
(2000) 02 BOM CK 0074
In the Bombay High Court
Case No : O.O.C.J. W.P. No. 1003 of 1998

Palimar Rangarao Sanjeeva Rao and Others	APPELLANT
Vs	
Oriental Insurance Co. Ltd. and Others	RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Constitution of India, 1950 — Article 229

Citation : (2000) 85 FLR 719 : (2000) 3 LLJ 529

Hon'ble Judges : Ranjana P. Desai, J; N.J. Pandya, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.J. Pandya, J.—The Petitioner herein has come with a grievance as to promotion to the post of manager in the insurance company, respondent No. 1. The respondent-insurance company is one of the units of GIIC, which is the holding company. The petitioner, in fact, came to be promoted on August 15, 1975 as Assistant Manager and thereafter on October 3, 1980 he was promoted as Deputy Manager. He has retired on June 30, 1996.

2. However, at the time of filing of the petition, a grievance with regard to the promotion given to many office colleagues starting with the year 1985, is made. His main grievance was that the persons who are junior to him have been promoted. The details whereof are set out at Page 58 (Ex-K to the Petition) 1985, 1986, 1987 and 1988 are the years that he is making grievance about. The relevant dates, when the promotions are granted to the post of managers in the aforesaid years, start from May 3, 1985 and end with February 8, 1988. As can be seen from Page 58, in the years 1985 and 1986 on two occasions promotions were granted and in 1987 and 1988 once only the promotions were granted.

3. Initially, it seems that the Petitioner did not raise a voice when in 1985 promotions were granted though he was clearly superseded by persons senior to

him and so were persons junior to him. About this there is no dispute between the parties.

4. However, after 1986 promotions came to be granted, the Petitioner by his representation (Ex-L, page 59) made a grievance of his having been overlooked. This factor is referred to in connection with the rival contentions later on.

5. Apparently, this representation as well as other representation made by him (Ex-M, page 61) in the year 1988 were not replied to. They may have been dealt with but unless his grievance was addressed to and set right even if they are dealt with they are not of much importance.

6. Finally, the Petitioner came to this Court by this Petition in the year 1988. This fact has prompted the respondent No. 1 company to urge before us that if at all the Court is inclined to consider the case, it should do so only with reference to 1988 promotions because for the previous years he ought to have come well in time. We disagree with the company because the Petitioner cannot be faulted for not coming to the Court at the earliest. When the petitioner has chosen to make representations to the company, the results were not communicated to him. He waited till the year 1988 and after addressing a letter (Ex-M. page 61) on January 13, 1988, he has come to the Court. Under these circumstances, if at all, we accept the plea of the petitioner, we make it clear that his case has to be considered from the year 1985 when he was superseded.

7. Now coming to the main question about his being denied promotion, in the petition, he has based his claim on promotion being granted according to the principles of seniority alone. The petition is supported by an affidavit. To it, initially, a one page reply was filed on behalf of the respondent as per page 63. By this affidavit of Aderbad Maneksha Wadia, only the admission of the matter was opposed. Later on, said Mr. Wadia has filed a detailed affidavit at Page 65 onwards till Page 76 where for the first time, they referred to the procedure followed by the company for granting promotion to the rank of Manager. They set out in this affidavit that so far as the posts of managers are concerned, the criteria is merit-cum-suitability-cum-seniority. In para 5 of that affidavit at Page 66, they referred to the criteria said to have been issued for promotion of officers to the cadre of managers and above.

8. Affidavit in rejoinder is filed by the Petitioner at page 77 onwards and in para 6 at page 79, he has denied categorically that there are any guidelines. He reiterates that there are no guidelines and, therefore, the promotion has to be on the basis of seniority. At page 80, it has been averred that the guidelines have not been notified by the respondent and therefore, according to the Petitioner promotion has to be governed by promotion policy published in the Personnel Manual Chapter VII, Page 1. According to the petitioner, if this manual is followed, promotion to the post of rank of Deputy Manager and Manager shall have to be seniority-cum-merit basis. In the next page, he clarifies that he is seeking promotion from the post of Deputy Manager to Manager and he also

indicates that neither interviews are held nor any qualifications laid down.

9. In this background, the petitioner very clearly contends at Page 83 that the Committee had not considered his confidential reports because according to the petitioner, if they were considered, he would not have been found unsuitable. He maintains that no adverse remarks were ever communicated to him till the date of filing of the said rejoinder.

