

(2014) 07 RAJ CK 0111
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11594/2012

Ram Chandra Bhagat

APPELLANT

Vs

The United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Citation : (2014) 07 RAJ CK 0111

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Vinit Kumar Mathur, Advocate for the Appellant; Jagdish Vyas, Advocate for the Respondent

Final Decision : Allowed

Judgement

Dr. Vineet Kothari, J.—The petitioner has filed the present writ petition seeking following relief/s:-

It is, therefore, most humbly and respectfully prayed that this writ petition may kindly be allowed and;

A]. By an appropriate writ order or direction the respondents may be directed to consider the case of the petitioner for granting him special promotion on the post of Senior Assistant by condoning the delay caused in submitting the application and grant him the benefit of promotion on the said post.

B]. By an appropriate writ, order or direction the letter dated 15.3.2012 (Annex. 5) issued by the respondent No. 3 may kindly be declared illegal and the same may also kindly be quashed and set aside.

C]. By an appropriate writ, order or direction, the respondents may kindly be directed to grant him the benefit of promotion on the post of Senior Assistant from the date he became eligible and also grant him all consequential benefits.

D]. Cost of litigation may also kindly be awarded in favour of the petitioner.

Any other appropriate order or relief which this Hon"ble Court may deem just and proper in the facts and circumstances of this case may also kindly be passed in favour of the humble petitioner.

2. The petitioner was working as Assistant in the respondent-United India Insurance Company Ltd. (for short, hereinafter referred to as "Company"). Under the Scheme framed for One Time Promotion avenue given to such Assistants, under para 25A of the Promotion Exercise, 2011, for SCS Staff vide the Annex. 2, dated 15th February 2012 on the basis of satisfactory work record and upon evaluation of the seniority, qualification and work performance, the Assistants were to be considered for promotion to the next higher cadre of Senior Assistants as one time measure and the applications for this purposes, were invited from the employees of the Company who were working as Assistants, between the period 15.02.2012 to 27.02.2012, within a short span of 12 days only.

3. The petitioner is said to have suffered from sickness and was hospitalized for some surgical intervention in his Gall Bladder and he remained hospitalized from 10.02.2012 to 21.02.2012 for a period of 12 days. Due to his hospitalization and while recovering from the said illness, he could not apply for such promotional avenue on or before 27.02.2012 but applied for the same on 14.03.2012. However, the application for consideration was rejected by the respondent-Company vide the impugned order (Annex. 5) dated 15.03.2012 on the very next day. The petitioner on achieving the age of superannuation retired from the services of the respondent Company on 31.08.2012 and thereafter preferred this writ petition on 29.10.2012 for claiming relaxation the said cut off date.

4. Mr. Vinit Kumar Mathur, learned counsel for the petitioner submitted that under Clause 26 of the relevant Rules produced on record as Annex. 7, the respondent-Company has power to relax/modify the Promotion Policy and, therefore, the said cut-off date dated 27.02.2012 could not be treated as a straitjacket closing date and in the circumstances and for the reasons beyond the control of the petitioner, the said date deserved to be relaxed for considering the case of the petitioner who was nearing his retirement of once in a life time promotion to the next higher post of Senior Assistant could be given to him condoning a minor delay in applying for the same, and appropriate direction may be issued to the respondent Company.

5. Mr. Jagdish Vyas, learned counsel for the respondent-Insurance Company, however, submitted that since he applied much later than the cut off date, and after retirement only has preferred this writ petition, therefore, the writ petition suffers from delay and laches in filing the application and the same could not be considered by the respondent company.

6. I have heard the learned counsel for the parties at length and perused the relevant documents.

7. The Promotion Policy under Annex. 2 dated 15.02.2012 in substance with

reference to Para 25-A and 26 of the Promotion Policy reads as under:-

Para 25A of Promotion Policy states that:

25. A. Special provisions of minimum one promotion in life time for Assistants:-

Such of the employees who joined the service of the Company in the cadre of Assistant, have put in 25 completed years of service in the same cadre, are not below 55 completed years of age and have not received a simple promotion, would be considered for promotion to the cadre of Senior Assistant to the extent of and against specific vacancies, as may be approved by the Chairman-cum-Managing Director of the Company for the purpose, on completion of normal promotion exercise, on the following basis:

(i) Eligibility would be restricted to the employees who have put in minimum of 25 years of service in the cadre of Assistant, without receiving a single promotion so far in their entire service career.

