating of marks shall be as under :—

<i>Rating</i>	<i>Marks</i>
Very Good	30
Good	22
Satisfactory	15
Unsatisfactory	0”

(18) A bare perusal of the criteria laid down for promotion from Scale IV to Scale V would demonstrate that it deals with two different

heads, namely, (i) to assess job and general knowledge, personal characteristics and potential for shouldering higher responsibilities and (ii) assessment of performance. The interview is held to assess the performance with regard to job and general knowledge, personal characteristics and potential for shouldering higher responsibilities. The other assessment of performance is with regard to work done by a candidate in preceding two years. Both these items have been listed differently in the promotion policy, Annexure P-1 and different marks have been prescribed for the same. It is not in dispute and as has also been observed by the learned Single Judge that if the rating of a candidate is very good, he will get 60 marks for his performance in the preceding two years. It is, thus, apparent that whereas there are maximum 60 marks for assessment of performance with regard to work done by a candidate in preceding two years, he can get maximum 40 marks in interview relating to job and general knowledge, personal characteristics and potential for shouldering higher responsibilities. It may be recalled at this stage that conclusion on the basic issue arrived at by the learned Single Judge is with regard to these 60 marks. In view of the learned Single Judge, every thing should have been left to the performance of a candidate in the interview as the assessment of performance of a candidate on the basis of the work done by him in two years preceding the date of interview, would be arbitrary because different officers may have a different yard stick to assess such performance of a candidate. The finding of the learned Single Judge, to the effect aforesaid, is not in consonance with the promotion policy, reproduced above. As mentioned above and as is reflected from the said promotion policy, an officer is eligible for promotion if he has three years satisfactory service in Senior Management Grade Scale-IV. Such officers are called for interview in the order of seniority. The maximum marks (60 and 40) for different parameters, i.e., assessment of performance with regard to work done by a candidate in preceding two years and performance in interview have been mentioned in the promotion policy. The word 'interview' is followed by words to assess job and general knowledge, personal characteristics and potential for shouldering higher responsibilities in bracket. It is quite apparent that in interview, for which there are maximum 40 marks, a candidate has to be assessed with regard to job and general knowledge, personal characteristics and potential for shouldering higher responsibilities. What we have said becomes further clear from the next sentence which runs thus:—

“The assessment of performance shall be made after evaluation of performance for the preceding two years and the rating of marks shall be as under :”

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(19) Rating of marks has then been mentioned, like Very Good, Good, Satisfactory and unsatisfactory. A reading of the promotion policy, Annexure P—1, would, thus, make it apparent that there are two different heads for giving marks to a candidate who is eligible for promotion to Grade V. We find no arbitrariness what soever in promotion policy, Annexure P—1. By no stretch of imagination could it be urged by learned counsel for the petitioner that the performance of a candidate for the work done by him in preceding two years is irrelevant in finding out the respective merit of the candidates. If that be so, how could work and conduct of an officer be assessed by those who were only to interview a candidate and, in all probability, had never seen any candidate performing their duties in preceding two years from date of interview. Such performance could only be seen by the reporting authority of the concerned officer. If the performance of an officer in preceding two years, is a relevant factor for deciding *inter se* merit of the candidates, we are of the view, such performance could not be assessed by the members constituting Directors Promotion Committee. The argument to the contrary may be questionable as in that case selection shall be made entirely on the basis of interview. In other words, all 100 marks shall be given by the Directors' Promotion Committee. That apart, as mentioned above, there was no serious challenge laid to the policy, Annexure P—1 on the anvil of Article 14 of the Constitution of India. We, thus, accept the argument of learned counsel for the respondent-Bank that the direction issued by the learned Single Judge in view of conclusion No. 1 had virtually resulted in setting aside one out of two criterias of promotion policy, Annexure P—1.

(20) Learned counsel for the petitioner has, however, sought to defend conclusion No. 1 in the impugned judgment arrived at by the learned Single Judge, on the basis of a Supreme Court judgment in *State Bank of India etc. v. Kashinath Khera & Ors.* (1). The facts of the case aforesaid would, however, reveal that the respondents in that case were working as Middle Management Grade Scale-II in the State Bank of India. They challenged the policy of the Bank dated 21st March, 1990 and 6th August, 1990 whereunder the officers who had not completed two years of line assignment and two years Rural/Semi-urban service were to be considered eligible for promotion to MMGS-III. The High Court had held that they were ineligible and such a clubbing of ineligible officers with eligible officers was violative of Article 14 and accordingly struck down the criteria. As per rules dealing with the promotions in the said case, there had to be a policy laid down by the Central Board or the Executive Committee from time to time. The

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(1) 1996 (1) R.S.J. 799.