10. Reference to confidential reports in the affidavit is to be found because in the earlier affidavit of Aderbad Maneksha Wadia, which is by way of a (sic) to the petition clearly refers to the requirement of Annual Confidential Reports of past three years be considered. Further affidavit in rejoinder is filed by the Petitioner where he annexed a handwritten copy of an order passed by the learned single Judge of this Court in Writ Petition No. 368 of 1989 on April 4, 1989. The said Petition was filed by the National Insurance Company Officers' Association and another, and the opponents being Respondent No. 1 National Insurance Company Limited, which is one of the units of GIIC. In fact, GIIC was also a party to it and, Ex-2 annexed to it is an affidavit of one Ashok Chotalal Desai who is the Deputy Manager of the General Insurance Corporation of India. The Petition was mainly with regard to seeking direction and mandatory order if necessary that rules be framed and policy be evolved regulating promotions. In the affidavit, reference is made to the guidelines in para 3, which will be material for our purposes when we deal with the guidelines hereafter. Further in the said affidavit, it has been indicated that the petitioner's promotion is said to be in process in the year 1988 and results thereof are soon expected. This affidavit is affirmed on April 1, 1989. Based on this, the said order dated April 4, 1989 came to be passed. In that order a statement made on behalf of the respondent is incorporated to the effect that while a promotion policy is under preparation the seniority-cum-merit principle shall till then be applied.

11. Needless to say this reference to the statement in the said order of April 4, 1989 made in a matter where the holding company GIIC is a party. The petitioner, to make out a case of promotion to be made by seniority-cum-merit basis, guidelines were extracted partly and in the course of hearing entire copy of the guidelines has been produced before us. Neither, in the beginning nor at the end is there any reference to authority that issued the guidelines nor it bears any signature. This was the position as on yesterday. Today, the learned advocate Mr. Singh appearing for Respondent has produced before us a copy of the guidelines bearing an endorsement of the manager of Respondent No. 1, Oriental Insurance Company Limited to the effect that originally this is. purported to have been signed by M.P. Vaidya though no signature is appearing on the copy given to us. The above guidelines, not having been published in the sense but one would understand under the Administrative Law of Publication all rules being known to the persons likely to be affected in a manner usually expected like printing it in in- house newsletter or displaying it in the notice board etc. At the same time promotion being on some criteria is also indicated on the very first

representation of the petitioner, at page 59, para 2, where it clearly refers to there being a criteria for promotion and this, according, to him as set out in the representation, is "suitability-cum-seniority". When one turns to the guidelines, it is to be found that they relate to different cadres starting with the cadre of the Assistant Administrative Officer to be promoted to Administrative Officer and so on. Seniority is the governing factor for first five posts upto the cadres of Administrative Officer. Administrative Officer to Assistant Manager, performance is introduced as one of the factors to be considered along with the suitability and future attention of the officer. From the cadre of Assistant Manager to Deputy Manager promotion is primarily based on merit as reflected in performance, job knowledge, suitability and potential for both. Promotion to the cadre of Manager is described as a promotion to the selection post and for that purpose criteria is merit-cum-suitability-cum- seniority.

12. Being faced with this situation and the said letter on behalf of the petitioner, two submissions were made. One was with regard to the non-application of the guidelines. In absence of publication, according to the learned Counsel for the petitioner, the guidelines cannot be made use of against the Petitioner. In fact, in absence of publication, seniority rule must govern that is the submission.

13. With regard to the letter at page 59 an effort is made that the words used therein are indicative only on the fact that he is the meticulous and suitable on account of long tenure that he has put in the particular cadre from which he is to be promoted. According to the learned counsel, therefore, this expression used by the petitioner in his representation should be understood to mean the reference to the period that he has spent in the cadre which in turn referred to seniority.

14. We are unable to accept the ingenuous argument. By way of criteria, it refers to suitability-cum-seniority. The word "suitability" carries in it the element of merit as well.

15. Now coming to the point of non-publication, judgments are cited with the Division Bench Judgment of this Court. It has occasion to deal with the situation arising out of an order passed by the High Court on the administrative side by the learned Chief Justice under Article 229 of the Constitution of India. While granting promotions, the tests were conducted which according to the petitioner, were never brought to the notice and hence further it was urged that the promotions granted on the basis of tests, so conducted, should be struck down. It was urged on behalf of the High Court in the said matter that the Petitioner of that case knew about it. Dealing with the submissions in Para 8, the learned Judges have clearly held that mere knowledge about the fact that a test or (sic) interview was going to be held could not be the information of the Rules or Administrative Instructions which have laid down various norms for promotion. After dealing with the implication of rules etc. and dealing also with the representation of the Petitioner, the learned Judges have come to the conclusion that findings cannot be given about the Petitioner having definite knowledge of

the norms. Later on, it is said that information about the norms of the condition for promotion must officially be made known to them. The learned Judges have read in it violation of natural justice as well. In absence of any such exercise, in para 3 of the judgment, the learned Judges categorically held that test conducted in absence of it being published would amount to serious error and would, therefore, further amount to an encroachment on the rights of the petitioner for being considered for higher post without making him to undergo test. In other words, in absence of and policies being made known, if it is applied test would be quashed and promotions have to be granted in accordance with earlier position prior to the date that the unpublished policy or rules were brought into force.

