
(2018) 08 JH CK 0054

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 103 of 2016, I.A. No. 9013 of 2017

Dr. Dhanakar Thakur

APPELLANT

Vs

MECON Limited

RESPONDENT

Date of Decision : 01-08-2018

Acts Referred:

Citation : (2018) 08 JH CK 0054

Hon'ble Judges : APARESH KUMAR SINGH, J; RATNAKER BHENGRA, J

Bench : Division Bench

Advocate : M.S.Mittal, Rahul Lamba, Naveen Kumar, Sheela Prasad

Final Decision : Dismissed

Judgement

1. Heard appellant in person and learned counsel for the respondents.
2. Writ petitioner is in appeal aggrieved by the order dated 7.12.2015 passed in W.P.(S) No. 5952 of 2013 by learned single judge, whereunder, it was held that since the petitioner failed to fulfill the requisite criteria in order to come within the zone of consideration for being recommended for promotion from E-6 to E-7 grade, he has failed to make out a case for direction upon the respondent nos. 1 and 2 to reconsider his claim for promotion. Learned single judge also held that promotion of respondent Nos. 3, 4 and 5 to E-7 grade cannot be interfered with. Writ petition was dismissed as being devoid of merit.
3. Petitioner/appellant herein had approached the writ court with a prayer for quashing of the order of promotion of respondent nos. 3 and 4 dated 30.6.2012 and respondent no.5 dated 6th July, 2013 to E7 grade asserting that they lacked basic requisite educational qualification for E-7 grade and that petitioner was deprived from promotion despite having the educational

qualification of MD in general medicine and Diploma in Child Health.

Petitioner prayed for a direction upon the respondent nos. 1 and 2 i.e. Mecon and its officials to promote him from E-6 to E-7 grade with effect from

1st April, 2011 with all consequential monetary benefits. He also prayed that the annual performance report pertaining to the year 2010 be expunged

and an average mark be accorded on the basis of past years in the E-6 grade for the purposes of promotion and payment of performance related

perks.

4. Brief facts as are material for consideration of the issue in controversy and the grounds of challenge are being referred to hereinafter. Petitioner

was appointed on the post of Senior Specialist (Medicine) in grade E-3 in 12.11.1990 in Mecon Ltd. He obtained the qualification of M.D. (General

Medicine) in the year 1995 and Diploma in Child Health in the year 1997. He was called for interview by the Departmental Promotion Committee in

2012 but was not granted promotion though respondent nos. 3 and 4 were promoted to E-7 grade vide order dated 30.6.2012. Later respondent no.

5 was also promoted to E-7 grade as per recommendation of the DPC held in 2013 vide order dated 6.7.2013. Petitioner being aggrieved represented

before the respondent authorities of Mecon for revocation of the promotion order which was rejected by the management. Petitioner contended that

promotion to respondent nos. 3, 4 and 5 were against the Promotion Policy of Mecon as they did not have requisite qualification. Petitioner was

awarded less marks in the annual performance report of 2012 deliberately in order to deprive him from promotion. Rule 10.3 of the Promotion

Policy and the Rules for Promotion for Executives and Non-Executives provided for relaxation of eligibility condition in exceptional cases at the

discretion of the Chairman-cum-Managing Director for reasons to be recorded. However, no documents were supplied to suggest that reasons were

recorded while granting promotion to these respondents after relaxation of the eligibility conditions. The exercise was without any reason and

therefore arbitrary. As per the Promotion Policy, doctors having MBBS degree can be promoted to E-5 grade but for promotion to higher grade up to

the top level the educational qualification of post-graduate is mandatory. Petitioner contended that he was senior to respondent Nos. 3, 4 and 5 as well

therefore, he ought to have been promoted. Petitioner had been earlier promoted

to E-6 grade w.e.f. 1st April, 2008 and had discharged his duty with due diligence, honesty and integrity on the promoted post. Therefore, there was no reason to question his professional efficiency.Â The interview held

for promotion to E-7 grade was for assessment of the capability to assume higher managerial responsibility.Â Â

5.Â Respondent-Mecon contested the case before the Writ Court so did the respondent Nos. 3 and 4. Respondent- Mecon asserted that respondent

Nos. 3 and 4 along with the appellant were promoted to E-6 grade in 2008. The appellant never objected on their eligibility. He has cast an aspersion

now on failing to get promoted to E-7 grade which is not proper. The meeting of the Departmental Promotion Committee was presided by Chairman

cum Managing Director. The Rule conferred power upon the CMD to relax the eligibility criteria of the candidates in the zone of consideration.Â It

was pointed out that petitioner was given Grade-C in the CCR grading. In the year 2013 also DPC comprised the CMD and other officials who after

objective assessment of the performance of the candidates made recommendation in favour of respondent no.5 for promotion to E-7 grade.Â Clause

