
(2006) 09 DEL CK 0120
In the Delhi High Court
Case No : LPA 574 of 2003

B.R. Kashyap

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:

Citation : (2006) 09 DEL CK 0120

Hon'ble Judges : Mukul Mudgal, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : N.L. Bareja, for the Appellant; K.L. Nandwani, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—This Letters Patent Appeal challenges the Order dated 1.4.2003 passed by the learned Single Judge in Writ Petition (C) No. 3725/2001 filed by the petitioner (appellant herein) who was working with the Respondent No. 3 United India Insurance Co. Ltd. as an Assistant claims that he should be considered for promotion to the post of Senior Assistant in accordance with the previous rules as also in accordance with the Assured Career Progression Scheme (hereinafter referred as the "ACP Scheme") with all consequential benefits.

2. The petitioner after his retirement from the Army had joined the respondent No. 3 as Assistant and the next promotion available for him was the post of Senior Assistant. The writ petition was occasioned by the plea of the petitioner that the case of the petitioner had neither been considered for due promotion with the post of Senior Assistant as per the relevant rules nor was he granted the benefit of the ACP Scheme introduced by the Union of India.

3. The learned Counsel for the respondent No. 3 & 4 has submitted as follows:

(a) The plea for promotion is barred by the principle of res-judicata. This issue was raised in the Writ Petition (C) No. 1173/89 which was dismissed by judgment dated 9.3.1999 and even review against the said judgment was dismissed on

27.1.2001. Thus, writ petitioner cannot claim the benefit of promotion.

(b) That the petitioner had not completed 25 years of service which was the pre-condition to the promotion of Senior Assistant and had retired after 24 years" service.

(c) The policy placed on record indicates that one has to submit an application and the petitioner has not submitted the said application though he submitted two successive representations.

(d) The ACP Scheme could not be applied to the petitioner as the petitioner had admittedly not completed 25 years of service.

4. We find force in the plea of the respondent that the appellant is precluded from re-agitating an issue that stood concluded with the dismissal of his earlier Writ Petition (C) No. 1173/1989. The learned Single Judge has, in this context, held as under:

The plea of res-judicata was held against the petitioner in the following terms.

It is also to be noted that before joining the respondent the petitioner was in military service and after his release there from, he joined the present respondent. The petitioner filed a writ petition praying for consideration of his past service rendered in the Army for counting of his service in the present post. The aforesaid contention of the petitioner did not find favor with this Court. It was specifically held that the petitioner would not be entitled to get the benefit of his past service rendered in the Indian Army and, Therefore, the said past service cannot be computed for giving any benefit. The aforesaid fact was also accepted by the petitioner when he submitted his representation on 5.2.2001. It was categorically stated in the said representation by him that his writ petition was dismissed wherein only the aspect of fixation of his previous Army Service in terms of F.R.27 was rejected by this Court on 9.3.99. The said contention as raised in his representation is required to be examined in the light of relief , i.e., sought for by the petitioner in CWP 1173/89, when are extracted above. In the said reliefs the petitioner had specifically prayed for a direction to the respondents to promote the petitioner to the post of Senior Assistant and also to include the service period of employment of the petitioner with the Indian Army. The aforesaid reliefs which were sought for by the petitioner in the said writ petition were considered in the light of the records, by this Court. This Court took notice of the guidelines issued by the respondents in 1989 and the guidelines issued by the Government of India in 1963 and 1986. It was also held in the said judgment that till 1989 when the respondent framed their own guidelines, the petitioner did not agitate his rights before any Court and that the petitioner had approached this Court immediately after the respondents asked for option from him. It was also held by this Court that no document was produced by the petitioner to show that at any point of time between 1977 and 1989 the respondent had adopted or followed the guidelines issued by the Government of India. In that context and having held thus, this Court held that the petitioner

cannot after the guidelines have been formulated by the respondent seek to claim benefits on that basis. The reliefs that were sought for by the petitioner were considered and dismissed by this Court holding that no case was made out by the petitioner for issuance of a writ. The said judgment was delivered on 9.3.99.

We are in agreement with the above finding.

5. However, even on merits we are of the view that the appellant has no case since the appellant did not satisfy the condition of the promotion policy, we are of the view that he cannot be given any benefit under the ACP Scheme. Section 49-B of the Promotion Policy reads as under:

One promotion before Retirement-Special Dispensation.

Class III/IV employees (In Entry grade) at Ceiling/Stagnation stage.

For such of the employees in the entry cadre viz. Subordinate Staff, Driver, Assistant and Stenographer who have put in twenty five completed years of service in the same cadre, who are not below fifty-five completed years of age, and have not received a single promotion, would be considered for promotion to the extent of and against specific vacancies, as may be approved by the Chairman-cum-Managing Director of the Company/Managing Director of the Corporation, as the case may be, for the purpose, on completion of normal promotion exercise, on the following basis:

(1) Eligibility would be restricted to employees who have put in minimum of twenty five years of service in their respective cadres, without receiving a single promotion so far in their entire service career.

(2) Such employees shall not be below the age of fifty-five completed years to be reckoned as on the cut-off date (31st December) of the preceding year.

(3) Selection would be subject to satisfactory work record and the concerned employee not being unfit for promotion. Any employee who is (a) under suspension; (b) in respect of whom charge-sheet has been issued and the disciplinary proceedings are pending; and (c) in respect of who prosecution for a criminal charge is pending, would be deemed to be ineligible for consideration under this paragraph.

(4) Selection made under this paragraph would not reckon against regular vacancies, but would be against the specific additional vacancies not exceeding 20 percent of the total declared vacancies in each of the entry cadres, as may be sanctioned by the Chairman-cum-Managing Director of the Company/Managing Director of the Corporation, as the case may be.

(5) Selection under this paragraph from amongst the eligible employees in the respective cadres would be based on marks obtained as provided for under the existing criteria for seniority, qualification, work record and interview, where applicable, in relation to the respective cadres. However, weightage for seniority

would be to the extent of 3 marks for each completed year of service in the cadre beyond 25 years of service in the cadre.

N.B. : In case of any doubt on interpretation of any part of the provision of this paragraph, Chairman of the Corporation would have the powers to clarify and issue guidelines.

6. It is clear that the case of the appellant does not fall within the said policy as the said policy clearly states that the benefit is only available to those who have put in minimum 25 years of service in cadre without even a single promotion. The appellant admittedly does not satisfy the said condition. In this view of the matter, no interference is called for with the judgment of the learned Single Judge. Accordingly, this LPA stands dismissed.