
(2003) 01 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 352/87

G.M.Lone

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) KashLJ 680 : (2003) LIC 2816 : (2003) 3 SCT 632

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : J.A.Kawoosa, H.I.Hussain, Advocates appearing for the Parties

Judgement

1. National Insurance Company Ltd. is engaged in the business of Insurance. It is set up under General Insurance Business (Nationalisation) Act,

1972 (Act no. 57 of 1972). While establishing the Company business were amalgamated and absorbed in this company by the above Act.

Petitioner appointed on 15.11.1969 by his erstwhile employer is deemed to be appointed by the above Company (respondent no.2). Petitioner is

an inspector while as respondent no.5 is also an inspector Grade I, under the General Insurance Scheme of 1976 and promotion policy governing

promotion of Inspector Grade I to the Cadre of Assistant Administrative Officer (hereinafter called A.A.O). Respondent no.5 along with many

otherwise promoted as A.A.O vide order dated 6.12.1982 (Annexure III) and later from the cadre of Assistant Administrative Officer in 1986

vide order dated 25.04.1986 (Annexure IV). Petitioner aggrieved of these orders of promotion of respondent No. 5 as A.A.O and A.O has

challenged both the orders. 2. Petitioner alleges that though he has made representations in December 1982 and October 1984 for redressal of his

grievances, there has been no response from respondents. Respondent no.5 was not eligible for consideration for the promotional of A.A.O from

the feeder category of Inspector Gradel as enumerated in para 11 of the promotion policy. The respondent has not passed any of the examination

prescribed in subclause I/II of clause A of para 11 and is not even fulfilling the other conditions of prescribed years of service as Inspector Grade I.

Respondent No. 5 could not have been promoted to any post on the cadre of A.A.O. Petitioner was categorised as inspector Gradel in the first

round of categorization as provided by explanation to Rule 11 of the promotion policy. His service prior to 1973 is to be accounted for and

reckoned. Once so, he fulfills the eligibility of prescribed years of service as a requirement for promotion to the post of A.A.O. Not with standing

petitioner's merit he was denied the promotion, whereas respondent no. 5 who did not even possess the eligibility was given promotion in an unfair

and unreasonable manner. The condition of eligibility was not also kept in view. Respondent no.5's promotion is arbitrary. Petitioner's merit,

seniority and business performance was not given due weightage. Despite representations there was no response from the other side. The delay

caused to challenge the order in question is referable to the representations and nonconsideration thereof by the respondents. Petitioner cannot be

denied the relief on the technical ground of delay. Petitioner prays for quashment of both circular/orders, so far as respondent no. 5's promotion as

A.A.O ad A.O is concerned.

3. Respondents have contested the case. In their pleadings (reply/objections) respondents aver that the writ petition is not maintainable for laches

and inordinate delay. Petitioner's promotion in December 1982 to Administrative officer in April 1987. The delay of five years to challenge the

promotion given in 1986 from feeder category of A.A.O to the post on the cadre of A.O. should put petitioner out of court. The promotions

cannot be challenged so belatedly only because some representation was made and more so when the representation was responded to and

rejected.

4. On merits it is stated that the petitioner's appointment in 1969 in National Insurance Co., a private organization, before establishment of National

Insurance Co. by Nationalisation Act of 1972, cannot be regarded perse as the

date of appointment as Inspector Grade I of petitioner. It is only on categorisation as Inspector Grade I in terms of promotion policy and Nationalisation Scheme for developmental staff 1976 that he can be called Inspector Grade I. Respondent No. 5 was categorised. By the explanation to clause (a) of para 11 of the promotion policy, the eligibility of respondent no. 5 is to be reckoned from his date of appointment namely 01.05.1970. Under the clause respondent no. 5 was entitled to benefit of this period of service rendered prior to 01.01.1973. Respondent no. 5 has qualification and the prescribed years of service as Inspector Grade I to earn consideration for promotion to the post in the category of A.A.O. Petitioner's contention thereto is misplaced and not based on facts. The eligible Inspectors Grade I were considered for promotion to A.A.O. posts in accordance with the promotion policy in a fair and reasonable manner. The promotions were ordered on the basis of suitability judged in the interview and on the basis of performance recorded and other criteria laid down by the promotion policy. It was done by the Selection Committee after keeping in view the detailed criteria as laid down by the policy, inter alia in various clauses of Rule 11 and other applicable rules governing the subject of promotion of Inspector Grade I to the cadre of A.A.O. Respondent No. 5 earned further promotion as A.O. on being assessed for this post of Administrative Officer, in the matter of his seniority, qualification performance, record and interview.

