

(2013) 05 DEL CK 0428

In the Delhi High Court

Case No : Writ Petition (C) 2464 of 1998

Sh. Vijay Pal Singh

APPELLANT

Vs

The Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0428

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : V. Mohana and Ms. Puja Singh, for the Appellant; Vishnu Mehra, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner-Sh. Vijay Pal Singh, who is an employee of the respondent No. 1/The Oriental Insurance Co. Ltd. By the writ petition, petitioner seeks the relief being promoted to the post of Development Officer Grade-I w.e.f. 19.09.1990 and also that he should be deemed to be confirmed after probation period on 19.9.1990. The facts of the case are that the petitioner was appointed as a Probationary Development Officer Grade-II by the respondent No. 1 vide letter dated 29.08.1988 and which is also the date of his appointment. Petitioner in the writ petition claimed that he achieved the targets which were fixed for the two years of his service and, therefore, the petitioner was entitled to confirmation as also promotion to the post of Development Officer Grade-I immediately on probation period being completed on 19.09.1990. Petitioner claims that however he was not given confirmation or promotion to the post of Development Officer Grade-I w.e.f. 19.9.1990. The writ petition thereafter makes reference to minor penalty proceedings being initiated against the petitioner in terms of letter dated 09.03.1992. The imputation of mis-conduct mentioned that the petitioner's agent had issued a back dated cover note and exposed the company to an unwarranted liability, due to which a motor accident case was pending with a

claim of over Rs. 5,50,000/- at Ghaziabad. The subject truck got involved in an accident on 21.04.1989 and, therefore, the charge was that the policy was wrongly issued back dated i.e. from 20.04.1989. Petitioner claims that he was imposed the punishment of censure on 01.06.1992, petitioner thereafter in the writ petition states that he earned the prescribed premium for the first two years but he was surprised to receive a letter dated 05.05.1993 of the Divisional Manager of the respondent No. 1 that the premium was not sufficient and if the petitioner does not improve the business his claim for regularization will not be considered. Petitioner was subsequently confirmed to the post of Development Officer Grade-II w.e.f. 01.10.1992, and the petitioner claims that he should instead be confirmed from 19.09.1990. The writ petition is, therefore, filed for quashing of the punishment of censure as the same is imposed without hearing and for confirmation of the petitioner in the post of the Development Officer Grade-II on 19.9.1990 and the immediate promotion thereafter from the same date as Development Officer Grade-I w.e.f. 19.09.1990.

2. In the counter-affidavit filed by the respondent No. 1, it is stated that once censure was awarded to the petitioner, there did not arise any issue of his confirmation from completion of two years period. It is argued that petitioner never challenged the censure order of 01.06.1992 except by filing a writ petition in the year 1998 and, therefore, the censure order has become final. In the counter-affidavit it is further stated that every Development Officer has to meet certain norms and only thereafter could a Development Officer would stand promoted. Norms have to be completed for a period of two consecutive years after the said revised norms became applicable w.e.f. 01.04.1993 for upgradation to Grade-I from Grade-II. Respondent No. 1 states that petitioner has failed to meet the eligibility criteria to upgrade to Grade-I as the petitioner failed to meet the relevant target. This is stated in para 7.13 of the counter-affidavit which reads as under:

7.13 Thus eligibility of the petitioner for upgradation to Grade-I has to be considered for the two consecutive years prior to 1.4.1993.

The respondents have therefore prayed for dismissal of the writ petition.

3. So far as the first relief claimed by the petitioner for automatic completion of probation period after two years on 19.09.1990, in my opinion, the argument is mis-conceived because pleadings on record show that there is required a confirmation order after the probation period is successfully completed. In the present case, the probation period was not successfully completed because petitioner was found guilty of mis-conduct and was imposed a minor penalty of censure. Therefore, the respondent No. 1 was justified in not confirming the petitioner after the period of two years as claimed by the petitioner i.e. w.e.f. 19.09.1990.

3(i). It is argued on behalf of the petitioner that petitioner met the targets for the first two years of his probationary period and, therefore, petitioner is deemed

to have been confirmed in terms of appointment letter dated 29.08.1988. Reliance is placed upon sub-paras "a" and "b" of para 5 of the appointment letter and which read as under:

5(a) Confirmation in the services shall not be automatic on fulfillment of the above conditions, unless a letter of confirmation is specifically issued by the Company.

(b) Unless letter of confirmation or extension of probation is issued to you, your services shall stand automatically terminated after expiry of the period of probation.

