

(2002) 07 OHC CK 0090

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6532 of 1992

K. Samantaray

APPELLANT

Vs

National Insurance Company Ltd.

RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 2 OLR 293

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : I.C. Dash and P. Ch. Mishra, for the Appellant; D.P. Nanda, on behalf of S.B. Nanda and associates, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—The petitioner has been working as an Administrative Officer of the National Insurance Company Limited (for short, "the Company"). In the year 1990, a promotion policy for Class I officers of the Company was formulated. In accordance with the said promotion policy, promotions of officers of the Company were considered and by a notice dated 30th of April, 1991 of the Company, the list of officers selected for promotion from the cadre of Administrative Officer/Branch Manager to that of Assistant Manager for the year 1991-92 was declared. In the said list, the name of the petitioner did not find place whereas the names of many officers who were junior to the petitioner in the cadre of Administrative Officer/Branch Manager were included. The petitioner submitted a representation dated 17.5.1991 to the Chairman-cum-Managing Director of the Company stating therein that twenty-one officers out of forty-two promoted to the cadre of Assistant Manager have superseded him in the promotional exercise of 1991-92. The said representation of the petitioner against his non-promotion was considered in the review meeting of the Lower Management Service committee held on 19th of June, 1991, but the said committee did not change its earlier recommendation in the case of the petitioner. By a communication dated 16th of

July, 1992 of the Company, the petitioner was informed that his representation has been rejected. Again by a notice dated 9th of April, 1992 of the Company, a list of officers selected for promotion to the cadre of Assistant Manager for 1992-93 was declared and in the said list also, the petitioner's name did not find place whereas the names of many of his juniors in the cadre of Administrative Officer/Branch Manager were included. The petitioner submitted a representation dated 28.5.1992 to the Chairman of the Company stating therein that five officers out of eleven promoted to the cadre of Assistant Manager have superseded him in the promotional exercise of the year 1992-93. The said representation of the petitioner was considered by the committee in its Review Meeting held on 18.6.1992 but the committee did not find it possible to change its earlier recommendation. Aggrieved by his non-promotion to the cadre of Assistant Manager in the years 1991-92 and 1992-93, the petitioner has filed this writ petition under Article 226 of the Constitution for declaring para 7.1 of the policy as bad in law and for quashing the promotional exercises of 1991-92 and 1992-93 and for quashing the communication of the Company rejecting his representation against his non-promotion and for a direction to the opposite party to promote the petitioner with all consequential benefits.

2. Mr. I. C. Dash, learned counsel for the petitioner submitted that it will be clear from para 1.2 of the promotion policy of the Company formulated in the year 1990 that promotion of officers was to be through a process of selection on the basis of seniority-cum-merit. He argued relying on the decision of the Supreme Court in *B. V. Sivaiah and Ors. etc. v. K. Addanki Babu and Ors. etc.* JT1998 (50) SC 96, that the expression "seniority-cum-merit" means that seniority will have priority over merit. But, para 7.1 of the promotion policy allots only 42 marks out of 100 for seniority and the balance marks out of 100 are for merit in promotions from the rank of Administrative Officer to that of Assistant Manager, thus giving merit priority over seniority. Mr. Dash vehemently contended that para 7.1 of the promotion policy is thus inconsistent with para 1.2 of the promotion policy and is liable to be quashed by the Court as bad in law. He pointed out that as a matter of fact, a learned Single Judge of the Rajasthan High Court has already held in the case of *Mohindra Kumar Bali v. The National Insurance Company and Ors.*, in the Judgment dated 9th of May, 2000 that allocation of marks prescribed under para 7.1 is absolutely unreasonable and irrational and has got no nexus with the object in para 1.2 of the policy sought to be achieved by the promotional policy and is violative of Articles 14 and 16 of the Constitution and has quashed the same.