Executive Committee issued circulars from time to time. In 1990, by a memo, general guidelines for promotion to MMGS-III were envisaged. In the light of the said guidelines, promotions were to be considered and the eligibility criteria prescribed thereunder regulated the eligibility of the candidates for promotion. The case of the respondents was that for the promotion, that had arisen from 1988, 1989 and 1990, as per the rules and the policy, the officer in MMGS-II should put in minimum of two years in "line assignment" and three years in rural/semi urban service even for consideration. For the candidates to become eligible for consideration for promotion, the criteria required under the guidelines required to be fulfilled. However, from the records it was clear that for reasons of non-availability of the posts or due to non-enforcement of the conditions, many of the officers had not had the benefit of working in the line assignment and the rural service. Consequently, the question arose whether the rule required to be adhered to or the policy required to be changed. In that behalf, the Board decided to relax the condition for the posts as one time measure to give the chance to the officers to fulfil the conditions. Nonetheless, the conditions had not been fulfilled due to diverse reasons which included mismanagement at circle levels as noted by the Board. Consequently, they had decided to arrange three lists. List A consisted of officers who had put in two years required service of line assignment ; in list "B" composing of officers who had not completed two years service but had done partly and list "C" consisted of officers who had not had the service at all. The officers who had not completed the rural or semi-urban service were not included in list "B" but they were separately dealt with. The Board later decided that all those who were required to be promoted would be considered subject to the fulfilment of the eligibility criteria and the officers who had completed the required service and found fit for promotion would be considered for promotion and if found fit would be selected, put in "B" list and promoted only on their completing required service. It is in the aforesaid circumstances that the respondents had contended before the High Court that clubbing the officers in List "B" with those of List "A" was unconstitutional and violative of Article 14 as unequals had been treated equal. The contention found favour with the High Court. On the contentions raised by learned counsel for the parties, the question that came to be focused before the Apex Court was as to whether the action taken by the Bank for making officers, who had not completed the required service of the line assignment and rural/semi urban service and considered their case, having found them fit, was violative of Article 14 of the Constitution of India. The Court found that the stand taken by the Bank was just and fair on the facts of the case. The Supreme Court, while allowing the appeal, also discussed confidential character rolls which were being prepared by the officers of the same rank. The

said procedure was adversely commented upon. The Supreme Court also found from the records that the confidential reports submitted were adopted in toto by the Committee considering promotion without any cross verification from the character rolls or the record and independent assessment of merit and ability. That too was adversely commented upon.

(21) While dealing with the confidential reports that were adopted in toto by the Committee considering promotion, in paragraph 16 it was observed by the Supreme Court :—

“Being a competent authority to consider the claim of the candidates, the Committee for promotion has to independently assess the merit and ability of each candidate from the reports and the records etc. consistent with the weightage prescribed in the rules and then to determine the relative merit and ability of the officers and then to arrange order of merit of the officers for promotion. Being selection post, the selection record also must indicate reasons, however, brief they may be, so that when tested by judicial review, the court would be better assisted by such record to reach correct decision in law. This exercise should also be done by the appellant. If the confidential reports written earlier are by superior officers, then the entire record could be secured by the controlling officers. They should be considered by the promotion Committee and each case must be examined in the light of the record of each officer. It would be desirable to prepare a columnar statement with all relevant columns”.

(22) It is these observations of the Supreme Court, quoted above, that have been relied by learned counsel for the petitioner. We are afraid, the observations to the effect that confidential reports submitted were adopted in toto by the Committee considering promotion without any cross verification from the character rolls or the record and independent assessment of merit and ability and that would be clearly illegal as also being a competent authority to consider the claim of the candidates, the Committee for promotion has to independently assess the merit and ability of each candidate from the reports, came to be made in peculiar facts of that case inasmuch as the confidential reports in the said case were sent by the officers of the equivalent rank. It is that, which, prior in point of time was adversely commented upon by the Supreme Court. What we have said would be clear if one is to read further findings recorded by the Supreme Court in paragraph 16 itself. It is clearly recorded that “if the confidential reports written earlier are by superior officers, then the entire record could be secured by the

controlling officers and these should be considered by the promotion committee and each case must be examined in the light of the record of each officer". We are of the view that from the observations of the Supreme Court, as mentioned above, petitioner can not derive much help to sustain the order of the learned Single Judge.