4.6.1. was also brought to notice of the Writ Court as per which weightage is given for qualification, interview, appraisal report of previous 3 years

and length of service while assessing theÂ candidates for promotion to E-7 grade. Promotions made were approved by the CMD and therefore

amounted to sufficient compliance of the Promotion Policy. Petitioner could not be promoted despite having the requisite academic qualification as his

confidential report was not up to the mark. The APR of all employees were prepared as per procedure and norms and any allegations of interpolation

is baseless. Petitioner also got an opportunity to attend the interview like similarly situated persons but could not achieve the cut-off marks.

Respondent Nos. 3,4 and 5 also supported their case. They also submitted that petitioner despite being in the zone of consideration could not be

promoted to E-7 grade due to the fact that he obtained lessor marks than the cut-off marks. Learned single judge after consideration of material facts

relied upon by the parties, Clause 4.6 relating to promotion from E-6 to E-7 grade and the judgments of the Apex Court rendered in case of Union of

India & Anr. Vs. S.K.Goel and Ors. reported in 2007 (3) JLJR 124 SC; (2007) 14 SCC 641 and other judgments relied upon by the petitioner however

did not find merit in the case of the petitioner.Â Â

6.Â Petitioner thus, being aggrieved is before us in appeal.Â During the pendency of the appeal appellant has sought permission to delete the

respondent nos. 5 and 6. As such the grievance of the appellant is directed against official respondent and respondent Nos. 3 and 4. Respondent No.3

has already superannuated in December, 2017. The appellant has also superannuated in April, 2015. Appellant is appearing in person in the present

proceedings also. The following submissions have been made in support of the challenge to the impugned order:Â Â

(i)Â Appellant has referred to the Promotion Policy at page 217 especially clause 10.3 whereunder the CMD, Mecon has been conferred the power

to relax eligibility conditions in exceptional circumstances. He has made reference to the information obtained under RTI at page 218 dated 27 August,

2013 whichÂ failed to disclose any reasons for relaxing the eligibility conditions. Exercise of power by the CMD was therefore arbitrary. Such power

for relaxation in the minimum educational qualification of post-graduate for promotion to E-7 grade has been violated in respect of respondent Nos. 3

and 4. Therefore, their promotion were not in accordance with law and fit to be set aside.

(ii)Â Appellant has referred to the annual performance report of 2012 at page 268 and submitted that he has been deliberately under assessed for the

relevant year to exclude him from being promoted to E-7 grade from the categories of doctors with an intent to favour the private respondents. He has

further submitted that promotion policy did not conceive of interview for the post of doctors. No doctors wereÂ in the interview board as such the

assessment for promotion to E-7 grade was vitiated. He further submitted that as per Promotion Policy of the respondentâ"Mecon, post-graduate

qualification is mandatory for promotion beyond E-5 grade.Â An incumbent can get promoted up to E-5 grade with the qualification of MBBS but not

beyond that. He refers to annexure 15/2 in support thereof.Â

(iii)Â Appellant further contends that the entire action was motivated for the reason that he had exposed the purchase of certain Sleep Lab and

Hearing Scanner for Rs. 33 lakhs in the Ispat Hospital, Mecon which had practically no utility in such a hospital.

(iv)Â It is contended by the appellant that the apportionment of hundred marks

for assessment of a candidate for promotion to E-7 grade was against the Promotion Policy. As per the Promotion Policy 10 marks for educational qualification, 15 marks for experience and 30 marks for interview were prescribed. The assessment had however been carried out for 100 marks giving weightage of 10 points to appraisal reports of previous three years, 15 points for length of service/experience in the grade, 30 points for qualification and 30 points for interview.

7. Appellant has relied upon the judgment rendered by the Delhi High Court in C.W.P No. 7276 of 1999 and 417 of 2099 of 2000 in the case of

K.S. Mathew and others Vrs. Government of NCT, Delhi and others in support of his submission that power to relax should not be construed as

meaning to ignore the legitimate claim of qualified persons. He has also relied upon the case of J.C. Yadav and others. Vs. State of Haryana and

others reported in (1990) 2 SCC page 189 on the same point. Reliance is placed on the judgment of the Apex Court in the case of M. Venkateswarlu

and others vs. Govt. of A.P. and others reported in (1996) 5 SCC 167 and also in the case of State of Orissa and others Vs. Sukanti Mohapatra and

others reported in AIR 1993 SC 1650 in support of the submission that power to relax is not intended to grant benefit to incumbents in a manner

which is inconsistent with the Rules. Appellant has also referred to the judgment rendered by the Apex Court in the case of Syed Khalid

Rizvi and Ors. Vs. Union of India reported in (1993) Supp 3 SCC 575 in support of his submissions.