(ii) It is argued in the alternative that actually period of two years was not required to be completed for probation and the same was reduced to one year vide letter dated 30.07.1990 of the General Insurance Corporation of India (GICI) and, therefore, subsequent minor penalty proceedings cannot be allowed to stop confirmation of the petitioner w.e.f. 19.09.1990, and from which date petitioner ought to have got the Grade-I pay. The relevant para of the letter of GICI dated 30.07.1990, which is relied upon, reads as under:

4. Past cases may be dealt as under:-

(i) xxx xxx xxx

(ii) A Development Officer who has completed probation period of one year or more but less than two years on or before 14th May, 1990 and has reached the target for the first year, may be confirmed as Development Officer Grade-II effective 14th May, 1990.

(iii) In my opinion, both the arguments urged of automatic confirmation after two years and of entitlement to confirmation after one year because of letter of GICI dated 30.07.1990 are misconceived. This is because sub-paras "a" and "b" of the para 5 of the appointment letter relied upon by the petitioner go against the petitioner inasmuch as the law is that once there is required a specific letter of confirmation after completion of probationary period, a person cannot be deemed to be confirmed automatically after the probation period and which is two years in the present case. The only reason whereby there can be deemed confirmation would be if there were some rules/staff regulations of the respondent No. 1 providing automatic confirmation after two years against language of the para 5 of the appointment letter, however, admittedly there are no pleadings or documents or rules/regulations of the respondent No. 1 relied upon to show that there would be automatic confirmation after two years of probationary period. There is no inconsistency between sub-paras "a" & "b" as argued on behalf of the petitioner and even if there is any assumed inconsistency I must apply the principle of harmonious construction to give effect to the language of para 5 that there shall not be an automatic confirmation unless confirmation letter is specifically issued by the respondent No. 1-company. The argument on behalf of the petitioner that since targets for first two years have been met and thus

nothing further stood in the way of the confirmation of the petition w.e.f. 19.9.1990 is a misconceived argument because not only targets have to be met but a confirmation letter of successful completion of probation had to be issued and which admittedly was not issued. It is illogical to argue that merely because targets are met, then confirmation is automatic because an employee may be guilty of a major or minor misconduct and thus such a person cannot claim confirmation simply because targets in probation period have been achieved. It is for this reason therefore that a confirmation of successful completion of probation period is required. I, therefore, hold that there was no automatic confirmation of the petitioner after a period of two years from the date of appointment.

(iv) So far as the argument of the petitioner on the basis of the letter of GICI dated 30.07.1990 is concerned, I may state that sub-para (ii) of para 4 relied upon use the expression "may," and which shows that it is discretionary for the respondent No. 1, and not mandatory upon the respondent No. 1 to confirm the services after one year. This discretion would be rightly given because there may be many cases where for different reasons the record of a Probationary Officer may not be good enough for automatic confirmation after one year such as the employee being guilty of minor or major misconduct as stated in the para above. Therefore, in the facts of the present case I hold that even the letter of GICI dated 30.07.1990 cannot be read to mean that there is automatic confirmation of the officer on probation after one year of probationary period.

4. The second relief claimed by the petitioner is for grant of a higher grade i.e. Grade-I instead of Grade-II w.e.f. 19.09.1990 inasmuch as the petitioner claims that petitioner had met the requisite target. The fact of the matter, however, is that petitioner was only confirmed to the post of a Development Officer Grade-II w.e.f. 01.10.1992 and, therefore, there does not arise the issue of claiming benefit of Grade-I post from prior date of 19.09.1990. After 01.10.1992 as per the relevant norms which came into being, the same required each Development Officer's targets to be considered for the two consecutive years and which is stated in para 7.13 of the counter-affidavit which is reproduced hereinabove. Petitioner has not given any requisite rejoinder to the factual averments made in para 7.13 of the counter affidavit, and the petitioner has only made a general denial without giving actual figures by which the petitioner achieved his targets for two consecutive years. Therefore, the contents of para 7.13 of the counter-affidavit have to be believed and which shows that the petitioner satisfied the norms of upgradation of Grade-I Officer for two consecutive years only on completion of the financial year 1995-1996. Petitioner accordingly was given upgradation w.e.f. 01.04.1996. Petitioner therefore is not entitled to the relief that he was entitled to upgradation to Grade-I w.e.f. 19.09.1990 as claimed in the writ petition.

5. So far as the challenge to the censure order dated 01.06.1992 is concerned, the same is hopelessly barred by delay laches because a censure order dated

01.06.1992 cannot be challenged by filing a writ petition six years later on 12.05.1998. If the petitioner had a grievance against the censure order of 1992 he should have come within a period of about three years (being the ordinary limitation period), however, the writ petition was filed much later in May 1998. No doubt Limitation Act does not apply to writ proceedings but the period prescribed in the Act has to be ordinarily observed except for grant and exceptional reasons. Therefore, the challenge to censure order dated 01.06.1992 is dismissed as being barred by delay and laches, especially because the change was of issuing a back dated policy and the respondent no. 1 therefore being involved in litigation in Ghaziabad courts. In view of the above, there is no merit in the writ petition, which is accordingly dismissed, leaving the parties to bear their own costs.