(23) With regard to conclusion No. 2, as reproduced above, Mr. Sibal, learned counsel for the respondent—Bank contends that there was no requirement, under the promotion policy, that the records of the case ought to have been placed before the Board of Directors for ratification of the decision taken by the Directors' Promotion committee as also that the scope of ratification being limited, it could not be held that non-availability of the record before the Board of Directors would vitiate the decision of the Directors' Promotion Committee. Before we might examine the contention of learned counsel with regard to scope of ratification, it shall be appropriate to reproduce the provision contained in the promotion policy with regard to representation that may be made before the Directors' Promotion Committee which ultimately has to be ratified by the Board of Directors as provided under the promotion Policy, Annexure P—1 itself :—

"In respect of promotion to SMG Scale-V and above, there shall be no appeal against the decision of the Committee of Directors. However, an officer aggrieved with the decision of the Committee may make a representation to the said Committee within a period of three months from the date on which the decision was announced. The Committee shall consider the said representation as soon as it is received and in any case, not later than six months from the receipt of the representation and review or modify its earlier decision if considered necessary. The decision of the committee shall be recorded in writing. The decisions of the Committee have to be placed before the Board of Directors for ratification before implementation".

(24) The provision in the promotion policy with regard to representation, as referred to above, would manifest that a person, aggrieved of his non-promotion has no right to make any appeal. An officer, aggrieved with the decision may, however, make a representation within a period of three months. The Committee has to consider the said representation and such a decision has to be ratified by the board of Directors. No independent remedy to an aggrieved officer, against his non-promotion is available before the Board of Directors. As mentioned above, the representation alone is competent and that too before the same Committee i.e., Directors' Promotion Committee. It is the said Committee which has to consider the

recommendations and review or modify its earlier decision, if considered necessary. The decision of the Committee has to be recorded in writing. It is this decision, recorded in writing, which is then put up before the board of Directors for its ratification. As mentioned above, no right of appeal or revision is available to an officer who could not be promoted. Representation, in the very nature of things, is not that kind of right which may need hearing of an aggrieved person or may need going into all details of the matter after perusal of the records which is normally the case when a right of appeal or revision is available to an aggrieved person. We may only mention here that normally when the statute provides for an appeal or revision, whereas, it may be necessary to examine the records and hear the aggrieved party in an appeal, it may not be necessary to call for the records at least while dealing with the revision. It may be reiterated that in the present case it was only right to make a representation and that too before the Directors Promotion Committee. "By some stretching and straining, it may be urged that perusal of records was necessary by the said Committee but surely there was no necessity of such records to be made available to the Board of Directors when the said Board was only to ratify the decision recorded by the Promotion Committee, particularly when the reasons recorded by the Promotion Committee, were before the Board of Directors". One may again imagine a situation where after analysing the reasons recorded by the Promotion Committee, the Board of Directors might feel the necessity of perusing the records and in that case might even call for the records but to say, as matter of law, that if the records were not available with the Board of Directors, ratification of the decision of Promotion Committee would be illegal, in our view, would not be correct.

(25) Scope of ratification and necessity of availability of records before the Board of Directors has since already been commented upon by us. The comments made by us on these issues apart, what really transpires from the records of the case is that when the decision of the Promotion Committee was put up before the Board of Directors for ratification, in the minutes of meeting that came to be recorded, it was mentioned against Item No. 11 as follows :—

"Item No. 11 : Decision of the Directors' Promotion Committee on the representation of the officers against their non-approval for promotion to SMG Scale V-General Manager (VPT) note dated 9th June, 1992 ratified. Shri Salamat Ullah, Director, however, dissented and expressed the view that since records pertaining to Interviewees selected for promotion by Departmental Promotion Committee have not been made available, as such it is not possible for him to consider the item".

(26) The minutes were placed before the Board of Directors on 25th July, 1992 for confirmation and following resolution was passed on that date :

“Item No. 11 : Decision of the Directors’ Promotion Committee on the representation of the officers against their non-approval for promotion to SMG Scale V.

Shri Salamat Ullah, Director, pointed out that there had been a discussion on the item but at no stage did he express his dissent on the decision of the Directors’ Promotion Committee. As such the following may be substituted in place of the recorded minutes :

“Ratified”.

(27) On the basis of the material placed on the records of the case, learned Single Judge came to the conclusion that “the objection raised by Shri Salamat Ullah, Director, shows that records had not been placed before the Board of Directors”. With respect, we are unable to agree with this view taken by the learned Single Judge. On 25th July, 1992 when the matter came up before the Board of Directors for confirmation of the minutes recorded on 3rd July, 1992, none other than Salamat Ullah himself pointed out that there had been a discussion on the item but at no stage did he express his dissent on the decision of the Directors’ Promotion Committee. As such the following may be substituted in place of the recorded minutes:

“Ratified”.