(ii) Such employees shall not be below the age of 55 completed years to be reckoned as on the cut-off date i.e., 31st December, 2010.

(iii) selection would be subject to satisfactory work record and the concerned employee not being unfit for promotion. Any employee who is (a) under suspension (b) in respect of whom charge sheet has been issued and the disciplinary proceedings are pending and (c) in respect of whom prosecution for a criminal charge is pending, would be deemed to be ineligible for consideration under this paragraph.

(iv) Selection made under this paragraph would not reckon against regular vacancies but would be against the specific additional vacancies as may be sanctioned by the Chairman-cum-Managing Director of the Company.

(v) Selection under this paragraph from amongst the eligible employees in the cadre of Assistant would be based on the marks obtained as provided for under the existing criteria for Seniority, Qualification and Work Record in relation to Promotion to the cadre of Senior Assistant. However, weightage for Seniority would be to the extent of 3 marks for each completed year of service in the cadre beyond 25 years of service in the cadre.

(vi) For employees who are "ex-servicemen" within the meaning of Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1970 as amended from time to time, the service rendered in the Armed Forces of the Indian Union in the past before joining the services of the Company, shall be counted, up to a maximum of 5 years, as service rendered with the company for the purpose of determining eligibility (i.e. calculating 25 years), as also for the purpose of grant of weightage for service under this paragraph.

Employees who satisfy the above eligibility conditions may submit their applications to the Officers-in-charge of the office, in which they are employed on or before 27th February, 2012.

Applications which are not complete and those received after the last date of submission are liable to be rejected.

Sd/-

(G.M. GARG)

Regional Manager

Promoting Authority

26. Power to modify/relax the Promotion Policy:-

The CMD may by order and for reasons to be recorded in writing dispense with or relax the provisions of this Promotion Policy to such extent the may consider necessary for dealing with individual cases in a just and equitable manner or for meeting exigencies of work situation or for complying with official guidelines that may be issued from time to time.

8. The factum of illness, hospitalization and medical condition of the petitioner are not in dispute and the only ground taken by the respondent company is that the Selection Committee only considered those applications which came within the prescribed time on the basis of Seniority, Qualification and Work record, and the said cases were considered and promotions were accordingly given.

9. The said promotions as would appear from Para 25A of the Promotion Policy, is once in life time opportunity particularly for the Assistants seeking promotion to the post of Senior Assistants. The time given for filing such application only to bring on record the relevant data/s, which were otherwise also available with the respondent-Company itself, such applications were invited within a short span of the time of only 12 days. Since the petitioner for the overriding reasons beyond his control, could not file such application within the stipulated time but filed immediately thereafter on 14.03.2012 as soon as he was discharged from the hospital, the same was rejected without giving him any opportunity of hearing by the impugned order (Annex. 5) dated 15.03.2012. No opportunity of hearing was admittedly given to the petitioner before passing the said order and thus there was obviously a breach of principles of natural justice in the present case. The respondent company ought to have taken a sympathetic and objective view of the matter. The selection on the basis of the Seniority, Qualification and Work record is matter of record and no written test or personal interview was envisaged for such promotion.

10. Therefore, these facts of contemporary period of all its employees who were working as Assistants, are still available with the respondent Company for consideration of petitioner's case. The delay in filing the application in the present set of circumstances, deserved to be condoned and a liberal view deserved to be taken particularly because the said promotion policy is once in a life time opportunity for the Assistants of the said respondent-Company. The superannuation of the petitioner does not debar him from consideration of his

case, which was not done by the respondent Company without good reason. The delay in filing the application by the petitioner is hereby condoned.

11. The writ petition, therefore, deserves to be allowed and the same is hereby allowed and quashing the impugned communication (Annex. 5) dated 15.03.2012, the respondent Company is directed to consider the case of the petitioner on merits and in accordance with Promotion Policy, particularly para 25A quoted above, and pass appropriate promotion order qua the petitioner within a period of three months from today and the said promotion be given to the petitioner as Senior Assistant on the basis of said criteria with effect from the date when such Assistants were given such promotion to the post of Senior Assistant. The petitioner would entitled to the consequential post retiral benefits also accordingly. No costs. A copy of this order be sent to the concerned parties forthwith.