3. In reply, Mr. D. P. Nanda, learned counsel for the opposite party, submitted that para 1.2 of the promotion policy of the Company has to be read as a whole and so read, it will be clear that not only seniority but also merit is to be taken into consideration for selecting officers for promotion to the higher cadre. Mr. Nanda further submitted that in para 1.2 itself, it has been indicated that merit would inter alia comprise of job knowledge, past performance, suitability and growth potential. According to Mr. Nanda, therefore, the contention of Mr. Dash

that seniority was to have preference over merit in the process of selection for promotion of officers, is not correct, He further explained that while in promotions to the lower cadres, seniority will have a greater role to play than merit, in promotions to higher cadres merit will have a greater role to play than seniority. Para 7.1 seeks to achieve this objective of the promotion policy of the Company by allocating higher marks to seniority of promotions to the higher cadres. He cited the decision of the Supreme Court in Sant Ram Sharma Vs. State of Rajasthan and Another, in which it has been held that promotion to selection grades or selection posts (higher posts) is to be based primarily on merit and not on seniority. He also relied on the decision of the Supreme Court in State of Mysore and Another Vs. Syed Mahmood and Others, and in State of Mysore Vs. C.R. Sheshadri and Others, wherein the principle of seniority-cum-merit was explained to mean as a promotion not by seniority alone but by merit also. Mr. Nanda also cited the decision of a learned Single Judge of Gujarat High Court in A. K. Singh v. National Insurance Company Ltd., and Anr., delivered on 20.9.1994, wherein selection for promotions held in accordance with promotion policy of the Company formulated in the year 1990 have been held not to be unfair or unreasonable.

4. Paragraphs 1.2 and 7.1 of the promotion policy of the Company formulated in the year 1990 are extracted herein below:

"1.2. This is aimed to be achieved by providing for promotion of officers through a process of selection on the basis of their Seniority-cum-Merit. While seniority is a known fact depending upon the number of years of service put in. merit would inter alia comprise of job knowledge, past performance, suitability and growth potential. These are to be assessed on the basis of performance appraisal system. Suitability and growth potential can be assessed from recommendations and remarks of Officers in the appraisals and interviews, where applicable.

7.1. Selection for promotion shall be based on seniority, Insurance qualifications and merit-cum-growth potential, as brought out in performance appraisals. In addition, for promotion to the cadre of Manager there shall be interview before selection. In assessment, maximum weightage in terms of numerical marks for various criteria shall be worked out as under :

A.A.O.	A.O.	A.M.	DY. MANAGER	TO	TO	TO	TO	A.O.	A.M.	DY.M.	MANAGER
(a)	(b)	(c)	(d)	(a)	(b)	(c)	(d)	(a)	(b)	(c)	(d)
Seniority	60	42	30	20	Insurance Qualification	10	8	-	-	C. R. FORM	:
Traits in C. R.	10	15	20	15	(ii) Performance	10	15	25	25	(iii) Growth potential	10
(d) Interview	-	-	-	-	-	-	-	-	-	-	-
Total	100	100	100	100							

----- NOTE : Marks for Insurance Qualification shall come into effect for promotion exercise for 1992 and onwards. Till then Total marks for A.A.O. to A.O. And A.O. to A.M. shall be 90 and 92 respectively."

5. It will be clear from a reading of para 1.2 of the promotion policy quoted above that promotion of officers of the Company was to be through a process of selection on the basis of their seniority-cum-merit. In the said para 1.2 it has