16. Looking to the representation, page 59, it is not possible to hold that petitioner was unaware of the requirement. He may not have referred to the guidelines, but page 58 clearly shows that during different years quite a number of seniors have left out and, juniors were promoted. In respect of a selection list, this is bound to happen. By very nature, selections have to be on merit, this will be the result as set out in *Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others*, as also *Sarat Kumar Dash and Others Vs. Biswajit Patnaik and Others*, .

17. In our opinion, therefore, the said judgment of the Division Bench of this Court arising out of the occasion of the High Court on its administrative side reported in 1998 CLR 1185 will not be of any help to the petitioner.

18. The said two judgments referred to in the discussions earlier are cited on behalf of the respondents and they may now be referred to at length. In case of *Sharat Kumar* even in absence of statutory rules when administrative orders were applied and merit-cum-suitability with due regard to seniority as a principle is followed, it was upheld as can be seen in course of discussion in paras 3, 6 and 10 of the judgment. Para 7 Capoor "s case of the Supreme Court has been cited with approval, it being *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, .

19. The second case is (*supra*) pertaining to one *Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others*, . Here also the order of the learned single Judge as well as the Division Bench of the High Court was set aside because the Supreme Court found that the Nabard guidelines indicating requirement of performance to be considered, were overlooked. The impugned action of promotion was on the basis of Nabard circular. This is to be found discussed in para 2 at page 2734, paras 5 and 8 at page 2735 of the said judgment.

20. We have, therefore, no hesitation in holding that in absence of rule if there are guidelines they can certainly be held good. Only requirement will be, it should be uniform in respect of all eligible candidates. It is nobody's case that his has not been so done. Mala fide is not alleged. Only case sought to be made out in the representation was that suitability-cum-merit is not considered. In the petition, an attempt is made to make out a case of rule of seniority for

promotion. On facts, we have found that guidelines are there. If any further reference is to be made, on the material on record one can refer to affidavit of Ashok Chotalal Desai as also the affidavit filed before J&K High Court in SWP No, 259 of 1993. One Mr. F.R. Heredia, the General Manager of General Insurance Corporation of India has filed affidavit with regard to a Codified Promotion Policy for the officers in general insurance industry having been approved by the Board of Directors on February 12, 1990. Prior to this, promotion was being effected in terms of guidelines on promotion which stipulated amongst other things minimum period of service in the cadre, seniority, suitability and merit. Thus the guideline seems to be in uniformity with all the units of GIIC.

21. Once this aspect is taken into consideration, it is obvious that the case now sought to be made out on the basis of there being no rules or guidelines and if there being any guidelines, they not having been published and therefore, the original seniority shall apply, in our opinion correctly cannot be accepted.

22. For this purpose, reliance is placed on a judgment reported in 1995 2 CLR 1109. When our attention is drawn to para 19 of that judgment, a case was sought to be made out that there being a panel, according to the panel the promotions are given and therefore no fault to be found. However, what is the meaning of panel could not be clarified in spite of repeated enquiry. The learned Judge has therefore understood the word to mean that it is a mail list or select list. In case of non-selection posts, learned Judge has held that there is no question of such a panel. In such cases, therefore, according to the learned Judge, the senior is promoted automatically unless he is found to be unsuitable to hold the post. Simple answer is that the post for which the petition filed is a selection post.

23. Judgment in the case of Additional District Registrar, Palghat and Ors. v. M.B. Koyyakutty and Ors., reported in 1979 LIC 803 is also cited. However, it pertains to dealing with rules that were applicable to that case. The case before us is on the basis that there are no rules and therefore seniority should follow.

24. Judgment of 1989 1 CLR 625 need not be discussed at all because it is on the basis of the rule of seniority-cum-merit. We agree with the learned counsel that if rule of seniority-cum-merit prevails only in case of positive demerit and the senior persons will be left out. In case of merit-cum-seniority, merits being equal seniority will tilt the scale. However, as seen above, it being a case of selection post where merit-cum-suitability-cum-seniority is the criteria, if the Petitioner is left out we do not see any reason to interfere with this action of the respondent company. In other words, no interference at our hand is warranted. The petition is, therefore, rejected. Rule discharged.