

(2010) 10 AHC CK 0127
In the Allahabad High Court
Case No : Service Bench No. 9011 of 1992

S.S. Ahluwalia

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 10 AHC CK 0127

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Shri Anil Kumar Tiwari learned senior Counsel assisted by Shri M.P. Singh on behalf of Petitioner and Shri Umesh Chandra, learned senior Counsel assisted by Shri Pramod Kumar on behalf of Respondents and perused the record.

2. Present writ petition under Article 226 of the Constitution of India has been preferred for categorization as Assistant Administrative Officer after reconstitution of the General Insurance Company under the General Insurance Business (Nationalization) Act 1972, in short "Act".

3. The Petitioner was appointed as "Inspector" in the erstwhile Oriental Fire and General Insurance Company Limited, in short "Company". After promulgation of Act and nationalization of General Insurance business, a merger scheme was floated and four major companies were established, all dealing with insurance business, which are viz:

1. New India Assurance Company.
2. General Insurance Company Ltd.
3. United India Insurance Company Ltd.
4. Oriental Insurance Company Ltd.

4. At the time of nationalization of Insurance Companies, Petitioner was working as Inspector in the Company and was Incharge of Sitapur Unit. In consequence of nationalization of Insurance Business, the Government of India through Ministry of Finance (Department) of Economic Affairs, issued a notification floating scheme providing therein, the rationalization of pay scale and other terms and conditions of service of the Development staff. The circular was issued for categorization of various posts in response to scheme and the Petitioner was categorized "Inspector Grade-I" with regard to rationalization of pay-scale. After categorization as Inspector Grade-I, the Petitioner came to know that persons junior than him and even having inferior service record were categorized as Assistant Administrative Officer (AAO) in the year 1975. Feeling aggrieved, the Petitioner preferred a representation before Chairman-cum- Managing Director, seeking his categorization as Assistant Administrative Officer on the ground that persons having inferior merit, lesser service and some similarly situated, have been categorized as AAO. The claim was installed also on the ground that some of the persons were categorized as AAO were never categorized as Inspector Grade-I. Respondents have not considered the Petitioner's representation and kept the matter pending.

5. Feeling aggrieved, the Petitioner has preferred writ petition No. 3397 of 1980 before this Court. The writ petition was allowed by this Court vide judgment and order dated 15.11.1991. While allowing the writ petition, the Court had expressed its displeasure on the conduct of opposite parties holding that the Petitioner's case was not considered, by the appellate authority, though it was constituted for the purpose. Because of non consideration of controversy with regard to Petitioner's claim for the post of AAO, Petitioner was adversely affected. The operative portion of judgment and order dated 15.11.1991 is reproduced as under:

It is really unfortunate that even after the constitution of the said Committee although it was constituted only to consider the appeals of the parties in the said writ petition, the case of the Petitioner was never considered by the appellate authority. Hence, without entering into the merits of the submissions made on behalf of the Petitioner and the opposite parties, this Court is of the view that it was incumbent upon the appellate authority to consider the case of the Petitioner who had preferred his appeal but the same was not done. It is appropriate, in these circumstances, to issue direction to the opposite parties to constitute an appellate committee to consider the appeal of the Petitioner on merit.

In view of what has been indicated above, the writ petition succeeds and a writ in the nature of mandamus is issued directing the opposite parties to constitute an appellate Committee to consider and dispose of the representation/appeal of the Petitioner in respect of the categorization of the Petitioner as Assistant Administrative Officer at relevant i.e. the year 1973 time within two months from the date of production of a copy of this order by the Petitioner to the opposite parties, in accordance with law.

6. In pursuance of the judgment of this Court, the Petitioner had submitted the representation dated 04.2.1992, a copy of which has been filed as Annexure No. 4 to the writ petition, with the prayer that he may be categorized as AAO (D), w.e.f. 01.01.1993. While submitting the representation, Petitioner has specifically pleaded that he was posted at Sitapur from July 1965 all alone and looking after the work of three districts, namely, Lakhimpur Kheri, Sitapur and Hardoi. In para 9, 10 and 11 of the representation, he has specifically stated that the Sitapur Office was upgraded as Sub-Branch Office and Petitioner was looking after the entire development and administration work of Sub-Branch Office within territory of district Lakhimpur Kheri, Sitapur and Hardoi.