8. Learned senior counsel for the respondent-Mecon has supported the findings rendered by the learned single judge and submits that the

appeal/representation of the appellant against promotion of respondent Nos. 3, 4 and 5 were rejected by the respondent competent authority of

Mecon by Annexure-4 which has not been challenged. Learned senior counsel has referred to the constitution of the DPC at Annexure-C page 244

which shows that Chairman-cum-Managing Director was part of the DPC. He submits that the case of the appellant was duly considered but not

found fit for promotion. His name figures at Serial No. 94 in the list of the candidates at page 248 of the record. Learned counsel has referred to the

appraisal performance report of the appellant at page 268 and pointed out that there are remarks made about his performance by his immediate

controlling authority which have been approved by the reviewing authority and the highest authority. Following remarks were made about the

appellant. He perpetually used to come late for work; see only meager number of patient; could not create faith among the patients; failed to upgrade

his skills; showed arrogant behavior with patients and was not involved in the activities pertaining to the organization. These remarks were duly

approved by the reviewing officer and accepted by the higher authority as well. Learned senior counsel has referred to the information furnished

under RTI dated 7.2.2013 at page-271 on the request of the appellant which delineates the apportionment of the 100 marks as per clause 4.6.1. of the

Promotion Policy for assessment of candidates for promotion to E-7 Grade. He submits that the appellant had only a right of consideration for

promotion but cannot agitate a right to be promoted if his performance was not up to the mark. Reference is made to the promotion order dated

30.6.2012 at page 188 where the respondent Nos. 3 & 4 rank at Serial Nos. 9 & 10. These respondents were promoted on the basis of the

recommendation of the DPC on consideration of the criteria prescribed under clause 4.6.1. Learned counsel has placed reliance on the judgment of

the Apex Court reported in (2013) 14 SCC 32 para 16 in support of the aforesaid submissions. He submits that the appellant did not have any reason

to raise grievance when he along with respondent Nos. 3 & 4 were promoted to E-6 Grade in the year 2008 though respondent Nos. 3 & 4 did not

have the post-graduate qualification at that point of time. It is only when he has failed to get promotion on account of his under performance before

the DPC in 2012 and 2013 that he has raised such a grievance. Learned senior counsel submits that the insinuations made by the appellant are wholly

unfounded and have been duly replied in the affidavit filed by the respondent-MECON. The appeal is without merit and therefore deserves to be

dismissed.

9. Respondent-MECON in its counter-affidavit filed in the present memo at para 22 made categorical reply to the contention of the appellant on the

purchase of the Poly Sonography Machine for the Sleep Lab for Ispat Hospital. This facility was procured in the year 2006-07 and has been used

extensively since 20.04.2007 and continues to be in regular use. Appellant seems to have raised a bogey six years thereafter on being denied

promotion.

10.Â Learned counsel representing respondent No. 3 & 4 has also argued in support of the findings of the learned Single Judge. She submits that the appellant at best could seek right of consideration for promotion on objective parameters upon which all other similarly situated candidates like respondent Nos. 3 & 4 were considered. Appellant was not found fit on account of the reasons stated by the official respondents. Appellant also did not make any complaint when respondent Nos. 3 & 4 were promoted to E-6 Grade in 2008 onÂ relaxation of eligibility criteria in terms of clause 10.3 of the promotional policy. The appellant has failed to make out any illegality or mala fide in the promotional exercise whereunder the private respondents were promoted. Therefore, the appeal is fit to be dismissed.

11.Â We have considered the submission of learned counsel for the parties, gone through the relevant material pleadings on record and also perused the judgments cited at the Bar. There are two aspects of the matter- one relating to the denial of promotion to the appellant to E7 Grade and second relating to the promotion of respondent Nos.3&4.

The appellant and the respondent Nos. 3 & 4 have come in the organization at theÂ different points of time. Appellant had joined in the year 1990 in E-3 Grade while respondent No. 4 had joined the services of the company in 1987 in E-1 Grade. Both climbed the ladders of promotion from time to time and reached up to the stage of E-6. As per the promotion policy relied by the parties promotion up to E-5 Grade could be granted to incumbents having a qualification of MBBS. However for promotion beyondÂ E-5 Grade up to top level the incumbent had to have post-graduate qualification, (MD/MS) as per the information furnished under RTI on 04.07.2012 (Annexure-2) the Promotion Policy in respect of regularÂ Doctors working at Ispat Hospital. Respondent Nos. 3 & 4 were having a qualification of MBBS but were promoted along with the appellant to E-6 Grade i.e. higher than E-5 Grade in the year 2008. No objection was raised by the appellant at that point of time. The relaxation if required, stood granted at that point of time itself. It further appears that prior to the promotionÂ of private respondent to E-7 Grade in 2012, another employee Dr. M.R. Raut had also been promoted to E-7 Grade as would appear from Annexure-5/2 to the memo of appeal. The document at page 244Â contains the recommendation ofÂ

the DPC for consideration of eligible AGM and equivalent (E-6 Grade) for promotion to the post of Deputy General Manager and equivalent (E-7

