
(2014) 03 MP CK 0006
In the Madhya Pradesh High Court
Case No : W.P. No. 6920 of 2013

Dipti Nigam

APPELLANT

Vs

Oriental Insurance Company Ltd.

RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 2 MPLJ 404

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Anil Sharma, Advocate for the Appellant; S.N. Gajendragadkar for Respondent Nos. 1 to 3 and Amit Lahoti for Respondent No. 4, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—This writ petition filed under Article 226 of the Constitution is directed against the order dated 11-9-2013 (Annexure P-1). By this order, the petitioner is posted on promotion to Manendragarh (Chhattisgarh). The facts narrated by the petitioner are that the petitioner was working as Assistant at Morena. The petitioner's husband is an Administrative Officer in the respondent-Company and presently posted at Gwalior. Her son is a student of Class-XI. The respondents issued a notice dated 9-7-2013 for implementing the promotion policy for the post of Senior Assistant. Options were invited for filling up the post of Senior Assistants available at Gwalior, Ratlam, Manendragarh and Champa (Chhattisgarh). The said notice is filed as Annexure P-4. Another notice dated 6-8-2013 (Annexure P-5) is also issued by the department. The petitioner submitted her candidature for the post of Senior Assistant. The petitioner gave her choice and opted for Gwalior. No second preference was given by the petitioner. The respondents considered the eligible candidates and then issued the final merit list. In this list, the name of the petitioner is at No. 1. It is contended by the petitioner that in the merit list petitioner is at No. 1. The

respondents have framed policy viz. Job Rotation and Transfer Policy for Supervisory, Clerical and Subordinate Staff (Policy). It is contended by Shri Anil Sharma that as per the said policy, the person so selected for promotion is entitled to get a nearer posting depending upon his/her merit. Since the petitioner was at No. 1 in the merit list, it is contended that she was entitled to get posting at nearer place i.e., Gwalior. It is further submitted that Manendragarh is about 1200 kms. from Morena and it will be contrary to policy to send a female employee to such a far-off place. More-so, when her son and 53 year old unsound brother-in-law is dependent on her. Thus, the main attack on impugned order is on the basis of Clause 11(b) of the policy.

2. Per contra, Shri Gajendragadkar for the employer submits that the transfer order is an administrative order on which no interference is warranted by this Court. He submits that there is no malice in the order impugned and, therefore, no interference be made.

3. Shri Amit Lahoti, learned counsel for respondent No. 4 submits that the existence of the provision in the policy cannot be disputed. It is contended by respondent No. 4 that in the event of promotion he opted for Ratlam. However, he has not been posted to Ratlam which is improper. Respondent No. 4 in para 5 of the return stated his personal difficulties.

4. No other point is pressed by learned counsel for the parties.

5. I have heard the learned counsel for the parties and perused the record on the basis of contentions made.

6. The stand of the petitioner is that she secured first position in the merit list and, therefore, as per the policy, she is entitled to get a nearer posting as per the ranking, whereas the stand of the employer is that the petitioner is transferred in administrative exigency.

7. In the opinion of this Court, in fact this is not a case of transfer. This is a case of posting of the petitioner and respondent No. 4 on promotion. In other words, this is a case of promotion-cum-posting. No doubt, in cases of transfer interference is limited. If transfer order is proved to be mala fide, runs contrary to any statutory provision, passed by an incompetent authority or changes service conditions of the employee to his detriment, interference can be made. Present case is not a case of simple transfer.

Clause 11(b) of policy is framed as under:--

11. Transfer on Promotion.--

(a) xxx

(b) After complying with the above provision, the principle of "higher the ranking nearer the posting" shall be followed.

8. From Clause 11(b) aforesaid, the respondents were required to apply their

mind on the anvil of "higher the ranking nearer the posting". There appears to be no application of mind to this aspect. The impugned order Annexure P-1 does not contain any reason as to why Clause 11(b) is not followed. It is not the case of the respondents that petitioner is unsuitable to be posted at Gwalior. It is also not the case of the employer that in administrative exigency, the petitioner's posting at Gwalior is not feasible or justifiable. The policies are made with a view to provide guidelines to the administration. In absence of any compelling reasons, guidelines in case of promotion policy must be followed. As long as policy is in force, the respondents should not deviate from the said policy unless it is must in administrative exigency or in public interest. In the present case, no such administrative exigency or public interest is shown. At the cost of repetition, it is not the stand of the respondents that posting of the present petitioner at a nearer place in consonance with policy will create any administrative problem for the administration.

9. The Apex Court in Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others, opined as under:--

It may be relevant to emphasis at this juncture that while the rules and regulations referred to above are statutory, the policy guidelines are relatable to the executive power of the Chandigarh Administration. It is axiomatic that having enunciated a policy of general application and having communicated it to all concerned including the Chandigarh Engineering College, the Administration is bound by it. It can, of course, change the policy but until that is done, it is bound to adhere to it.

10. In Virender S. Hooda and Others Vs. State of Haryana and Another, , the Apex Court opined that policy decisions are also binding if not contrary to the rules. In the present case, no statutory rule governing the field is brought to the notice of this Court. Thus, it cannot be said that policy was contrary to any statutory rule. The eligible candidates were given to understand that on promotion they may get a nearer posting depending upon their merit. A legitimate expectation was created in their mind. The doctrine of legitimate expectation is akin to reasonableness and natural justice. [see National Buildings Construction Corporation Vs. S. Raghunathan and Others,].

11. Considering the aforesaid, in the opinion of this Court, the respondents have erred in not examining and applying Clause-11(b) in case of the petitioner.

12. Resultantly, the impugned order Annexure P-1 to the extent it relates to the posting of the petitioner at Manendragarh is set aside. The respondents are directed to consider the case of the petitioner for posting on promotion as Senior Assistant at a nearby place by strictly applying Clause-11(b) of the policy. The aforesaid exercise be completed within 30 days. Petition is allowed to the extent indicated above. No cost.