

(2015) 02 MAD CK 0162

In the Madras High Court

Case No : Writ Petition (MD) No. 15311 of 2012

G. Thirumal

APPELLANT

Vs

The Deputy General Manager and Appointing Authority
(Personnel), The Oriental Insurance Company Ltd. and
Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Citation : (2015) 02 MAD CK 0162

Hon'ble Judges : V.M. Velumani, J.

Bench : Single Bench

Advocate : T. Antony Arulraj, for the Appellant; K. Bhaskaran, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.M. Velumani, J.—This Writ Petition has been filed to direct the respondents to treat the petitioner as Scale-II Officer (Assistant Manager) with effect from 08.07.2010.

2. The petitioner was appointed as Assistant (T) on 08.01.1985 in the respondent Organisation. He was promoted as Senior Assistant in the year 1990 and subsequently, promoted as Scale-I Officer in the year 2003. He became eligible to be promoted as Scale-II Officer in the year 2010. His name was included in the promotion list for the year 2010-2011. The said list was displayed in the portal of the respondents. However, he was not served with the list. On promotion, he was posted to Tuticorin. He did not join duty at Tuticorin, as the promotion order was not served on him.

3. The competent authority issued promotion order on 08.07.2010. The petitioner was in Serial No. 86. The relevant column mentions, as if he was posted at Thiruvannamalai. Actually, he was posted only at Madurai. The order of promotion was not served on the petitioner by inadvertence. Thiru. Johnson, the

then Chief Regional Manager, Coimbatore, requested the petitioner to submit a letter, as if he received the promotion order. The petitioner was making representation to post him either in Madurai or nearby Madurai. The petitioner has made this request as his wife had undergone surgery and advised by the doctor to take bed rest and he has also to look after his mother, aged 80 years. The petitioner had made many representations and the respondents have not sent any reply. The respondents have decided that the petitioner has relinquished his promotion, as he has not joined the transferred place. The respondents are insisting that petitioner should appear for examination for considering him for promotion in the subsequent promotion process. Since the petitioner had already been promoted, the question of appearing for examination does not arise. Hence, the petitioner has filed the present writ petition for the relief stated supra.

4. The second respondent filed counter affidavit denying the various averments made by the petitioner. It is stated that the petitioner was promoted as Scale II Officer and the promotion order dated 08.07.2010, bearing Ref.PRM/CBRO/2010-11/21, was served on the petitioner. After receiving the said order, the petitioner refused to acknowledge the receipt of the same. The petitioner gave two representations dated 05.08.2010 to the second respondent. In one representation, the petitioner admitted that he has received the promotion and posting order, dated 08.07.2010. In another representation, the petitioner had stated that he came to know about his promotion and posting. In both the representations, the petitioner requested for retaining him in Madurai itself or in any one of the Office in and around Madurai.

5. As per the policy of the respondent Company, promoted Officers will be transferred and posted in some other place, as per the need of the Company. Further, as per promotion policy, the Officers, who were working for more than two years in the same place, should be transferred to some other place. The respondents issued a notice, dated 07.10.2010, directing all the promoted Officers to join duty in the transferred place immediately, in any event, not later than 11.10.2010, failing which their promotions will be withdrawn and no individual notice was given to promoted officers.

6. The petitioner did not join in the Divisional Office, Tuticorin, as per the directions in the notice, dated 07.10.2010. Hence, as per the provisions of the promotion policy, it is deemed that the petitioner had declined the promotion.

7. In order to give another opportunity to him, a reminder, dated 25.02.2011, was issued to him, directing to report duty at the new place of posting. The petitioner refused to receive the said notice in the presence of witnesses. The promotion will take place only if the promoted Officers join duty at the place of posting on transfer. For the above reasons, the second respondent prayed for dismissal of the writ petition.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

9. I have perused the materials on record, pleadings and considered the arguments of the learned counsel for the petitioner and the respondents.

10. From the pleadings and the materials on record, it is seen that the petitioner was promoted to Scale II Officer from Scale I Officer, as per promotion order, dated 08.07.2010 and was posted in the Divisional Office, Tuticorin. The petitioner did not join duty at the transferred place. The petitioner gave two representations, dated 05.08.2010, seeking retention at Madurai or in and around Madurai. In one representation, the petitioner has stated that he had received the promotion order, dated 08.07.2010 and in another representation, the petitioner has stated that he came to know about the promotion order.

11. The petitioner claimed the relief in the writ petition only on the ground that the promotion order was not served on him. This contention of the petitioner is not tenable and not sustainable. The petitioner was aware of his promotion and posting at Tuticorin. Further, the petitioner was given one more opportunity to join duty at the transferred place, by a reminder, dated 25.02.2011. The petitioner refused to receive the said letter. The respondents have categorically stated that on promotion, the Officers will be transferred to the needy places and an Officer, who was working in a place for more than two years and above, will be transferred to another place on promotion. The respondents have also stated that the promotion will take effect only, when the promotee joins duty at the transferred place. The respondents by notice/circular, dated 07.10.2010, has called upon all the promotees to join duty at the transferred place at the earliest, in any event, not later than 11.10.2010. The petitioner did not join duty at the transferred place. This amounts to declining the promotion. At the time of hearing, the petitioner filed an affidavit making the same averments as made in the representation, dated 05.08.2010. In the present affidavit, the petitioner has stated in paragraphs 4 and 5, as follows:

"4. I respectfully state that my wife undergone a surgery in the year 2010. Hence, I made a representation dated 05.08.2010 requesting the respondents to place me on promotion in the nearby offices i.e., Dindigul, Virudhunagar, Theni, Sivakasi, so that I could take care of my wife as well as my aged mother. Even now my wife is suffering from several physical ailments on 23.12.2014 she underwent a surgery at Meenakshi Mission Hospital, Madurai and she is completely on bed ridden. On medical examination it is diagnosed that evidence of cyst is notice in her left ovary and we are planning for another surgery. I am taking care of my mother who is aged about 80.

5. I respectfully state that I am now ready to join in the promoted scale - II post with the same seniority with effect from 08.07.2010. I am ready to give up the monitory benefits payable to me from 2010 to till I join in the promoted post. I therefore humbly request this Hon'ble Court may direct the 1st respondent to consider my case sympathetic grounds and place me on promotion in the nearby offices."

12. The petitioner did not join in the promoted post at the transferred place in spite of circular, dated 07.10.2010. Therefore, the writ petition filed by the petitioner is dismissed holding that the petitioner declined promotion. The request of the petitioner now made in the affidavit cannot be considered and granted by this Court. However, it is open to the petitioner to make such representation to the respondents. If such representation is made by the petitioner, the respondents may consider the same sympathetically, within a period of four weeks from the date of receipt of the representation. No costs.