Grade) for the year 2013. The Chairman-cum-Managing Director who has been authorized under Clause 10.3 to relax the eligibility conditions in

exceptional cases was part of the Departmental Promotion Committee. The DPC considered the case of the appellant as well as the private

respondents in the year 2012 and again that of appellant and respondent No. 5 in the year 2013. The issue of relaxation therefore pales into

insignificance as respondent Nos. 3 & 4 had been promoted to E-6 Grade in the year 2008 without any such objection on the part of anyone including

the appellant. Candidates falling within the zone of consideration for promotion to E-7 Grade were considered as per the weightage prescribed under

Clause 4.6.1 on the following factors:

Factor

Weightage

(a) Appraisal Reports (previous 3 years) 10 points

(b) Length of Service/Experience in the grade 15 points

(c) Qualification 30 points

points

(d) Interview 30 points

12. We have taken note of the submission of the appellant relating to the Annual Performance Report of 2012. However, on perusal of the APR (

Annexure-2) at page 268 of the memo of appeal, it is evident that the assessment did not attain finality only on the remarks of the Chief Medical

Officer dated 01.05.2013. The reviewing officer recorded his agreement on 03.05.2013 and the higher authority also made an observation on

27.06.2013 i.e. appraisee's attitude towards work is totally negative and undesirable. Allegations of mala-fide could have been alleged against one

official but if the hierarchy of officials has concurred with the opinion, such a plea is not tenable. We are in agreement with the observations made by

the learned Single Judge on the point.Â

13.Â The Apex Court in the case of Union of India and another versus S.K. Goel and others, reported in (2007) 14 SCC 641, has held that it is a well

settled dictum ofÂ service jurisprudence that there will ordinary be no interference by the Courts of law in the proceedings andÂ recommendation of

the DPC unless such DPC meeting are held illegally or in gross violation of the Rules or there isÂ misreading of confidential reports. The opinion of

the Apex Court as rendered in the case of S.K. Goel and others (supra) para 27 is quoted hereunder:

â??27. In our opinion, the judgment of the Tribunal does not call for any interference inasmuch as it followed the well settled dictum of service

jurisprudence that there will ordinarily be no interference by the courts of law in the proceedings and recommendations of DPC unless such DPC

meetings are held illegally or in gross violation of the rules or there is mis-grading of confidential reports. In the present case, the DPC had made an

overall assessment of all the relevant confidential reports of the eligible officers who were being considered. The DPC considered the remarks of the

reviewing officers. There was clear application of mind. Respondent 1 did fulfill the benchmark. Hence, the impugned direction of the High Court

ought not to have been issued as the same will have the impact of causing utter confusion and chaos in the cadre of the Indian Revenue Service and

the Customs and Central Excise Service.â??Â Â Â Â Â

14.Â The DPC had made an overall assessment of the eligible officers based on their appraisal reports, qualification, experience and interview as

well. Appellant found his place at Serial No. 94 in the list of candidates in the year 2013. 39 candidates were recommended for promotion to the post

of Deputy General Manager and equivalent out of 94 candidates. Cut off marks for promotion for next higher grade was 65. The promotion to E-7

Grade is to a managerial post as such, it is a channel for promotion to Executives from different streams, such as, finance, engineering, medical etc.

The contentionÂ of the appellant that the DPC should have a Doctor on the Board also does notÂ merit acceptance as the DPC was assessing the

capability of the candidates to assume higher managerial responsibilities.

15.Â The appellant has laboured to question the recommendation of the DPC in assessing his candidature. However, the materials on record do not

substantiate such allegations. More so, appellant has not been able to show that the DPC meeting was held illegally or in gross violation of the Rules

or there was misreading of confidential reports. 16. From the discussion made hereinabove, we are of the opinion that the findings of the learned

Single Judge do not suffer from any such errors of law or fact which require interference in appeal.

17. As an upshot of the aforesaid discussion and for the reasons recorded hereinabove, we do not find any merit in the appeal. It is accordingly

dismissed.

18. I.A. No. 9013 of 2017 is closed.