
(2004) 02 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule No. 3728 of 1997

Umesh Chandra Baishya

APPELLANT

Vs

United India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 03-02-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 2 GLR 388

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : A.S. Choudhary, R. Majumdar and R. Ahmed, for the Appellant; S.S. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—Aggrieved by what the writ petitioner contends to be an unjustified and arbitrary action of the Respondents Insurance Company in denying promotion to the petitioner from the post of Development Officer Grade-I to the cadre of Assistant Administrative Officer, the instant recourse to the writ remedy has been made in the following facts :

2. Sometime in the year 1992, a process of promotion to the cadre of Assistant Administrative Officer in the Respondent Insurance Company was undertaken. Promotions were required to be made by following the set norms and parameters and thereafter a select list equal to the number of vacancies available was required to be prepared. A contingent/waiting list to the extent of 20% of the vacancies available was also required to be prepared in terms of Clauses 13 and 14 of the Office Memorandum laying down the norms governing such promotion, a copy of which is enclosed as Annexure-D to the writ application. The list prepared by the promotion committee was to remain valid till the next lot of vacancies are notified and further the contingent/waiting list could be acted upon as and when required till such time that the notification of the vacancies for consideration for the next round of promotion is issued.

Contending that the petitioner was better in merit and eligibility as determined by the promotion committee on the basis of marks awarded, the promotion given to one Atul Chandra Baishya has been assailed though curiously the aforesaid person has not been made a party to the present proceeding. The other limb of the argument advanced is that irrespective of the correctness of the aforesaid promotion granted to Atul Chandra Baishya, the name of the petitioner was included in the contingent/waiting list and as vacancies arose against which the petitioner could be accommodated before the next lot of vacancies were notified, the authority was duty bound to promote the petitioner. The authority having failed to do so, it is contended that a writ of mandamus should be issued directing the authority concerned to promote the petitioner in terms of the promotion policy.

3. I have heard Mr. A.S. Chaudhury, learned senior counsel for the writ petitioner and Mr. S.S. Sharma, learned counsel for the Insurance Company. Pursuant to the earlier orders passed by this Court, the records have been placed before the Court. The same have been duly perused.

4. According to the writ petitioner, the result sheet of the selection held, which has been enclosed as Annexure-C to the writ petition, would go to show that the petitioner had secured 27.33 marks whereas Atul Chandra Baishya had secured 23.67 marks ; yet promotion was given to Atul Chandra Baishya and denied to the writ petitioner. Prima facie the document marked as Annexure-C having made out a strong case in favour of the writ petitioner, this Court directed the Insurance Company to produce the relevant records of the selection in original. The said records have been produced and on perusal of the same, it appears that in the final result tally, the petitioner had secured 44.33 marks whereas Atul Chandra Baishya to whom promotion was given, had secured 47.01 marks. The difference of marks in the document enclosed as Annexure-C to the writ petition and the final result tally as produced, in original, has been sought to be explained by submitting that the document enclosed as Annexure-C was a draft document, which has not been signed and authenticated by any authority of the Insurance Company. There were discrepancies in the Annexure-C ; the correct position could be ascertained only on due scrutiny and proper verification of all the relevant records whereafter the final result sheet was prepared and authenticated.

5. A comparison of the original records produced with the result sheet enclosed as Annexure-C would go to show that in respect of certain heads under which marks were awarded, the figures incorporated in the Annexure-C document had been corrected in the final result tally. As the original document/result sheets produced before the Court, has been signed and authenticated by the competent authority, I see no good reason as to why any credence should be given to the Annexure-C document. That apart, the petitioner, if aggrieved by the promotion granted to Atul Chandra Baishya, should have made said person a party to this proceeding. In the absence of the necessary party, this Court considers it

appropriate not to pursue the aforesaid issue any further.

6. Coming to the second ground urged, i.e., that in view of Clauses 13 and 14 of the Office Memorandum the contingent/waiting list is required to be operated till the next lot of vacancies are notified in which event the petitioner would have been promoted, it must be noticed that Clause 14 of the Office Memorandum in question is merely an enabling provision and no mandate to act in the manner claimed by the writ petitioner is discernible on a reading of the aforesaid Clause 14. That apart, judicial pronouncements over the years has given a limited sanctity to a contingent/waiting list in the matter of promotion/appointment. Explaining the provisions of Clauses 13 and 14 of the promotion policy, the Insurance Company in the affidavit filed has clearly averred that, as a matter of policy, the contingent/waiting list prepared by the Insurance Company had always given a limited field of operation. The policy of the Insurance Company is to act on the contingent/waiting list only in the event a person included in the main select list refuses to take the appointment or if such a person subsequently opts to go out of employment. Vacancies occurring during the intervening period, on account of death or retirement are not to be filled up from the contingent/waiting list. In view of the clear statements made in the affidavit with regard to the policy adopted by the Insurance Company in respect of the contingent/waiting list, this Court does not see any infirmity in the action taken in the present case. Rather, the policy adopted and the actions taken are in consonance with judicial pronouncements made from time to time and the same are in conformity with the equality Clause enshrined by Article 14 of the Constitution. In view of the above discussion, the rights claimed by the writ petitioner for promotion on the basis of his position in the Contingent/Waiting List, cannot be appreciated.

7. For all the aforesaid reasons, this writ petition has to fail. It is accordingly dismissed. No costs.

8. Notwithstanding the conclusion reached by this Court as above, the case of the petitioner will naturally be considered by the Insurance Company in the next promotional process subject to his being eligible.