been stated that while seniority was to be determined on the basis of number of years of service put in by the officers, merit inter alia was to be assessed on the basis of job knowledge past performance, suitability and growth potential. In the said para 1.2. of the promotion policy, there is no mention whatsoever that seniority will have priority over merit. In the absence of such mention in para 1.2 it is sufficient to hold that by the expression "seniority-cum-merit", the authors of the promotion policy meant that seniority would have priority over merit. On the other hand, a glance at the allotment of marks to seniority and other factors in para 7.1 of the policy extracted above would show that the authors of the promotion policy have sought to give priority to seniority over merit in promotions from the cadre of A.A.O. to A.O. and to merit over seniority in promotions from A.O. to A.M.. A.M. to Dy. M. and Dy. Manager to Manager. The promotion policy of the Company has to be read as a whole for the purpose of finding out its object and the Court cannot read just one expression in para 1.2 of the promotion policy and treat such expression as the object of the promotion policy. On such a reading of the promotion policy as a whole, including paragraphs 1.2 and 7.1 thereof, the object of the promotion policy appears to be that both seniority and merit are to be considered for making promotions to various cadres of the Company and while in promotions to lower cadres seniority was to play bigger role, in promotions to higher cadres, merit was to play bigger role. It is a normal and sound principle of public administration to give priority to seniority while making promotions to the lower cadres and to give priority to merit while making promotions to higher cadres of service and there is nothing arbitrary, unreasonable or illegal in such object of the promotion policy. With great respect, we are unable to persuade ourselves to take the view of the learned Single Judge of the Rajasthan High Court in the case of Mohindra Kumar Bali v. The National Insurance Company and Ors. (supra) cited by Mr. Dash that para 7.1 of the promotion policy is arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India.

6. In B. V. Sivaiah and Ors. etc. v. K. Addanki Babu and Ors. etc., (supra) cited by Mr. Dash, the Central Government had framed statutory rules u/s 29 of the Regional Rural Banks Act, 1976 called the Regional Rural Banks (Appointment and Promotions of Officers and Other Employees) Rules, 1988 and the Second Schedule of the said statutory rules provided that promotions to the post of Area Manager or Senior Managers will be on the basis of seniority-cum-merit. The said statutory rules did not further explain the meaning of the expression "seniority-cum-merit." The Supreme Court found that prior to the making of the rules, appointment to the post of Area/Senior Manager in regional rural banks was governed by the circulars issued by the Central Government and the National Bank and the circular dated 10th October, 1997 of the Central Government addressed to the Deputy General Manager of the Central Bank provided that for such promotions to the posts of Area/Senior Managers, the non-selection rule of seniority-cum-merit has to be applied and this rule envisages promotions by seniority with due consideration of minimum merit/fitness prescribed. On these

facts, the Supreme Court held that the criterion of seniority-cum-merit in the aforesaid rules postulates by giving minimum necessary merit requisite for efficient administration, the Senior even though less meritorious, shall have priority and comparative assessment of merit is not required to be made. But, in the present case, a promotion policy was formulated in the year 1990 and the said promotion policy while laying down that seniority-cum-merit as the criterion for promotion, itself lays down the marks allotted for seniority and merit for promotions to the different cadres and there is nothing in the promotion policy to show that the non-selection rule of seniority-cum-merit is to apply, which envisages promotion by seniority with due consideration to minimum merit/fitness prescribed.

7. On the other hand, in the case of *State of Mysore v. C.R.Seshadri and Ors.* (supra), the Supreme Court held that if the criteria for promotion is one of seniority-cum-merit, comparative merit may have to be assessed if length of service is equal or an outstanding junior is available for promotion. Relevant portions of the judgment of the Supreme Court in the said case of *State of Mysore v. C.R. Seshadri and Ors.* (supra) is quoted herein below :

".....Basically, it is in Government's discretionary power. fairly exercised, to promote a Government servant. If the rule of promotion is one of sheer seniority it may well be that promotion is a matter of course. On the other hand if seniority-cum-merit is the rule, as in the Supreme Court decisions cited before us, promotion is problematical. In the absence of positive proof of the relevant service rules, it is hazardous to assume that by efflux of time the petitioner would have spiralled up to Deputy Secretaryship. How could we speculate in retrospect what the rule was and whether the petitioner would have been selected on merit, and on the strength of such dubious hypothesis direct retroactive promotion and back pay ? The frontiers of judicial power cannot be stretched thus far. The proper direction can only be that Government will reconsider the case of the petitioner afresh for purposes of notional promotion. If the service rule entitle him to promotion on the ground of seniority alone, Government will, except for the strongest reason, grant the benefit of promotion with effect from the date Venkataraman became Deputy Secretary. Nothing has been suggested against the petitioner in his career to disentitle him to promotion and we have no doubt Government will give him his need. However, if the criterion for promotion is one of seniority-cum-merit, comparative merit may have to be assessed if length of service is equal or an outstanding junior is available for promotion....."

