

(2012) 07 DEL CK 0267

In the Delhi High Court

Case No : LPA 15 OF 2012 and CM 418 of 2012

Ram Rattan

APPELLANT

Vs

United Indian Insurance Co. Ltd. and Ors

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Citation : (2012) 6 AD 241

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : K.S. Chauhan, Mr. Ajay Kumar Ekka and Mr. Chandan Kumar, for the Appellant; K.L. Madhwan, Advocate for UIICL. And Mr. K.C. Nandwani, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. By means of judgment dated 25.3.2011 the learned Single Judge dismissed the writ petition of the appellant herein. In the said writ petition the appellant had made a grievance that he was wrongly denied promotion to the post of Senior Assistant in the Scheduled Caste Category in the years 1992-93 and 1994 and sought mandamus to promote him as Senior Assistant from the post of Assistant (Typist). The learned Single Judge, for the reasons stated in the said order held that the petitioner was not entitled to promotion because of his non-selection in each of the years and did not find any fault with the selection process. The promotion policy of the respondent was taken note of which provided that selection is to be made on the basis of seniority, qualification and work record and also the appraisal criteria and weightage is to be given in respect of each of the aforesaid components namely, seniority, qualification and work record. On reading thereof, the learned Single Judge came to the conclusion that seniority alone was not the criteria for promotion as it was only one of the considerations, the promotion policy provided for preparation of ranking list under which different aspects have been given due weightage and to

secure entry into the said ranking list it was incumbent for the SC candidate to obtain at least 30 marks in aggregate. Para 42 and 46 of the said Promotion Policy read as under:-

PARAGRAPH 42: SELECTION AND RANKING The committee shall first finalize the recommendations on the basis of marks gained on all the criteria entering into for appraisal, and arrange the list in the descending order of the marks gains. For being ranked the candidate must secure at least 40 marks (30 marks in case of SC/ST candidates) in the aggregate. However, this proviso shall not apply to ranking list prepared under para 31.

PARAGRAPH 46: CANDIDATES ON THE RANKING LIST WHO HAVE NOT BEEN OFFERED PROMOTION.

The ranking list once published by the Promoting Authority shall remain in force till it is replaced by the next list and the candidates on the list shall be offered promotion up to the time the list is in force. The candidates who have not been offered promotion during this period will be placed on the top of the next ranking list.

Applying this promotion policy to the selection held in the years in question, the learned single judge found as under:-

(i) With regard to 1992, the appellant was placed at Sl. No.3 in SC/ST category. There were 4 vacancies available in SC candidates including 1 due to interchange in ST vacancy. Accordingly 4 employees were promoted and one Mr. Tilak Raj was placed in the reserved list. (it is clear that this ranking list was for who were not offered promotion).

The appellant had not made any specific allegations against the said 4 persons instead allegations were made against one Ms. Harvinder Kaur alleging that she was promoted even when her name was not included in the ranking list. Explanation of the respondents in this behalf was that name of Ms. Harvinder Kaur as she was on the reserve list for the year 1991 automatically appeared for the 1992 and it appeared as per para 46 of the promotion policy. To demonstrate this the respondent has placed seniority list for the year 1991 wherein name of Ms. Harvinder Kaur was shown at sl. No.6. The ranking list for promotion of the cadre of Sr. Assistant of the year 1992 was also produced wherein the name of the appellant was at sl. No.6. The learned Single Judge has accepted this position explained by the respondents noting that the appellant was not able to respond and controvert this position.

(ii) In respect of promotion for the year 1993, the case put up by the appellant was that there were total 21 vacancies out of which 3 were reserved for SC candidates. The appellant was shown at sl. No. 2 in SC category in the list based on seniority-cum-post awarding 29 appraisal marks. He had also submitted that there were 6 vacancies meant for SC candidates but this figure was wrongly and illegally reduced to 3.

The learned Single Judge noted the clarification given by the respondents in the counter affidavit stating 6 cumulative vacancies for ST candidates were shown as vacancies for SC candidates which was rectified inasmuch as SC candidates are concerned, there were only 3 vacancies. The learned single judge held that there was nothing wrong in showing 3 vacancies in SC candidates. Further as the appellant had himself admitted that the appellant had secured 29 marks which was less than the minimum qualifying marks i.e 30 marks, he was not "recommended" for promotion.

