

**(1998) 07 PAT CK 0060**

**In the Patna High Court**

**Case No : Letters Patent Appeal No. 25 of 1990 (R)**

P. Con

APPELLANT

Vs

Mettalurgical and Engineering Consultants (India) Ltd. and  
Another

RESPONDENT

**Date of Decision : 31-07-1998**

**Acts Referred:**

**Citation : (1998) 3 BLJR 2297**

**Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J**

**Bench : Division Bench**

**Final Decision : Dismissed**

## Judgement

1. The appellant filed writ petition being CWJC No. 1049 of 1985 (R) challenging the order dated 28.6.1985 granting promotion to 34 officers to the post of Engineers/Managers or equivalent posts, while not giving any such promotion to him. In the writ petition, the promotees were impleaded as Respondents 10 to 43.

2. The appellant retired on 31.3.1988 and thereafter he moved an application in the writ petition confining his claim for monetary benefit only and deleting Respondents 10 to 43 from the array of the parties in the writ petition on the ground that he is no more interested for any relief against them and after his retirement they have ceased to be necessary parties. That writ petition was dismissed by the learned Single Judge on 20.2.1990. Being aggrieved, the appellant has filed this appeal under Clauses 10 of the Letters Patent.

3. Learned Counsel for the appellant has made following submission in support of the appeal:

(i) The criteria for promotion being CCR (merit) seniority, the respondents were not entitled to refuse promotion to the appellant:

(ii) The order declining promotion to the appellant as well as the order recording

entries in his character roll are mala fide ; and

(iii) Grade-C entry in the character roll of the appellant in the year 1984 amounts to adverse entry, which was not communicated to him. on account of which it was not liable to be taken into consideration.

4. At the request of the learned Counsel for the appellant, we asked the learned Counsel for the respondents to produce the relevant records before us. Mr. Debi Prasad, learned Sr. Counsel appearing on behalf of the respondents, has placed the whole record before us today and we have perused the same. We have also perused the CCR of the appellant for the years 1982. 1983 and 1984. From perusal of the original record it is apparent that the claim of the candidates including the appellant was considered by the Departmental Promotion Committee (hereinafter to be referred to as the DPC) objectively on the basis of three years" character roll entry (1982 to 1984).

For different grades of entries recorded in the CCR marks, are marked as follows:

CCR. : 30 marks (Max.). A- - 10 B+ - 8 B - 7 C+ - 5 C - 4

Ten marks were allotted for qualification and fifteen marks for seniority (experience). For 1982, 1983 and 1984 the CCR entries of the appellant indicates that he was given B, B+ and C, Entry C is treated as average entry for which 4 marks have been allotted. The appellant was given 44 marks by the DPC No "candidate who was given less than 45% marks has been promoted. The appellant"s marks even being less than that, his claim for promotion cannot be entertained.

5. What is required for making selection for promotion is that it should be based on the objective criteria. In this connection, the Apex Court in Sarat Kumar Dash and Others Vs. Biswajit Patnaik and Others, , has held that awarding marks, giving grading to the candidates and the selection made on such basis is valid, being on the objective criteria. From perusal of the records as well as pleadings of the parties, we are satisfied that the DPC followed the criteria for making selection for promotion, and as the appellant could not secure adequate marks for selection, he was not promoted. The first submission of the learned Counsel for the appellant is. therefore, rejected.

6. The 2nd submission was also raised before the learned Single Judge. But the learned Single Judge has rejected it for want of adequate pleadings. In this connection paragraphs 13 and 14 of the judgment of the learned Single Judge may be referred. We also repeatedly asked the learned Counsel for the appellant to point out the paragraphs of the writ petition, while contained the allegation of mala fide. In this connection only paragraphs 47 and 48 have been placed before us. The said paragraphs are re-produced below-

47. That the petitioner submits that from the statement as appearing in the counter affidavit of Respondent Nos. 1 and 2 in CWJC No. 585/85 (R) and

according to Annexure J/I the petitioner was alleged to have been given mark B, B and B + for the year 1981. 1982 and 1983 as allegedly observed during 1984 and for the years 1982. 1983 and 1984 the petitioner was alleged to have been allotted B. B + and C respectively. According to the records appearing in the CCR, for 3 years proceeding to the said Departmental Promotion Committee reduction of score of C.C.R. from B + to C for the year 1984 for alleged consideration in 1985 proves the mala fide and arbitrariness of the Departmental Promotion Committee.

48. That the petitioner states that the adverse marks which has caused allocation of C marks for alleged consideration during the year 1985 was never communicated to the petitioner and has been vindictively attributed.

The above allegation of mala fide and arbitrariness are vague, lacking particulars. In absence of appropriate pleading containing particulars or details, this plea was rightly rejected by the learned Single Judge and it is not possible for us to accede to the same.

7. The 3rd submission made by the learned Counsel for the appellant also deserves the same fate, Grade C is not adverse entry. It is one of the good entries recorded in the CCR of a servant. It is only grade D which is treated as adverse. The D.P.C. has allotted 4 marks for C entries, which is treated as average. It not being an adverse entry was not required to be communicated to the appellant. In this connection, learned Counsel for the appellant has submitted that in 1986, grade C was treated as a grade on the basis of which promotion could be refused. It is not necessary for us to go into this submission. It was not the position upto 1984, when the appellant's case was considered by the DPC.

8. There is another reason on account of which the writ petition is liable to be dismissed. In the writ petition, the appellant challenged the promotion of 34 persons who were impleaded as Respondents 10 to 43. He has also claimed consideration of his own claim for such promotion. The record clearly indicates that those 34 respondents were selected for promotion on comparative merits and in fact had already been promoted. If the appellant is granted promotion, he has to replace one of those 34 promotees. But those promotees have now been deleted from the array of the parties in the writ petition and are also not impleaded in this appeal. The plea that now the appellant seeks no relief against them cannot be of any help to him because if the appellant is allowed promotion, even notionally, the resultant position would be that the employer has to give promotional benefits to two persons for the same post. Such position is not permissible in law.

9. For the reasons aforementioned, this appeal is dismissed. No cost.