(28) No material was placed before the Court that might suggest that there was substitution of the original resolution in order to avoid embarrassment. The counsel representing the petitioner had only made a suggestion at the time of arguments to the effect aforesaid. On this suggestion alone, we are afraid a finding could not be recorded that the objection raised by Shri Salamat Ullah would show that the records had not been produced before the Board of Directors.

(29) The matter does not end here. The word ‘ratification’ even though not defined in the promotion policy or else where, would, however, suggest that the same is not a regular hearing of the kind as such. The Oxford Dictionary, Volume II, at page 1405 records that ‘to ratify’ means confirm or make valid (esp. what has been done or arranged for by another) by giving consent, approval or formal sanction”. 6th Edition of Black’s Law Dictionary at page 1261 mentions “ratification” to mean in a broad sense, the confirmation of a previous

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act done either by the party himself or by another, as, confirmation of a voidable act. The affirmance by a person of a prior act which did not bind him, but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorised by him". In the said Edition, word 'ratify' has been defined to mean "to approve and sanction ; to make valid ; to confirm; to give sanction to ; to authorise or otherwise approve ; retroactively, an agreement or conduct either expressly or by implicationn." We are of the view that the Board of Directors, while ratifying the decision recorded by the Promotion Committee, in the very nature of things, were not to critically examined as such the entire matter before them. They had only to see the reasons recorded by the Promotion Committee and if such reasons were found to be based on good grounds, there was no necessity at all to look into the records.

(30) Learned counsel for the petitioner, however, has remained content to rely upon a Division Bench judgment of this Court in *Hardwari Lal v. Union of India & Ors.* (2). It is his contention that ratification being a conscience act, records of the case ought to have been produced before the Board of Directors. Paragraph 27 of the report in *Hardwari Lal's* case (supra), relied upon by learned counsel for the petitioner would, however, reveal that it was a case of ratification of a resignation. The observations made by the Division Bench run thus :—

“Otherwise also, ratification being a conscience act, nothing can be inferred from the documents placed on the record that the authorities, i.e., either the Managing Director or the Executive Committee or the Board of Directors expressly or by implication had applied their mind for the ratification of acceptance of resignation and waiving off the period of three months notice or salary in lieu thereof”.

(31) The Division Bench has only observed that the Managing Director or the Executive Committee or the Board of Directors had to expressly or by implication apply their mind for the ratification of acceptance of resignation and waiving of the period of three months notice or salary in lieu thereof. It is not even the contention here that the Board of Directors, while ratifying the decision of the Promotion Committee, had not applied their mind.

(32) In view of the discussion made above, we are of the view that the second contention of Mr. Sibal, learned counsel for the respondent-Bank is also well merited.

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(2) 1990 (5) S.L.R. 777.

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(33) For the reasons recorded above, this appeal is allowed. The conclusions No. 1 and 2 and consequent directions, as reproduced above, arrived at/issued by the learned Single Judge in the impugned judgment are set aside. The parties are, however, left to bear their own costs.

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**S.C.K.**

*Before Swatanter Kumar, J*

ANIL RISHI,—*Petitioner*

*versus*

GURBAKSH SINGH,—*Respondent*

C. R. No. 2879 of 1997

26th March, 1998

*Code of Civil Procedure, 1908—S. 115—Specific Relief Act, 1877—S. 7 (iv) (c), Article 1 of Schedule 1—Suit for declaration filed to the effect that registered sale deed is fake and fabricated & thus not enforceable—Relief cannot be granted unless Court holds that document is liable to be cancelled—If plaintiff's version is established that document is forged & fabricated, document will be cancelled—S. 7 (iv) (c) not applicable but article 1 schedule 1—Payment of Court fees to be judged on the basis of facts stated in plaint rather than on relief claimed—Plaintiff to pay ad valorem Court fee on consideration reflected in sale deed.*

*Held that*, so far the question of payment of appropriate Court fee is concerned, the case of the plaintiff must be judged cumulatively on the basis of the facts stated in the plaint rather than the relief the plaintiff is claiming by cleverly wording the prayer clause.

(Para 4)

*Futher held*, that the registered sale deed reflects the consideration of Rs. 9 lacs and the plaintiff in unambiguous terms has claimed that the said document is void and ineffective for the reasons stated in the plaint. A plaintiff cannot be permitted to avoid payment of requisite and prescribed court fee in the garb of innocently worded prayer clause while in fact it would in spirit and substance and in law becomes inevitable for the Court to grant such a relief which has not been prayed for in the prayer clause explicitly.

(Para 4)

Rajinder Goyal, Advocate,—*for the Petitioner.*