

(2013) 07 DEL CK 0331

In the Delhi High Court

Case No : Writ Petition (C) No. 4453 of 1998

Shri L.R. Senapati

APPELLANT

Vs

Indian Institute of Technology

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Citation : (2013) 07 DEL CK 0331

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Vaibhav Kalra, for the Appellant; Tejveer Bhatia and Ms. Suhasini Raina, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioner (since deceased) sought the relief of being considered for promotion under an Assured Career Progression (ACP) Scheme. Prayer was made to quash the orders of the respondent dated 11.12.1997 and 18.3.1997 whereby the representations of the petitioner were rejected. Petitioner also claimed an alternative relief of being placed in the scale of Rs. 3,000-4,500/- w.e.f. 5.1.1995 on account of stagnation by getting the highest bracket of the existing pay scale. I heard the counsel for the petitioner in detail for almost one and half hour and at which stage it was pointed out that the petitioner has already expired. This aspect would be very crucial because if the petitioner was alive, I was inclined to giving direction to the respondent to consider the petitioner for Assured Career Promotion in terms of the 1994 scheme of the respondent, but which now cannot be done as there are requirements in the scheme of appearing in the test and the interview.

2. The first relevant scheme in this context was the scheme of 1994 because petitioner claims the ACP after completion of eight years from the date of his appointment as an Assistant Resident Engineer on 5.1.1981. Petitioner was a Group "B" employee in the year 1989 and therefore the following para of 1985/1986 scheme would have been applicable to the petitioner.

4. PROCESSING

4.1 By the end of March of each calendar year, the Register of each Institute shall prepare a cadre wise list of all employees who are or shall become eligible by the 30th June of the year for consideration under the Personal Promotion scheme. This list shall be submitted to the Director by the 15th April each year. On receipt of the list, the Director shall appoint assessment committees for the evaluation of the candidates in accordance with the procedure prescribed by the respective Boards.

4.2(a) To qualify for promotion, an employee must obtain 50 percent of the maximum marks as per the following evaluation table (except for those joining the Institute in Grade "D" in the scale of pay of Rs. 196-232).

EVALUATION TABLE

3. A reference to the above para shows that the entitlement to promotion to a supernumerary post or a benefit of higher pay scale effectively is granted not automatically on completing eight years of service but additionally by appearing in a test/interview or both which were to be conducted, and which were of 40 marks.

4. The respondent at the relevant point of time seems to have rejected the representations of the petitioner essentially on the ground that no scheme was applicable. I find that this defence is justified because admittedly there was no scheme which was extant in the year 1989 when the petitioner claims entitlement to promotion to a supernumerary post. By 1989 admittedly the 1985/1986 scheme stood withdrawn. Further, and admittedly, the next applicable scheme was the scheme in the year 1994. This scheme by its very nature will be prospective, however, petitioner would theoretically be entitled to be considered under this 1994 scheme. However, once again the requirement in this scheme also, in addition to the consideration of ACRs, was a test and interview and which is clear from the following relevant portion of the 1994 scheme:-

Procedure for Selection

There will be a test and interview. The distribution of marks will be as under:-

For Group B, C & D posts:

All staff members who obtained 60 or more marks in aggregate will be selected provided that they have secured not less than 50% marks in the test.

5. At this stage, I must clarify and put on record that the petitioner's claim before me is for an Assured Career Promotion taking that petitioner is at a Group "B" post. This I am stating because the eligibility and qualifications for Group B post have been reproduced by me above both of the 1985/1986 scheme, and the 1994 scheme. The aforesaid facts show that though the petitioner was not entitled to be considered in 1989 because there was no scheme which was existing/applicable, however, he was entitled to be considered for the 1994

scheme, and the petitioner admittedly was not considered under the 1994 scheme. That however cannot take us further because, as already stated, the petitioner has expired and therefore there cannot be applicability of a scheme which requires the petitioner to appear in a test and interview. Really therefore, the passage of time has made the entitlement to relief infructuous.

6. Learned counsel for the petitioner did very vehemently argue on the basis of the office order dated 29.5.1990 of the respondent and which seemed to show the grant of benefit of promotion to various persons who were similarly situated as the petitioner as Assistant Resident Engineer. I was considerably persuaded by this office order dated 29.5.1990 at one stage, however, I have reminded myself of the fact that Article 14 is a positive concept and not a negative concept i.e. if some other persons have wrongly got benefits, I unfortunately cannot grant those illegal benefits granted to someone else to the petitioner, more so because the requirement of scheme of test and interview cannot be complied with by the petitioner who has since expired.

7. Another claim of the petitioner was for grant of highest bracket of pay in his pay scale, and for which, reliance was placed upon the following portion of the 1985/1986 scheme:-

(8) Personal Promotions already given to the staff under the promotion rules previously existing in the IITS should be taken into account while implementing the new rules. An employee shall be eligible for two Personal Promotions in the entire period of his service with the proviso that if after obtaining the second Promotion he reaches the top of the scale in which he is placed, he will be assessed for being placed in the next higher scale without any change of designation. In the case of employees recruited in the lowest category i.e. in the scale of Rs. 196-232, the number of maximum permissible Personal Promotions will be three in the entire service period. Thus people who have already got Personal Promotions under any of the existing schemes, or on ad hoc basis, will not get additional or fresh chances under the new rules, except to the extent the permitted chances have not been exhausted during the period the old rules were in force.

8. I am however unable to accede to the arguments raised in this regard because para 8 is only a para which forms part of the preamble of the scheme and it does not form part of the main scheme which starts in the next page being internal page 3 of the document (running page 32 of the file). It is only from internal page 3 of the scheme that the actual scheme is set out as regards its requirement and other aspects. Para 8 of the preamble cannot create any legal right in favour of any employee including the petitioner. In view of the above, ordinarily I would have issued directions for the petitioner to be considered under the 1994 scheme, however, since the petitioner is no more, the writ petition has become infructuous for that reason as already stated above, and is accordingly dismissed, leaving parties to bear their own costs.