

(2015) 12 P&H CK 0080

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 25774 of 2014(OandM)

Sajjan Kumar Gupta

APPELLANT

Vs

The Oriental Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Citation : (2015) 12 P&H CK 0080

Hon'ble Judges : Lisa Gill, J.

Bench : Single Bench

Advocate : Kapil Kakkar, Advocate, for the Appellant; Ashwani Talwar and Kush Makkar, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Lisa Gill, J.—Prayer in this writ petition is for quashing of Promotion Policy for Supervisory, Clerical and Subordinate Staff, 2008 (Annexure P3) to the extent weightage of 30 marks is afforded for service put in by the employees irrespective of length of service (beyond fifteen years) while making promotions to the cadre of A.O. (Scale-I) from amongst the supervisory, clerical and subordinate staff. Further prayer is for granting of marks as per seniority on pro-rata basis and to consider the petitioner's case for promotion to the post of A.O. (Scale-I).

2. Facts of the case are that petitioner joined respondent - Company as Assistant on 03.02.1987 (Annexure P1). He was promoted to the post of Senior Assistant in August 2013 (Annexure P2). Next channel of promotion from the post of Senior Assistant is to the cadre of Scale-I officer. It is submitted that the petitioner who has spent more than 27 years of service has been put to a disadvantageous position because of an arbitrary and illegal criteria adopted by the respondents. It is urged that he is appearing in the written examination every year from 2011 onwards and despite securing sufficient marks in the written test, he was superseded just because of the clause granting 30 marks on the basis of service. 30 marks were afforded to all candidates having service of

15 years and above thereby, putting the petitioner and similarly situated candidates who have put in more than 15 years of service to disadvantage.

3. Promotional exercise for the year 2014 was set in motion by issuance of notice dated 22.08.2014, Annexure P4. Twenty three (23) vacancies are reflected under the competitive channel of North Zone, out of which four are reserved for Scheduled Caste candidates. Written test was held on 21.09.2014. Petitioner's name figured at Serial No. 24 in the provisional panel of employees declared eligible for interview. His base marks were calculated as 57 (Annexure P5). Final panel list (Annexure P6) was prepared and petitioner called for interview on 19.11.2014. Petitioner did not figure in the final promotion list (Annexure P8) while persons junior to him stood selected. Aggrieved therefrom, present writ petition has been filed.

4. Learned counsel for the petitioner vehemently argues that proportional marks should be awarded keeping in view the length of service of each employee who chooses to seek promotion through the competitive channel. It is submitted that a cap of 30 marks on account of service is illegal and arbitrary, working a disadvantage to the petitioner. Impugned Policy would lead to heart burn as seniors are not promoted and employees who are much juniors steal a march over them. Allotment of marks should be on pro-rata basis in consonance with length of service.

5. Learned counsel for respondents on the contrary submits that Policy in question is valid. It is applicable to employees of four companies/agencies all over India and has withstood the test for the past seven years after its formulation in the year 2008.

6. Furthermore, selected candidates have not been arrayed as party-respondents in this petition and petitioner is estopped from raising challenge to the abovesaid criteria after having participated in the process of selection and being unsuccessful therein. Learned counsel for respondents relies on judgment of Hon'ble Supreme Court in *Om Prakash Shukla v. Akhilesh Kumar Shukla and others*, 1986 (Sup.) SCC 285 to urge that petitioner having taken a chance by taking the competitive exam, is estopped from challenging the process or the criteria. It is submitted that even principle of seniority cum-merit is different from merit-cum seniority. In the instant case, it is promotion through a competitive channel.

7. No discrimination is worked towards any of the employees by the criteria in hand which is fair, just and proper. It is the prerogative of the department to decide the weightage to be afforded for various fields. It is thus prayed that writ petition be dismissed.