2. With regard to the year 1994, the case of the petitioner was that there were 2 vacancies in the cadre of SC candidates. He has claimed to have secured 33% marks which were higher amongst the SC candidates but still was not promoted. The respondent, however mentioned that for the year 1994, there was no vacancies for SC candidates. Moreover, the petitioner's marks were not highest as claimed by him. Instead one Mr. Gajraj Singh was placed at sl. No.1 and the appellant was placed at sl. No.2. It was further explained by the respondents that even in the year 1995 there was no SC vacancies in the cadre of Sr. Assistant. However, 1 ST vacancy was available for inter-change and Mr. Gajraj Singh who was at sl. No.1 was promoted. In the year 1996 again there was no vacancy and when the vacancy arose in the year 1997 the appellant next in line was given promotion. This was the basis of rejection of the petition of the appellant.

3. The appellant preferred review petition, the petitioner sought review on the ground that since the name of the petitioner was in the ranking list of 1992, he should have been given promotion in the year 1993 on the basis of said ranking in 1992 list in terms of paragraph 46 of the Promotion Policy and thus promotion could not be denied to him on the basis of his appraisal marks in the year 1993 which was 29 i.e less than the minimum marks. This contention was refuted by the respondent by pointing out that this list mentioned in the notice dated 27.5.1992 on the basis of which the appellant was stating that his name was shown at sl. No.1 in the ranking list was in fact not a promotion or ranking list. It was only a list containing names of employees who were entitled to be considered for promotion to the cadre of Senior Assistant and therefore claim predicated on such a list was unwarranted. The learned Single Judge accepted this clarification of the respondents, taking note of the fact that as per the list mentioned in the notice dated 27.5.1992, Ram Karan has been shown at sl. No.5 and Gambhir Singh has been shown at sl. No.2 whereas Jasbir Singh, Ram Rattan and Vinod Kumar have been shown at sl. No.1,3 and 4 respectively. Ram Karan, who was at sl. No.5 after the ranking list was prepared has been promoted as candidate no.2 in the seniority list and Gambhir Singh has been promoted as candidate no.3 in the seniority list. Thus, there is merit in the contention of the respondent that the list mentioned in the notice dated 27.5.1992 is not a seniority/ranking list. The ranking list is dated 1.6.1992 and the applicant did not qualify and his name was not included in the ranking list for 1992. In this appeal filed by the appellant, challenge is only to the order passed

in the review petition and it is argued that the matter is not dealt with by the learned Single Judge in right perspective as there is a clear error therein.

4. It is clear from the above that the appellant is seeking promotion only on the basis of 1992 promotion process undertaken by the respondents. As per the appellant, the official respondent published notice dated 27.5.1992 whereby 16 vacancies were published for the post of Senior Assistant which include 4 posts for SCs. He has stated the vacancy position as under:-

Total Vacancies

General

SC

ST

Eligible candidates

Genl.

SC

ST

16

9

4

3

36

11

NIL

Total vacancies filled

12

9

3

NIL

5. Thus, according to him, he was duly eligible and was placed at Sl. No.3 by the official respondents vide notice dated 27.5.1992. However, according to him, the respondent filled up only 3 vacancies keeping one vacancy unfilled and had that been filled up, the appellant would have got the promotion. Three persons were promoted when actually the respondent should have been promoted 5 persons. Had it been done, the appellant who was at sl. No. 6 would have been placed in

the reserved panel and on that basis he should have got promotion in the next year. The contention of the appellant when examined on the basis of relevant documents does not appear to be correct. It is accepted by the appellant that notice dated 27.5.1992 was not a ranking list but was only a seniority list. The appellant placed reliance on the ranking list prepared on 12.12.1992 and his submission is that it shows SC category vacancies as 3+2 i.e. 2 ST category vacancies converted into SC vacancies. His contention is that first four persons were promoted at sl. No.5 was Tilak Raj and the appellant was at sl. No.6 His contention is that five persons been promoted, Tilak Raj would also been promoted and in the next year, as per para 46 of the promotion policy, the appellant would have been on the top of the list and was entitled to get promotion in the year 1993 selection. What is omitted in the argument is that apart from four persons who were promoted, Ms. Harinder Kaur who was in the reserved list in the year 1991 was also promoted as she automatically appeared at the top of the list in the year 1992 in terms of para 46 of the promotion policy. Therefore, four persons were not promoted as alleged. Thus, Tilak Raj could not be promoted because of the aforesaid reason and he was admittedly above the appellant. We thus do not find any merit in this appeal which is accordingly dismiss.