

(2008) 01 P&H CK 0138
In the Punjab And Haryana At Chandigarh

N.K. Thakur, Assistant Manager

APPELLANT

Vs

Chairman-cum-Managing Director, National Insurance
Company Limited and Others

RESPONDENT

Date of Decision : 25-01-2008

Acts Referred:

Citation : (2008) 01 P&H CK 0138

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The petitioner, who is working as Assistant Manager with the respondent-Company has invoked the writ jurisdiction of this Court seeking a writ of mandamus directing the respondents to consider the name of the petitioner for promotion to the post of Deputy Manager from the date his juniors were promoted, with all consequential benefits.

2. The petitioner qualified the departmental competitive examination in terms of the pre revised promotion policy of the respondent-company. The petitioner's ranking was at serial No. 9 in the ranking list dated 27.9.1985, whereas Rakesh Mohan and Manjit Singh Arora were mentioned at serial Nos. 11 and 13 respectively in the said ranking list.

3. The next promotion from the post of Assistant Manager, on which the petitioner was working, is to the post of Deputy Manager. The promotion to the post of Deputy Manager is governed by the Promotion Policy for Class-I Officers. The said Policy contemplates the criteria for promotion and weightage to be granted to the various aspects while considering the claim for promotion.

4. It is the case of the petitioner that while considering the case of promotion to the post of Deputy Manager, he has been ignored, but his juniors i.e. Rakesh Mohan and Manjit Singh Arora have been promoted. The challenge of the petitioner is that his juniors have been promoted illegally, arbitrarily, whereas the

claim of the petitioner for promotion to the post of Deputy Manager has been rejected. In reply to the writ petition, the criteria for promotion has been mentioned, which is reproduced as under:

(7) Criteria for promotion and weighage:

7.1 Selection for promotion shall be based on Seniority, Insurance Qualifications and Merit-cum-Growth potentials as brought out in performance appraisals. In assessment, the maximum weighage in terms of numerical marks from cadre of A.M. to Deputy Manager will be as under:

(a) Seniority : 30 (b) Insurance Qualification : ? C.R. Form: i) Traits in C.R. : 20 ii) Performance : 25 iii) Growth Potential : 25 Total : 100 xx xx xx

5. It has been further pointed out that since the petitioner is senior, he has been granted 30 marks for seniority; 19.47 marks out of maximum 20 marks for traits in the Confidential Reports; 20 marks out of maximum 25 marks for performance and 21 marks out of maximum 25 marks for growth potential. It is pointed out that total marks secured by the petitioner are 90.47 marks out of total of maximum 100 marks. The petitioner's rank was 55. The candidates upto Serial No. 31, who has obtained 92.53 marks, were granted promotion to the post of Deputy Manager. Since the petitioner has not secured marks within the grading of the Officers keeping in view the number of posts, the petitioner cannot claim promotion merely on the basis that his juniors have been promoted. The petitioner has a right of consideration for promotion. The petitioner has been considered and assigned suitable marks by the Competent Authority. Therefore, the claim of the petitioner for promotion is not justified. Apart from this, learned Counsel for the respondents has referred to a judgment of the Hon'ble Supreme Court reported as K. Samantaray Vs. National Insurance Co. Ltd., ", wherein such Promotion Policy has been upheld.

6. In the rejoinder filed, the petitioner has not disputed the marks assigned to him, but asserted that the respondents have not given the detailed statement and grading of marks of the selected candidates, therefore, action of the respondents is not tenable. It has also been pointed out that the petitioner has filed a Review Representation in terms of Clause-14 of the Promotion Policy, but no decision has been communicated on the said Review Representation of the petitioner. Therefore, the action of the respondents in not promoting the petitioner for the post of Deputy Manager is unwarranted, illegal and arbitrary.

7. The mere fact that the decision on the Review Representation has not been communicated to the petitioner, will not render the process of promotion as vitiated. Once the petitioner has invoked the writ jurisdiction of this Court wherein the criteria for promotion and the ranking has been disclosed, the mere fact that his Review Representation has not been decided, will not confer any enforceable right in favour of the petitioner.

8. A perusal of Rule 7.1 of the Rules, as reproduced above, would show that the

promotion to the post of Deputy Manager is based upon the Seniority, Insurance Qualifications, Traits in Confidential Reports, Performance and Growth Potential. The marks have been assigned in respect of each of these aspects to the petitioner as well. Merely because that he has not been able to be within 31 successful candidates, will not confer any right in favour of the petitioner to allege that his juniors have been promoted illegally and arbitrarily. The manner in grading the Officers was within the administrative wisdom of the Selection Committee. There is no malafide alleged against any of the members of the Selection Committee in assigning particular marks to any candidate. It may be noted that the Promotion Policy has been approved by the Hon''ble Supreme Court in K. Samantaray's case (supra), wherein it has been held to the following effect:

xx xx xx xx 11. While laying down the promotion policy or rule, it is always open to the employer to specify the area and parameter of weightage to be given in respect of merit and seniority separately so long as policy is not colourable exercise of power, nor has the effect of violating any statutory scope of interference and other relatable matters. The decision in B.V. Sivaiah case is clearly distinguishable on facts and in law. That was a case where statutory rules governed the field. This Court, inter alia, held that fixing terms which are at variance with the statutory rules is impermissible. In the case at hand, prior to the formulation of policy in February, 1990, there were no codified prescriptions. It was the stand of the respondent employer that prior to the formulation of the policy, certain guidelines existed and the objectives of the policy were to rationalize and codify the existing guidelines relating to promotions within officers'' cadre. There is no statutory rule operating. It is for the employer to stipulate the criteria for promotion, the same pertaining really to the area of policy making. It was, therefore, permissible for the respondent to have their own criteria for adjudging claims on the principle of seniority cum-merit giving primacy to merit as well, depending upon the class, category and nature of posts in the hierarchy of administration and the requirements of efficiency for such posts.

12. Reading of the whole policy reveals that stress was not on seniority alone and weightage was sought to be imposed on merit and other relevant aspects also.

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9. Learned Counsel for the petitioner has referred to a judgment of the Hon''ble Supreme Court reported as Sher Singh and Others Vs. Surinder Kumar and Others, ". The said judgment pertains to promotion from amongst the post of Clerks in the Himachal Gramin Bank. It was found that the Bank has adopted criteria of merit-cum-seniority though the Rule was seniority-cum-merit. Therefore, the selection made was not sustainable. In the present case, promotion has been made on the basis of merit in terms of the Policy. The promotion has been made in terms of the criteria framed by the Insurance

Company. Therefore, the judgment relied upon by the petitioner is not of any help to the petitioner.

10. Consequently, we do not find any merit in the present writ petition. The same is dismissed with no order as to costs.