

(1994) 05 PAT CK 0001

In the Patna High Court

Case No : Letters Patent Appeal No. 134 of 1991

Sri Gopal Churiwala @ S.G. Churiwala

APPELLANT

Vs

National Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 11-05-1994

Acts Referred:

Citation : (1994) 05 PAT CK 0001

Final Decision : Dismissed

Judgement

Ashok Kumar Ganguly, J.—This appeal has been filed against the judgment and order dated 1st November, 1991 passed by Aftab Alam, J., on the writ petition filed by the appellant. On a perusal of the said judgment of the first Court, it appears that though various points were urged in the writ petition, counsel for the appellant-writ petitioner only picked up two points relating to his categorization/promotion. Those two points which were urged before the first Court were as follows:

(a) A declaration that the appellant-petitioner's initial categorisation (in 1975) as Assistant Administrative Officer was bad and illegal and a consequential direction to assign him, from the date of the initial categorizations, the post of Administrative Officer with all the attending benefits.

(b) The other point urged, in the alternative, was that a direction be given to the respondents to promote him to the post of the Administrative Officer with effect from 1-4-1976 when persons Junior to the petitioner were given promotion to the said post.

2. In respect of both these points, learned Counsel for the respondent submitted that it is rather late in the day for the appellant-petitioner to challenge his categorisation accorded to him in the year 1975 and more so when the said categorisation has been accepted by the petitioner without prejudice or objection. In this connection, counsel for respondents pointed out that the petitioner's initial categorisation was made and communicated to him on 29th November,

1975 (Annexure-6). The appellant-petitioner filed an appeal against the said order and the appellate committee has turned down the appeal. It was further recorded by the first court that in the writ petition the petitioner-appellant has not challenged these two orders. The first Court also came to the conclusion that the appellant-petitioner had earlier moved this Hon"ble Court twice unsuccessfully for the same relief, namely, challenging his categorisation and as such it is not open to the appellant petitioner to press for the same relief once again. this Court finds that those findings of the first Court are based on cogent materials and, therefore, this Court also endorses the views taken by the first Court in this respect.

3. The first Court further records the admission made by the counsel for the appellant-petitioner to the effect that if the categorisation of the appellant-petitioner cannot be called un-authorized, the petitioner shall have no case. As such the only point urged by the petitioner's counsel in the first Court was that the scheme in question is not applicable to the Officer. In this connection the attention of the Court was drawn to paragraph 3(b) of the Scheme which defines an Officer. The first Court has noted that relying on the said definition, the contention made by the petitioner-appellant's counsel that as an Officer he is out of the purview of the said scheme cannot be sustained. As the appellate court this Court endorses the seasonings given by the learned Judge of the first Court in paragraph 11 of the judgment and this Court is further of the view that by very cogent reasons, the contentions raised by the counsel for the appellant-petitioner have been repelled by the first Court.

4. It has been held by the Supreme Court in the case of S.N. Mukherjee Vs. Union of India, that if the appellate court or the revisional authority endorses or affirms the reason given by the original authority, it need not give separate reasons. Following the said principle, this Court refrains from giving any reasoning but adopts the reasonings given by the first Court in refuting the contentions of the Counsel appearing for the appellant-petitioner that the petitioner is not covered under the said scheme.

5. Before us, surprisingly enough, the points which have been urged with some emphasis, were not urged by the Counsel for the appellant-petitioner in the first Court. The points which have been urged before us is that the petitioner's promotion has been withheld on the basis of un-communicated adverse remarks. Apart from the fact that the learned Counsel for the appellant-petitioner cannot urge this point which was not urged before the first Court, there is also another difficulty on our part in considering the said point inasmuch as it was pointed out before us by the Counsel for the respondent that during the years 1977 to 1980, the petitioner-appellant was subjected to a number of disciplinary proceedings and some of which ended in the imposition for punishment on the appellant-petitioner. The records were produced in the first Court to show the imposition of punishment on the petitioner-appellant. Records were further produced to satisfy the first Court that on each occasion the petitioner's case was duly considered

for promotion but he was not found fit on the ground of pendency of departmental proceedings and infliction of punishment upon him. The effect of the punishment which was inflicted on the petitioner-appellant came to an end in 1988 and thereafter he was again considered and found fit for promotion and promotion was duly accorded to him. As such the learned Judge of first Court rightly held that the petitioner has no right to make any "legitimate grievance" in this Court. We have perused the judgment of the first Court very carefully and found that all the contentions raised before the first Court have been duly adverted to, considered and pronounced upon.

6. As such sitting in the appellate Court, I do not find any reason to interfere with the judgment passed by the first Court. In that view of the matter, I hold that there is not merit in this appeal and as such this appeal is dismissed. There will be no order as to cost.

K.S. Paripoornan, C.J.

7. I agree.