5. Petitioner's counsel submits that the whole case in fact revolves around 'eligibility condition' for promotion of Inspector Grade I to the post of A.A.O. as given in subclause 2 of clause a of Rule 11 of the promotion policy. He contends that respondent no. 5 is a matriculate and therefore, has prescribed qualification for being considered for the higher post of A.A.O. on having put at least 8 years service as Inspector Grade I. But respondent no. 5 having less than 8 years service as such inspector, on the date of selection/ appointment, lacked eligibility for the promotion. On the other hand petitioner is also a matriculate having been confirmed as Inspector in November 1969 and subsequently as Inspector Grade I in 1973, in the first round of categorization. He was eligible for consideration to the promotional post of A.A.O. Given his business performance and merit, he was eligible to be promoted. However, this contention is contested and

refuted by the counsel for respondents. He submits that the respondent no. 5 too has been a confide Inspector of 1970 and subsequently categorised as Inspector Gradel in the first round of categorization. In fact both are categorised as Inspector Gradel by the categorization by one and the same order, in terms of explanation of paragraph 11 of the promotion policy respondent no. 5 is also entitled to count his service under erstwhile insurer as developmental staff prior to 01011973 towards service on inspector Gradel for purposes of eligibility of prescribed year of service as Inspector Gradel for promotion to the post on the cadre of A.A.O, the biodata of respondent no.5 would show that he has T.D.C part one qualification and is appointed as. Inspector on 01051970 and subsequently confirmed so on 01071971.

6. The relevant paragraph of promotion policy as applicable, in terms of the submission of the counsel to this case, is reproduced as under :

11. condition of Eligibility:

Those of the Inspectors Grade I who satisfy the following condition of eligibility shall be considered for promotion: II) He must have put in at least

8 years of service as Inspector Gradel and must have passed either the Inspector's examination of the F.I.I or its equivalent examination or

matriculation or secondary school certification examination recognised by the State or central government.

Explanation: The service put in by a development staff initially categorised as Inspector Gradel in accordance with para 4 (3) of the General

Insurance (Rationalisation of pay scale and other conditions of service of Development staff) Scheme, 1976 under the erstwhile insurer under

whom such development staff was employed prior to 111976 shall be taken into account that is those who were categorised as Inspector Gradel

in the first round of categorization. Those who were promoted subsequently or those field workers who were categorised as Inspector Grade I

subsequently to the first categorization are not eligible for the above facility of reckoning service as Inspector grade I prior to 111973.

7. There is hardly any dispute that both petitioner and responded No.5 fulfilled the eligibility of qualification / examination prescribed for the

Inspector Grade I to seek consideration of promotion to A.A.O post clear stand is taken by the othersider on affidavit that respondent No5 was

categorization. If so, explanation to clause 11 of the promotion policy provides that his service earlier to 111973 as Inspector is to be taken into

account for purposes of prescribed years of service spent as Inspector Gradel Respondent No.5 was promoted in December, 1982. obviously

when his said actual and deemed service as Inspector Grade I is counted respondent No.5 had the eligibility of over 8 years service as Inspector

Gradel for promotion to the post on the cadre of A.A.O. Equally petitioner too had the edibility for consideration policy for promotion of Inspector

Grade I shows that apart from the eligibility criteria of qualification and span of service period, performance of appraisal based on preceding three

years average of prescribed business performance and premium income as also the performance at the interview is also required to be considered

as integral component part scheme of weighage for promotion is separately weighed, premium income cost ratio, confidential report and

assessment of performance of result, as also performance in interview are all considered by the promotion committee before finalizing the

recommendation on the bases of the evaluation / marks gained on all counts of the prescribed criteria. The ranking list as also final recommendation

of the promotion is prepared by the promotion committee only after taking into account the marks earned out of prescribed marks in detail under

each to the heads and on preparation of merit list. The maximum marks reserved for interview is just 20 out of 100. Therefore, it cannot be said

that by allotting 20% marks on interview by the interview committee inconjunction with appraisal and assessment of the eligible candidates, the

procedure prescribed is arbitrary or in the facts and circumstances of this case, there is any case for arbitrariness or unfairness.

In B.V Sivaiah Vs. V Addanki Babu and Others (AIR 1988 SC 2565) it is observed:

For assessing the minimum necessary merit the competent authority can lay down the minimum standard that is required and also prescribe the

mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on

the basis of appraisal of performance on the basis of service record and interview an prescribing the minimum marks which would entitle a person

to be promoted on the basis of seniority cum merit.