8. I have heard learned counsel for the parties and gone through the file.

9. As per Annexure P3 i.e., Promotion Policy for Supervisors, Clerical and Subordinate Staff, 2008 (hereinafter referred to as "Promotional Policy") 50% of

the promotional vacancies in Scale-I officer cadre are to be filled up from the employees eligible under Paragraph 13.1 of the Policy and rest of 50% under Paragraph 13.2. Relevant Paragraph 5.4.1 of the Policy is reproduced as under:--

"5.4.1 Of the promotion vacancies in Scale-I officer cadre declared under this policy, 50% will be filled up from employees eligible under Paragraph 13.1 and balance 50% under Paragraph 13.2. Vacancies remaining unfilled under either of these paragraphs due to lack of availability of adequate number of suitably qualified candidates for promotion under that paragraph in any Promotional Exercise shall be carried forward to next Promotional Exercise for adding to the number of vacancies under the respective paragraph therein."

10. Promotional Policy, Annexure P3 regulates the promotion of Supervisory, Clerical and Subordinate staff. This Policy is applicable not only to respondent-Company but also to employees of four other companies all over India. Paragraph 13 of the Policy deals with promotion to the cadre of Scale-I officer. There is departmental channel and a competitive channel. Petitioner sought promotion in the competitive channel dealt with under Para 13.2. Paragraph 13 of the Policy which deals with promotion to the cadre of Scale-I officer reads as under:--

"13. Promotion to the cadre of Scale-I officer:

There shall be two channels of promotion to this cadre known as "Departmental" and "Competitive" channels, each having distinct eligibility criteria described in the succeeding subparagraphs.

13.1 Departmental channel: The following employees shall be eligible to be considered. for promotion to the cadre of Scale-I Officer under this channel:--

a) Senior Assistants and Stenographers who have put in 7 years service in the cadre; or

b) Senior Assistants and Stenographers who have put in at least 5 years service in the cadre and have passed the Licentiate Examination of the I.I.I or who have passed one subject of Institute of Actuaries or Post Graduate Diploma (minimum one year duration) in Computer Applications/Business Administration/Management of recognized University or Institute with AICTE approval for the course; or

c) Senior Assistants and Stenographers; who have put in at least 3 years service in the cadre and are qualified as AIII or ACII or who have passed three subjects of Institute of Actuaries; or

d) Senior Assistants and Stenographers who have passed F.I.I.I. or F.C.I.I. or ACA or

ACWA or who have passed five subjects of Institute of Actuaries or Graduates in Engineering or Master of Business Administration (MBA) qualification from a recognized University or Post Graduation Diploma (Minimum two year duration)

in Business Administration/Management (PGDBM) or Master in Computer Applications (MCA) from a recognized University/Institute with AICTE approval for the course, or Chartered Financial Analyst (CFA) qualification from the Institute of Chartered

Financial Analysts of India or Associate of Institute of Company Secretary (ACS) qualification from the Institute of Company Secretaries of India.

Note: Senior Assistants means all employees in the scale of Senior Assistants including Senior Assistant (Programmer).

13.1.1 Selection under this channel shall be based on seniority, qualification, Work record and interview.

13.2 Competitive channel: Graduate and Post-Graduate employees with at least 50% marks in any Degree examination (40% in case of SC/ST employees), employees holding F.I.I.I. or F.C.I.I. Diploma (A.I.I.I. or A.C.I.I. in case of SC/ST employees), employees who have passed five subjects of Institute of Actuaries, employees who are ACA or ACWA and employees who have acquired Master of Business Administration (MBA) qualification from a recognized University or Post Graduation Diploma (minimum two year duration) in Business Administration/Management (PGDBM) or Master in Computer Applications (MCA) from a recognized University/Institute with AICTE approval for the course, or Chartered Financial Analyst (CFA) qualification from the Institute of Chartered Financial Analysts of India or Associate of Institute of Company Secretary (ACS) qualification from the Institute of Company Secretaries of India, shall be allowed to appear for not more than four (five for SC/ST employees) occasions in the entire period of service for the Competitive Examination and those securing at least 60% marks (50% in case of SC/ST employees) shall be declared successful and included in further process for consideration of promotion to the cadre of Scale-I Officers under this channel.