7. A perusal of the representation also reveals that the Petitioner has cited the names of several persons like Shri S.P. Arora, Shri J.S. Ahluwalia, Shri Surendra Verma, Shri S.K. Soni and others who were posted as Inspector Sitapur branch. Later on, categorized on higher post. The Petitioner has also invited attention of the Respondent that the premium of several persons were less than Rs. 1.5 lac as required for categorization as AAO, but they were extended benefit. Giving example, the Petitioner has given names of Shri K.P. Pandey of Dena Unit, who was categorized as A.A.O, on the premium of Rs. 50,976.00 in 1973, and Shri A.C. Srivastava of Jupiter (Hardoi) had procured a sum of Rs. 1,24,970 in 1973. He has given the names of some other persons who were having less than eight years of service and lesser premium than Petitioner.

8. The representation submitted by Petitioner has been rejected by the impugned order, after adjudication of controversy by the appellate committee. The appellate committee while rejecting the Petitioner's claim had proceeded to observe as under, to reproduce:

The Appellate Authority perused the details/records of all those categorized as AAO, including their Business Performance for the relevant period, position held and designation, any supervisory functions performed, whether any class-III or sub-ordinate staff was working under them, etc.. The business performance of each of those who have been categorized as AAO was examined and it was found that all persons who were so categorized in the rank of AAO, emanating from the Development Staff of erstwhile unit of "Oriental" stream had better business performances than Shri Ahluwalia's. The Appellate Authority has come to the conclusion that even if his appeal had been considered at the relevant/appropriate time, it would have failed to make the grade. As such, it is reaffirmed that Shri Ahluwalia was rightly categorized as "Inspector Grade-I", notwithstanding that his representation was not considered by the Appellate Authority in the year 1978 and 1980.

He was properly and rightly categorized as Inspector Grade-I with effect from 01.01.1973.

9. Taking into account, the finding recorded by the appellate Committee, a copy of which has been filed as CA2 to the counter affidavit and representation

submitted by Petitioner (Annexure No. 4), it appears that no finding has been recorded by the appellate Committee with regard to specific instance given by the Petitioner. Mere observation that business performance of each of those who have been categorized as AAO was examined and found to be superior against the Petitioner seems to be not sufficient. It was obligatory on the part of the appellate committee to record the specific finding with regard to issue raised by Petitioner in his representation dated 4th February 1992. The letter and spirit of the judgment of this Court was to take a decision with regard to Petitioner's service career by reasoned order instead of making vague observation on the question involved. Once the Petitioner had installed his claim with regard to categorization as AAO giving specific instance and details of certain persons, who availed benefit inspite of inferior merit, it was incumbent on appellate authority to adjudicate the dispute by speaking reasoned order, more so, when they were acting under the command of this Court. It appears that inspite of judgment of this Court, Respondent had not taken care to adjudicate the dispute after considering representation submitted by the Petitioner on merit on the basis of pleading on record.

10. It has been submitted by learned Counsel for the Petitioner that according to circular issued by the Respondents four conditions were to be fulfilled by all the incumbent for categorization AAO namely:

1. Premium, more than 1.5 lacs.
2. Eight years of service as Inspector.
3. Passing of the examination of Inspector.
4. Holding of independent charge of unit.

11. The aforesaid facts seem to be pleaded by Respondent while filing counter affidavit in para 9 of the counter affidavit. It has been stated that the Petitioner's premium was less than 1.5 lac and in para 11, the criteria has been given Para 9 and 11 of the counter affidavit are reproduced as under:

9. That the contents of paragraph 14 of the writ petition are wrong and hence denied. It is further stated that a committee was constituted by the Chairman-cum-Managing Director of the Oriental Fire and General Insurance Company (hereinafter referred to as the Company) by virtue of order dated 22.5.1976. Under the provisions of Clause IV of the General Insurance Rationalization of Pay Scales and other conditions of Service of Development staff, the cases of every employee of the company, who had been declared as member of development staff were to be examined by the aforesaid Committee. The Committee held various meeting between 15th August to 31st August, 1976 at New Delhi, Calcutta, Madras and Bombay on the basis of guidelines issued by the General Insurance Corporation of India. This review was held on the basis of representations submitted by the affected employees. The Petitioner had also made a claim that on the basis of his business performance, he should be

categorized as Assistant Administrative Officer (Development). It may, however, be pointed out that the Petitioner's business performance was not up to mark in the years 1971, 1972 and 1973. The deponent is giving a chart to show the business performance of the Petitioner during the aforesaid years:

Year His premium income

1971 Rs. 49,086.00 1972 Rs. 91,707.00 1973 Rs. 1,52,274.0

A perusal of the aforesaid chart clearly proves that premium income of the Petitioner did not justify his claim for categorization as Assistant Administrative Officer (Development). It may also be mentioned that the Petitioner is only a High School although he has passed the Inspectorate's Grade Examination held by the Federation of Insurance Institute of India.

11. That the contents of paragraph 16 of the writ petition are wrong hence denied. In reply to this paragraph it is stated that the criteria followed for categorization was as under:

(A) Criteria Premium

Mofussil Metro

Centre Cities

1. Graduates with 5 years service 1.5 Lacs 2 Lacs 2. Metric with Inspector's Exam. With 8 years service 1.5 Lacs 2 Lacs 3. Others 3 Lacs 4 Lacs (B) Those Inspectors holding independent charge of Unit Office.

It is necessary to point out here that the categorization committee perused detail record of all those categorized as Assistant Administrative Officer including their business performance for the relevant period, position held and super-visory functions performed. In all 60 Inspectors of Grade I were categorized as Assistant Administrative Officers. It is further submitted that the Petitioner's performance was not up to the mark and so he was not categorized as Assistant Administrative Officer. It is stated that the Petitioner's business performance has already been mentioned in paragraph 9 of this affidavit. A comparison of the Petitioner's performance and criteria for categorization as Assistant Administrative Officer clearly shows that the Petitioner's business performance was much below to the categorization criteria and hence the Petitioner could not be categorized as Assistant Administrative Officer at relevant time.

12. In view of the above, it appears that it was necessary for the categorization of AAO to posses 8 years of service, in case, a person is metric with Inspectorate examination and premium for more than 1.5 lacs in Mofussil Centre. Admittedly, the Petitioner is Metric and he has served more than 8 years on the post of Inspector and he has also passed Inspectorate examination. His premium was 1.5 lacs and more in the year 1973 and 1974.

13. In para 12 of the writ petition, the Petitioner specifically pleaded that he was

all in all of district Sitapur, Lakhimpur Kheri and Hardoi area. Accordingly, it may be inferred that he was having independent Incharge of Sitapur Unit. However, learned Senior Counsel on behalf of the Respondent tried to submit that Sitapur is not a branch Office of Insurance Company, but, averments made in para 11 speaks for units which seem to cover Sitapur which has got area of three districts, namely, Sitapur, Hardoi and Lakhimpur Kheri.

14. There is one other aspect of matter. During course of hearing, this Court has directed the Respondents to produce the circular with regard to categorization of Officers. Shri D.S. Soni, Deputy General Manager had appeared before this Court on 09.9.2008, who made statement before the Court that circular with regard to categorization of the Officers shall be produced. But later on, an affidavit dated 14.9.2009 was filed by Kamla Prasad, Regional Manager stating therein that the circular with regard to categorization is not available. Such an act on the part of Respondent seems to be uncalled for and deplorable. The repeated orders passed by this Court, have not been complied with and circular was not produced during course of hearing. Accordingly, adverse inference/presumption may be drawn against the Respondent to the effect that there is nothing adverse against the Petitioner which may install his claim for categorization as AAO. There appears to be deliberate attempt on the part of Respondent in not producing the circular/orders dealing with the categorization of Officers.

