
(2012) 02 GUJ CK 0133

In the Gujarat High Court

Case No : Special Civil Application No. 7080 of 1994

B.H. Mehta

APPELLANT

Vs

Gujarat Industrial Investment Corp. Ltd. and Others

RESPONDENT

Date of Decision : 10-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 2 GLH 203 : (2012) 3 GLR 2441

Hon'ble Judges : Mohinder Pal, J

Bench : Single Bench

Advocate : M.D. Rana, for the Appellant; G.M. Joshi for Respondent 1 and Mr. B.P. Tanna for Respondent 2 - 6, for the Respondent

Judgement

Mr. Mohinder Pal, J.—Vide order dated 17.12.2004, this matter and Special Civil Application No. 10209 of 1998 were tagged, however, from the facts of the case though these matters pertain to the same petitioner, but the matters are totally different and accordingly Special Civil Application No. 10209 of 1998 is detached. This is a petition under Article 226 of the Constitution of India seeking direction to the respondents to grant promotion to the petitioner at the deemed date to the post of Manager and Senior Manager and consequently fixation of seniority and arrears of salary, if any.

2. The petitioner was selected and: appointed as Deputy Manager on 26.8.1975. He was confirmed on this post on 27.8.1978. He was further promoted to the post of Manager on 17.6.1983 and was confirmed on 30.11.1984. Thereafter, adverse remarks were recorded in his annual confidential reports for the years 1984-1985, 1986-1987 and 1989-1990. The petitioner was promoted to the post of Senior Manager on 3.1.1992. The petitioner submitted his representation to the adverse entries on various dates, however, his final representation has been rejected on 26.11.1993 vide Annexure-E to the petition and aggrieved from the decision of the respondents, the petitioner has preferred the present petition in this Court.

3. After the notice, the respondents have put appearance and denied the claim of the petitioner on various grounds including that of delay.

4. Learned Counsel for the petitioner has contended that adverse entries recorded in the year 1984-1985, 1986-1987 and 1989-1990 have been finally expunged vide order dated 3.1.1992 and on the same day, the petitioner has been promoted as Senior Manager. It is further submitted that the petitioner has been confirmed on 2.2.1993 vide order Annexure-P to the petition. It has been submitted that since adverse entries recorded against the petitioner have been expunged, he should be given deemed date of promotion viz.,

(i) to the cadre of Manager with effect from 21.2.1981; and

(ii) to the cadre of Senior Manager with effect from 1.7.1986.

5. On the other-hand, learned Counsel representing the respondents while referring to the written statement has submitted that the petitioner was not having good record and as at the relevant time, there were adverse entries in his annual confidential reports, he could not be promoted, however, after expunction of these entries, he has been given promotion and has been confirmed at the post of Senior Manager. It is submitted that the adverse remarks for the three years were expunged mainly on the ground that the performance of the petitioner for subsequent years had improved and it was decided to give prospective promotion to the petitioner and hence the claim of the petitioner for promotion retrospectively cannot be accepted. It is further contended that the case of the petitioner for retrospective promotion was considered by the respondent along with other employees and on careful consideration, it was decided not to issue retrospective promotion to the petitioner. Lastly, it is requested to reject the present petition.

6. Having heard learned Counsel for the parties at length and going through the record, I am of the view that relief claim in paragraph 18-c cannot be granted to the petitioner. It has been pointed out from the rules that for promotion from the post of Manager to that of Senior Manager, a person is required to have put in five years" of service. From the representation of the petitioner dated 24.1.1982, it is apparent that he has been promoted as Manager on 13.6.1983, while Mr. G.A. Sompura with whom the petitioner is claiming parity has been promoted on 21.12.1981. Still further, Mr. Sompura has been promoted as Senior Manager on 1.7.1986, while the petitioner has been given promotion on this post after expunction of his remarks on 1.1.1992. So, in view of the fact that Mr. Sompura was promoted as Manager prior to that of the petitioner, his case cannot be considered at par with Mr. Sompura. However, the petitioner is on better footing if we compare his case with that of Mr. B.B. Patel who joined the service in 1979, while the petitioner joined as Deputy Manager (Accounts) in the year 1975. Mr. Patel has been promoted as Manager in the year 1984, while the petitioner has been promoted as Manager in the year 1983. Still further, Mr. Patel has been promoted as Senior Manager on 1.7.1991, while the petitioner has been

promoted to this post on 1.1.1992 after adverse entries have been expunged. I do not find any reason to deny the petitioner deemed date from the date when his junior has been promoted i.e. 1.7.1991. This view is supported by the decision of the Apex Court in the case of U.P. Jal Nigam Vs. S.C. Atri and Another, . In this case, there was dispute of promotion from the post of Executive Engineer to the post of Superintending Engineer. There was an adverse entry for the year 1974-75 in the character roll of the petitioner on account of which he was not promoted although a representation against the adverse entry was pending. This adverse entry was subsequently expunged as his representation was allowed. The effect of order allowing expunction of the adverse entry would be that on the date on which he was considered for promotion to the post of Superintending Engineer, there existed no adverse entry in his character roll. Subsequently, it cannot be said that the respondent was not promoted on account of his unsuitability. That being so, the High Court was justified in ordering that the respondent on being promoted though subsequently, shall be entitled to reckon his seniority with effect from the date on which person junior to him was promoted to the post of Superintending Engineer. So, the ratio of this case will be fully applicable to the facts of the present case. In view of the above discussion, this petition is partly allowed. The respondents are directed to consider the case of the petitioner for deemed date of promotion from 1.7.1991 as Senior Manager, the date from which Mr. B.B. Patel, junior to the petitioner has been promoted. The petitioner will further be entitled to consequential benefits, if any. Rule is made absolute: to the aforesaid extent only. There shall be no order as to costs.