8. It is thus clear from the aforesaid law that it is within the power of the authority laying down the promotion policy/ promotion rule to decide as to how much of weight will be given to seniority and how much of weight will be given to merit while making promotions to a higher cadre and so long as the power is exercised fairly and reasonably, the Court will not strike down the rule or the promotion policy as arbitrary and unreasonable on the basis of its own opinion on

the relative weight to be attached to seniority and to merit in making promotions to a particular cadre. The first contention of Mr. Dash, therefore, has no merit and is accordingly rejected.

9. It was next submitted by Mr. Dash that para 14.4 of the promotion policy lays down that the selection committee shall review the representation of an officer against his non-promotion and the selection committee shall also prepare a list of officers who are not considered fit for promotion and record reasons therefor. According to Mr. Dash, therefore, while rejecting a representation of an officer against his non-promotion, the reasons for such rejection have to be communicated, but the impugned letter dated 16th of July 1991 of the Company to the petitioner (Annexure-7 to the writ petition) informing him that his representation has been rejected, does not indicate the reasons for such rejection. He cited the decision of the learned Single Judge of the Rajasthan High Court in *Umesh Chand Pandya v. The New India Assurance Co. and Ors.* and *Upendra Kumar Pradhan v. The New India Assurance Co. and Ors.* delivered on 29.5.1997 in support of his contention that reasons for rejection of a representation have to be given. Mr. Nanda, learned counsel for the opposite party, on the other hand, submitted that the record would show that para 14.4 of the promotion policy has been duly complied with by the committee during review of the representation of the petitioner and there is nothing in para 14.4. of the policy to show that reasons for rejecting the representation are to be communicated to the officer making the representation.

10. Para 14.4. of the promotion policy of the Company made in the year 1990 is quoted herein below :

"14. REVIEW :

14.1 to 14.3 xx xx xx 14.4. The Committees shall review the representations, taking into account all relevant factors and finalise the list of Officers considered for promotion on review. The Committee shall also prepare the list of others, who have not been considered fit for promotion and record reasons therefor.

14.5 14.8 xx xx xx "

The aforesaid para 14.4. of the promotion policy provides that the committee making the review has to record reasons as to why it has not considered the officers fit for promotion. It nowhere states that the reasons for which an officer has not been considered for promotion have to be communicated to such officer. On a perusal of the records produced before the Court, we find that the committee which examined the representations of the Administrative Officers against their non-promotion in 1991, at its review meeting held on the 19th of June, 1991 recorded the following reasons :

PROMOTION TO THE CADRE OF ASSISTANT MANAGER

The Committee examined the representation made by the eligible Administrative Officers for promotion to the cadre of Assistant Manager. There were in all 101

Administrative Officers who had made representations against their non-promotion as per list attached (Annexure-I).

The Committee perused in detail the points brought out in the individual representations vis-a-vis the official records, the marks secured by them on seniority, personal and executive traits, performance, growth potential, as well as their ranking based on the total marks prepared earlier. The Committee also examined specially all the cases of SC/ST Officers who had made representations against their non-promotion.

Taking into consideration all the relevant factors, the Committee is of the view that Officers listed in Annexure II (out of the total number of representations received as mentioned in Annexure-I) are fit to be included in the Reserve List or Contingency List as the case may be for the reasons recorded therein. The Committee does not find any valid additional/new points/facts to change its earlier decision in respect of the remaining Officers who have made representations against non-promotion. The Reserve List and Contingency List now drawn up as below supersede the Reserve List and Contingency List drawn by the Committee on 23rd April, 1991."

