

(2002) 04 OHC CK 0044

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2975 of 1993

Ashok Kumar Mishra and Another

APPELLANT

Vs

Chairman-cum-Managing Director, I.D.C.O. and Another

RESPONDENT

Date of Decision : 10-04-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (2002) 2 OLR 104

Hon'ble Judges : P.K. Mohanty, J;P.C. Naik, J

Bench : Division Bench

Advocate : A.R. Dash and N. Lenka, for the Appellant; Bijan Ray, B.K. Bal. C. Choudhury, A.K. Mohanty and B. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—The petitioners, two in number have challenged the order of the Chief General Manager (T & A) rejecting their representations to designate them as Deputy Manager and allow them the revised scale of pay as allowed to the other contemporaries in service with effect from the date of such persons have been given, the benefit.

2. The short fact of the case is that petitioner No. 1 Ashok Kumar Mishra was first appointed as Trainee Junior Engineer on consolidated salary of Rs. 750/- per month and joined in the Industrial Infrastructure Development Corporation (hereinafter called "I.D.C.O.") on 24.11.1986. He was regularised in the post of Junior Engineer (Civil) at a starting pay of Rs. 565/- per month in the scale of pay Rs. 490-840/- with effect from 1.1.1987. Petitioner No. 2 Dipak Ranjan Tripathy joined the I.D.C.O. on 10.7.1987 as Assistant Manager (Civil) on probation on a consolidated salary Rs. 750/- per month. Subsequently, petitioner No. 1 Sri Mishra was designated as Assistant Manager (Civil) and allowed the scale of pay of Rs. 1350-2975/-with effect from 24.11.1987 in letter dated 22.12.1987, copy whereof is Annexure-D to the counter. Sri D. K. Tripathy, petitioner No. 2 was designated as Assistant Manger (Civil) in the pay scale of

Rs. 1350-2975/- with effect from 15.4.1988 by letter dated 21.4.1988, copy of which is Annexure-E. According to the petitioner No. 2, he was given appointment on probation as Assistant Manager (Civil) at a time when there was no such post but only the post of Assistant Manager (Technical) was available. He being a Graduate Engineer, it is claimed that he ought to have been appointed as Assistant Manager (Technical). However, both the petitioners were subsequently designated as Assistant Manager (Civil) in the pay scale of Rs. 1350-2975/-, which according to them was not existing prior to and after the 18th meeting of the Board of Directors. The promotions were to be given according to the 9th and 10th Board meetings on the recommendation of the Selection Committee, Constituted by the order of the Chairman or Managing Director of the Corporation but the same was not done. The petitioners assert that they could not be placed in the category of Junior Engineer (Selection Grade) in the pay scale of Rs. 1350-2975/-, since it was meant for Junior Engineers having Diploma qualification, with five years experience. The petitioners allege that though unified scale of pay and redesignated post of Graduate Engineers were introduced in the 18th Meeting of the Board of Directors of the I.D.C.O. on 2.6.1987 and the petitioners had joined the service with effect from 1.1.1987 and 10.7.1987, they have been discriminated against other such Engineers appointed prior to them in 1985-86. Petitioner's representation to the authorities having been rejected, they have approached this Court for relief.

3. The opposite party-I.D.C.O. has filed its returns denying the claims and allegations made by the petitioners. It is the specific case of the opposite party-Corporation that the Board of Directors of the Corporation in its 18th Meeting dated 2.7.1987 resolved that there will be an intermediate post in between the post carrying the old scale of Rs. 525-1150/- prescribed for Assistant Manager (non-technical) and the post carrying the old scale of Rs. 1600-1585/- prescribed for Deputy Managers. The intermediate post carrying the old scale of Rs. 750-1100/- would be designated as Deputy Managers. The new scale of pay suggested for that post was Rs. 1845-3100/-. A copy of proceeding of the 18th Meeting of the Board has been annexed as Annexure-F. It is therefore, the stand of the Corporation that in terms of the decision of the Board, intermediate post carrying old scale of Rs. 750-1150/- was designated as Deputy Manager and revised scale of pay suggested for the post was Rs. 1845-3100/-. The petitioners were brought to the cadre of Assistant Manager in the pay scale of Rs. 1350-2975/- after the decision was taken by the Board on 2.6.1987 i.e. by Notification dated 24.11.1987 and 15.4.1988 respectively. By the time the decision of the Board was taken on 2.6.1987, creating a new cadre of Deputy Manager, both the petitioners did not become eligible to get the scale of pay as prior to this decision or on the date it was taken they were not continuing in the pre-revised scale of pay of Rs. 750-1150/- prescribed for Assistant Manager (Technical) or in the revised scale of Rs. 1845-3100/-, which has been adopted for the intermediate post of Deputy Manager. It is specifically asserted that Sri A.K. Misra was continuing as Junior Engineer (Civil) in the scale of Rs. 490-840/-

with effect from 1.1.1987 and Sri D. R. Tripathy was continuing as Assistant Manager on a consolidated pay of Rs. 750/- per month with effect from 10.7.1987 and accordingly, their representations were rightly rejected. It is further stated that the Junior Engineer as shown in Annexure-3 got the pre-revised scale of pay of Rs. 750-1150/- before 2.6.1987 and as such in terms of the Board Resolution, they were designated as Deputy Manager, whereas the present petitioners were brought into the cadre of Assistant Manager (Civil) in revised scale of Rs. 1350-2975/- of the Corporation after 2.6.1987 and did not enjoy the pre-revised pay scale of Rs. 750-1150/- by the time the decision of the Board was taken. However, the petitioners have been promoted to the post of Assistant Manager.

4. In view of the pleadings of the parties and the materials placed on record, it is clear that the petitioners were not continuing in a post carrying a pre-revised pay scale of Rs. 750-1150/- as on or before 2.6.1987, the date on which the Board of Directors of I.D.C.O. took the decision to create the intermediary post of Deputy Manager. The contention of the learned counsel for the petitioners that they being Graduate Engineers and Graduate Engineers holding the scale of pay of Rs. 750-1150/- having been designated as Deputy Manager, they should have been given the same benefit, is misconceived in law. The question of discrimination arises only where equals are treated unequally without any justifiable cause. Admittedly, the Graduate Engineers, who have been re-designated as Deputy Manager in terms of the Board's Resolution were appointed prior to the petitioners were enjoying a scale of Rs. 750-1150/- higher to that of the petitioners. The petitioners being juniors to such persons and holding a post with lesser salary cannot claim equality with those persons. It is not a case where the petitioners were equally situated with their contemporaries as claimed, having the same qualification, experienced scale of pay and seniority, but were denied the benefits of the Resolution and as such, the expectation of the petitioners cannot be legitimate in the facts and circumstances of the case. Only because, the petitioners were Graduate Engineers and some such Graduate Engineers were allowed the benefit of re-designation as Deputy Manager earlier, the petitioners would not ipso facto become eligible or entitled to have the same benefit or privilege. Person similarly situated can only claim equality and not otherwise.

In such view of the matter, we do not find any merit in the writ application, which is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

P.C. Naik, J.

5. I agree.