13.2.1 Selection under this channel shall be made on the basis of Seniority, Qualification, Work Record, Interview as also the marks obtained in the Competitive Examination.

The marks for the four criteria of Seniority, Qualifications, Work Record and interview shall be according to the scheme of Weightage given in Para 16, and to the total of the marks so obtained shall be added the marks (reduced to base 100) for the Competitive Examination. The employees who have secured at least 120 marks (100 marks in case of SC/ST employees) out of a maximum of 200 shall be drawn in a ranking list arranged in descending order of marks. A successful attempt at the Competitive Examination by an employee who does not earn selection in the ranking list shall not count for computing the number of attempts permitted to him.

13.2.2 For the purpose of counting the number of attempts under this sub paragraph, the attempts availed by an employee under Para 31 of the previous

Promotion Policy shall be taken into account. For example, if an employee has availed two attempts under Para 31 of the previous Promotion Policy, he shall be entitled to avail further two (three for SC/ST employees) attempts under this Policy.

The CMD may issue administrative instructions for holding the Competitive Test.

13.3 Separate Ranking Lists shall be prepared for those qualifying under the provisions of sub-paragraph 13.1 and those qualifying under the provisions of sub-paragraph 13.2."

11. Relevant Paragraphs 16 and 17 of the Policy read as under:--

"16. Scheme of weightage:

The following shall be the Scheme of Weightage for various criteria of promotion to different cadres:--

17. Accrual of marks:

The accrual of marks under each criteria for promotion to different cadres shall be as per the provisions of sub paragraphs hereunder.

17.1 Seniority:

i) For promotion to the cadre of Scale-I officer (under Para 13.1) and Senior Assistant, two marks for each completed year of service in the cadre as on the 31st December of the preceding year shall be allotted.

ii) For promotion to the cadre of Scale-I officer (under Para 13.2) and Assistant, two marks for each completed year of service in the Company as on the 31st December of the preceding year shall be allotted.

iii) Both for Weightage and eligibility criteria, period of six months or more shall be treated as one completed year of service, while service less than six months shall be ignored."

12. Policy in question clearly provides for a competitive channel as well as departmental channel for promotion to the cadre of Scale-I officer. Competitive channel regulated by para 13.2 is in question in the instant petition.

13. By its very nature, competitive channel envisages of components other than length of service. It is specifically mentioned in Paragraph 17.1 that for promotion to the cadre of Scale-I officer under paragraph 13.2, two marks for each completed year of service in the company as on 31st December of the preceding year shall be allotted. At the same time, it is a maximum of 30 marks which are to be afforded on this count. Therefore, all employees who have rendered service for 15 years and above are granted of 30 marks on this count.

14. Paragraph 13.2.1 specifies that selection under this channel shall be made on the basis of seniority, qualification, work record, interview as well as marks

obtained in the competitive examination. No illegality can be found with the Policy wherein maximum marks afforded to an employee for length of service have been specified. Perusal of the Policy and the underlining purpose clearly reveals that components other than length of service, are to be given weightage in the competitive channel. In respect to length of service, the departmental channel takes care of this aspect. It is a settled position that seniority per se cannot be relevant when promotion is by way of a competitive examination. There is no merit in the argument raised by the petitioner that weightage for length of service should be on a pro-rata basis. If such argument is accepted it shall amount to a definite premium on the length of service rendered by an employee which is clearly not the intention of Promotional Policy.

15. It is to be noted that very concept of affording a competitive channel negates reverence to seniority as such. It is not open to the petitioner to say that employees junior to him and those who have joined service much later, have stolen a march over him due to this criteria. As stated above, concept of competitive channel itself permits said persons to steal a march irrespective of the length of service. Any other interpretation would render the provision for competitive channel redundant. Learned counsel for the petitioner is unable to point out any patent illegality or arbitrariness in the abovesaid provision in the Promotional Policy to invite interference by this Court.

16. Consequently this writ petition, being devoid of merit, is dismissed.