It will be clear that the committee has gone through the representations of the Administrative Officers against their non-promotion and after taking all relevant factors have listed some officers fit to be included in the reserve list or contingent list for the reasons recorded therein, but has not found valid additional/new points/ facts to change its earlier decision in respect of the remaining officers including the petitioner who had made representations against their non-promotions. Moreover, it appears from the impugned communication dated 16th of July, 1991 in Annexure-7 to the writ petition that the petitioner has been informed that on careful re-consideration the committee has not found it possible to change its earlier recommendation in case of the petitioner. Hence, the reason given by the committee for rejecting the representation of the petitioner against his non-promotion in 1991 has also been communicated to him. Similarly, it appears from the copy of the report of the Lower Management Services Committee Review Meeting held on the 18th of June. 1992 that the committee has recorded its reasons as to why it has after examination of the representation of the Administrative Officers against their non-promotions, prepared a reserve list of 42 officers and contingency list of 6 officers, but has not suggested changes in the case of others. The petitioner has also been informed by the communicated dated 28.9. 1992 that the committee has not found it possible to change its earlier recommendation. It is, therefore, difficult to interfere with the decision of the committee on the ground that reasons have not been recorded by the committee in its Review Meetings.

11. Finally, Mr. Dash submitted that para 7.1 of the promotion policy provides that for insurance qualification, a candidate will be awarded 8 marks for promotion from A.O. to A.M. but in the note appended to para 7.1 of the promotion policy, it has been stated that marks for insurance qualification would

come into effect only for promotion exercise for 1992 and onwards. He pointed out that by a subsequent circular dated 9th March, 1992, the said note appended to para 7.1 was amended stating that marks for insurance qualification shall come into effect for promotion exercises for 1994 and onwards. Mr. Dash vehemently argued that the deferment of allotment of marks for insurance qualification for the promotion exercise was only with a view to showing some favour to the favourite officers of the Management of the Company and is discriminatory and violative of the right to equality of the petitioner under Article 14 of the Constitution, Mr. Nanda, learned counsel for the opposite party, on the other hand, referred to the counter-affidavit filed on behalf of the opposite party as well as the guidelines and administrative instructions relating to promotion policy for officers laid down by the General Insurance Corporation of India in its communication dated 18.3.1991 to show that only insurance qualification AIII or ACII or FIII or FCII are taken into consideration for awarding such 8 marks and the petitioner has some other insurance qualification from the Associate of Federation of the Institute of Insurance of Bombay for which no marks are allotted towards insurance qualification. Mr. Nanda further submitted that the deferment for considering the insurance qualification was for all candidates as a general rule and thus no discrimination has been suffered by the petitioner.

12. In our considered opinion, as the deferment of consideration for insurance qualification was for all Administrative Officers eligible for consideration, it is difficult to hold that the petitioner has suffered on account of such deferment. Not only the petitioner but all other Administrative Officers with insurance qualification were not to be given additional marks for insurance qualification and we cannot hold that the petitioner suffered discrimination on account of deferment of allotment of marks for insurance qualification. Thus, we are not inclined to interfere in the promotion exercise of 1991 and 1992 on this ground also.

13. We further find from the two counter-affidavits of the opposite party and the records produced before the Court that the petitioner did not succeed in the promotion exercises of 1991 and 1992 by the Lower Management Service Committee because of his inability to secure adequate marks on efficiency parameters indicated in the promotion policy. Law is well settled that the Court will not interfere with the selection or non-selection by a Selection Committee unless bias or mala fide of the Selection Committee is established. The petitioner has not been able to establish any bias or mala fide on the part of the said committee in making their recommendations and has therefore not made out a case for interference in this writ petition.

14. In the result, the writ petition has no merit and the same is dismissed, but considering the facts and circumstances of the case, the parties shall bear their own costs.

M. Papanna, J.

15. I agree.