8. respondent No. 5 has been also given second promotion as Administrative

officer in April, 1986 from the feeder category of A.A.O. Petitioner

as seen in the facts and circumstances of the case cannot question the promotion of respondent No. 5 to the cadre of A.O. when petitioner is not

born on/appointed to any post on the cadre of A.A.O. inspector Gradel is not a feeder category for promotion to the post of administrative officer.

Even on this count petition cannot succeed .

9. In the view taken of the matter as above, petitioner cannot succeed and cannot be given the relief prayed for so far as quashment of the

promotion orders of respondent No. 5 concerned. However it is not understand as to why the petitioner who too is confirmed / examination wise

and number of years spent as Gradel Inspector is being sidelined and not considered to the next higher promotional post of A.A.O. it is for the

promotion committee /competent Authority t consider the petitioner's case in terms of criteria laid down for the promotion. Merely because he is

litigating the matter that perse is no ground to refuse the promotion, if he otherwise earns same in term of the policy and the criteria laid down

thereto. This observation of the court is prompted by the reply / objections filed by respondents 2 to 5 wherein primary the action of the committee

/ competent authority to select, promote and appoint respondent No. 5 as A.A.O. and A.O. is defend, rather than thing fault with the case of

petitioner meriting consideration for promotion to the post of A.A.O. the positive and firm writ pleas as to petitioner's serviced data. Performance

result, premium income cost ratio, confidential report etc. are not refuted. Pegging petitioner for long last three decades on the post of Inspector, in

the facts and circumstances of the case, appears exfacie unjustified.

10. As regard the contention that the matter suffers from laches and delay petitioner counsel submits that soon after promotion of respondent No.

5 as AAO. In 1982 he made representation (AnnexuresIII.VVI and IX) from December, 1982 to August 1985 . There was no response.

Petitioner filed the writ petition, after he came to know that the respondent No.5 has been given second promotion to the post of A.O from the

post of A.A. O. and threw challenge to both promotions accordingly.

11. Ld. Counsel for respondents submits that promotion of respondent No. 5 has been in December, 1982. The petitioner opted not to challenge

the promotion of respondent No. 5 as A.A.O. for long five years. It was only in

April 1987, when the respondent No.5 was given second

promotion on 25/4/1986 as A.O. that he awoke to challenge the promotions. The representation made as referred by petitioner's counsel can hardly

change the situation, though the respondent stands to this aspect of the matter is that the petitioner despite being asked time and again to spell out

clearly his case for promotion, did not clearly and sufficiently come forth on the subject. Grievance against respondents is hollow. The

representation was not accepted. The petitioner could not brood over the matter for about five years so as to unsettle the seniority and promotion

of different occupants of the post of A.O. and A.O.

11. The question of seniority of A.O. and A.Os cannot be reopened after a lapse of reasonable period. Disturbing of the settled position is not

justified. Inordinate delay in this case for making a grievance cannot be looked into while considering the question if the court under Article 226 has

a sufficient cause to interfere with the order in the writ jurisdiction. (See B.S. Bawa Vs. State of Punjab AIR 1999 SC 1510).

12. In B.V. Sivaiah Vs. K. Addanki Babu and Others (supra) some of the employees challenged the promotions of respondents as area/Sr.

manager in Regional rural Banks established under the Regional Rural Bank Act of 1976 and (appointment and promotion of officers and other

employees) rules, 1988. These employees/ appellants before Apex Court had been by then as well promoted as area/Sr. manager. Before the

court, they sought to raise the question of restoration of interest seniority between the appellants and the promoted officers to the post of area Sr.

Manager, the Supreme court in this regard observed: ".....We do not find any merit in this contention. Since there was no challenge to the

promotions made on May 03, 1988 till 1993, the promoted officers had been working for nearly five years by then and had acquired right to

seniority on the basis of such promotion and they cannot be deprived of the said right. The High court, in our opinion, has rightly held that the

belated challenge to the promotion made on May 03, 1988 raised by the appellants in these appeals cannot be entertained.

In P. S. Sadasivaswamy Vs. State of Tamil Nadu (AIR 1974 SC 2271), in the context of promoting a Junior over the head of Senior the Apex

Court observed:

.... A person aggrieved by an order of promoting a Junior over his head should approach the court at least within six months or at the most a year

of such promotion. It is not that there is any period of limitation for the course to exercise their powers under Articles 226 nor is it that there can

never be a case where the courts cannot interfere in a length of time. But it would be a sound and wise exercise of discretion for the courts to

refuse to exercise their extraordinary powers under Articles 226 in the case of persons who do not approach it expeditiously for relief and who

stand by and allow things to happen and then approach the court to put forward State claims and try to unsettle settled matters...

13. In result, the writ petition is dismissed with the observations on the questions of according consideration to the case of petitioner for promotion.

Srinagar