

(2010) 08 GAU CK 0134
In the Gauhati High Court
Case No : Writ Appeal No. 24 of 2005

Hamendra Chakraborty

APPELLANT

Vs

National Insurance Company and Others

RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2010) 4 GLT 575

Hon'ble Judges : Madan B. Lokur, C.J.;C.R. Sharma, J

Bench : Division Bench

Advocate : S. Talapatra and B. Banerjee, for the Appellant; D.K. Biswas, for the Respondent

Final Decision : Allowed

Judgement

Madan B. Lokur, C.J.—Heard Mr. S. Talapatra, learned senior Counsel assisted by Mr. B. Banerjee, learned Counsel appearing on behalf of the Appellant. Also heard Mr. D.K. Biswas, learned Counsel appearing on behalf of the Respondent-Insurance Company.

2. The Appellant is aggrieved by the judgment and order dated 17.2.2005 passed by a learned Single Judge in W.P.(C) No. 83 of 2004.

3. The Appellant was vying for promotion to the cadre of Senior Assistant. According to him, he was erroneously and illegally bypassed and denied the promotion. His grievance is that Respondent No. 5, an undeserving candidate was granted the promotion instead of him. In his writ petition, the Appellant had challenged his promotion and also made a grievance with regard to the promotion of Respondent No. 4. Before us however, he has given up the challenge to the promotion of Respondent No. 4.

4. The writ petition filed by the Appellant was dismissed by the learned Single Judge and that is why the Appellant is now in a writ appeal.

5. We find from the Promotion Policy for Supervisory, Clerical and Subordinate Staff as amended upto 17.3.98 (hereinafter referred to as the Promotion Policy) issued by the National Insurance Company Ltd. (for short the Insurance Company) that three criterion were laid down for making promotions to the cadre of Senior Assistant. The criterion and the marks are as follows:

6. Learned Counsel for the Respondent has very fairly produced before us the original record of consideration. We have gone through the original record and find that surprisingly, the Annual Confidential Reports (ACRs) forming the work record of the Appellant for the period 2000, 2001 and 2002 were written on the same date, that is, on 10.9.03. Similarly, the ACRs of Respondent No. 5 for the same three years were written on one date, that is, 9.9.03. The significance of this (though it is not very material for the decision of the present case) is that while the work record of the Appellant is not particularly good, it is clear that he was not given any opportunity to improve his performance over a period of time. But more importantly, the ACRs of both the officers were written just about a week before the Departmental Promotion Committee (DPC) was to meet on 19.9.03. According to learned Counsel for the Appellant, the ACRs were tailored, but we need not delve into this issue.

7. We have gone through the record of the DPC as well as the final tally sheet prepared by the Insurance Company. The admitted position is that in respect of the first two criteria i.e. seniority and qualification, the Appellant obtained 52 marks out of 70 while Respondent No. 5 obtained 40 marks out of 70.

8. On an evaluation of his work record, the Appellant was assessed at an average of 15.28 marks out of 30 for the three years under consideration. Respondent No. 5 was assessed at an average of 25 marks out of 30 for the three years under consideration. By totalling the marks obtained by the Appellant and Respondent No. 5, we find that the Appellant got 67.28 out of 100 while the Respondent No. 5 got 65 marks out of 100. As a result, the Appellant should have been graded above Respondent No. 5.

9. However, the DPC, on its own, appears to have allotted additional marks based on the ACRs of the Appellant as well as Respondent No. 5. In so far as the Appellant is concerned, the DPC awarded 2 additional marks and in so far as Respondent No. 5 is concerned, the DPC awarded 5 additional marks.

10. In view of award of additional marks by the DPC, the total marks obtained by the Appellant was 69.28 out of 100, while Respondent No. 5 obtained 70.00 marks out of 100. On this basis, Respondent No. 5 was found to be more meritorious and she was granted promotion to the cadre of Senior Assistant instead of the Appellant.

11. Learned Counsel for the Appellant made two submissions: Firstly, there is no provision whatsoever by which the DPC could award additional marks over and above the marks awarded on the basis of the ACRs of the candidates before them. Secondly, even if such additional marks could be awarded, no basis has

been shown for explaining how the Appellant was awarded only 2 additional marks by the DPC while Respondent No. 5 was awarded 5 additional marks.

12. We have gone through the counter affidavit filed by the Insurance Company and find absolutely no mention of any sort of authority conferred on the DPC to grant additional marks over and above the marks calculated on the basis of the ACRs of the candidates. The granting of additional marks by the DPC is not even postulated by the Promotion Policy. We are, therefore, of the view that the DPC could not have awarded any additional marks to the candidates over and above what was determined on the basis of the ACRs placed before the DPC.

13. Additionally, we find absolutely no basis for awarding only 2 additional marks to the Appellant by the DPC, nor do we find any basis for awarding 5 additional marks to Respondent No. 5. The affidavit in opposition filed by the Insurance Company does not even advert to this and there is absolutely no justification put forward for awarding 2 additional marks to the Appellant and 5 additional marks to Respondent No. 5. The award of additional marks has come to be known only on a perusal of the original records of the case. This was not disclosed by the insurance company in its affidavit in opposition. Consequently, we find this award of additional marks by the DPC to be totally unwarranted in law and hitting at the very root of the equal opportunity clause enshrined in Article 16 of the Constitution in so far as the promotion to the cadre of Senior Assistant is concerned.

14. Therefore, we hold that the DPC had no authority to award additional marks over and above what was already determined on the basis of the ACRs of the candidates. We also hold that the DPC had no basis for awarding 2 additional marks to the Appellant and 5 additional marks to Respondent No. 5.

15. That being the position, the selection process conducted by the DPC on 19.9.03 is set aside. Since the Appellant has otherwise been promoted to the cadre of Senior Assistant, we would not have been inclined to disturb the existing position. However, learned Counsel for the Appellant points out that unless the proceedings of the DPC are reviewed, it may have an impact on the seniority of the Appellant and may also have an impact on his future promotions. Taking this into consideration, we direct the Insurance Company to convene a review DPC to review its recommendation. The DPC should meet within a period of eight weeks from today and re-consider the promotions to the cadre of Senior Assistant entirely on the basis of the records and the Promotion Policy for Supervisory, Clerical and Subordinate Staff. We make it clear that the DPC is not entitled to award any additional marks over and above the Promotion Policy.

16. The writ petition is allowed with the above directions. No costs.