15. Learned Counsel for the Petitioner has given instance that some of the persons who have been categorized AAO have less than 8 years of service and even premium of less than 1.5 lacs. Our attention invited from the list filed by the Respondent along with affidavit. Some of the Officers are:

Non-Graduate

(Page 122-A)

1. Sri R.K. Wadhawan sl. No. 4 page 122-A, Matric, No Inspectorate Exam. Pass, only 7 years service as against 8 years in criteria, Premium 1973 - Rs. 1.29 lacs and in 1974 - Rs. 1.45 lacs.
2. Sri P.K. Khittar, sl. No. 6 page 122-A, Matric, No Inspectorate Exam pass.
3. Sri Y.H. Chelwala, sl. No. 7, page 122-A, Non-graduate, No Inspectorate Exam pass.
4. Sri G.T. Khukreja, sl. No. 8, page 122-A, Non Matric.
5. Sri A.P. Merchand, sl. No. 9, page 122A, Non-graduate, No Inspectorate Exam pass, 7 years service as against 8 years in criteria.
6. Sri D.K. Bhalla, sl. No. 11, page 122A, Matric, no Inspectorate Exam. Pass, only 4 years service as against 8 years.

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7. Sri S. Vaish, sl. No. 1, page 124 Matric, No Inspectorate Exam Pass and only 6

years service as against 8 years.

8. Sri D.S. Gandhi, sl. No. 5, page 124, Matric, No Inspectorate Exam pass.

9. Sri H.S. Khullar sl. No. 7, page 124, Matric, No Inspectorate Exam pass.

10. Narendra Sharma, sl. No. 8, page 124, Non-graduate, No Inspectorate Exam pass.

11. Sri S.S. Singhvi, sl. No. 14, page 124, Non-graduate, No Inspectorate Exam. Pass, only 7 years service as against 8 years.

12. Sri G.S. Dhillon- Sl. No. 15, page 124, Matric, No Inspectorate Exam pass.

13. Sri J.K. Gupta, sl. No. 17, page 124, Matric, No Inspectorate Exam pass, only 2 years service as against 8 years. Premium 1973 - Rs. 1.27 lacs and in 1974- Rs. 1.48 lacs as against Rs. 1.5 lacs.

14.

Graduate:

(Page 122).

1. Miss. S.N. Khandwala, sl. No. 1, 3 years service as against 8 years.

2. Mrs. S. Tahar, sl. No. 2 Mombay (Metro) Premium in 1973 - Rs. 1.36 lacs, in 1974 Rs. 1.78 lacs as against 2 lacs required,

3. Sri S.P. Thanna, sl. No. 14, 2 years service as against 5 years.

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4. Sri R.S. Singh, sl. No. 4, 3 years service as against 5 years.

5. Sri O.P. Gupta, sl. No. 6, 3 years service as against 5 years.

6. Sri S.P. Vinayak sl. No. 7, only 4 years service as against 5 years against provision of criteria.

Sri G. Mohiddin sl. No. 14, Premium 1973 - Rs. 1.27 lacs and in 1974 - Rs. 1.24 lacs.

16. It appears that while dealing with the matter with regard to categorization Respondent have not adopted uniform procedure, but pick and chose has been done. And in consequence thereof, Petitioner has been deprived from his rightful claim. It is settled law that equal cannot be treated as unequally vide Venkateshwara Theatre Vs. State of Andhra Pradesh and Others, The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc., Vellore Educational Trust Vs. State of Andhra Pradesh and Others, AIR 19809 SC 2841 J.P. Kulshreshtha v. Allahabad University.

17. Once Respondents were proceeded to categorize the erstwhile employees of

the various companies with intention to rationalize the salary and extend due rights keeping in view their service record, then that should have been done in just and fair manner. While deciding the appeal, the appellate authority has evaded to produce the record.

18. In view of the above writ petition deserves to be allowed. Accordingly, writ petition is allowed. A writ in the nature of certiorari issued quashing the impugned order dated 06.3.1992 contained in Annexure No. 7 to the writ petition. Petitioner shall be entitled for categorization as AAO with all consequential benefit from 01.1.1973. Let the appropriate order be passed accordingly expeditiously within two months from the date of production of certified copy of this order.