

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 10887/2006

Reserved on: 14th July 2011
Decision on: 27th July 2011

OM PRAKASH DHINGRA

..... Petitioner-in-person.

versus

LIFE INSURANCE CORPORATION OF INDIA Respondent
Through: Mr. Kamal Mehta, Advocate.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT
27.07.2011

1. The Petitioner challenges the letter dated 27th October 2005 of the Executive Director (Personnel) of the Respondent, Life Insurance Corporation of India ('LIC') ordering that the Petitioner not be promoted to the cadre of Assistant Administrative Officer ('AAO') along with Mr. N.K. Sharma.

2. The Petitioner was appointed to the post of Assistant (Class III) in the LIC in March 1962. The promotion of the Petitioner was governed by the Life Insurance Corporation of India Class III and Class IV Employees (Promotion) Rules, 1976 ['Rules'] made under Section 48 of the Life Insurance Corporation Act, 1956 ('Act'). According to the Petitioner, he became eligible for the post of Higher Grade Assistant ('HGA') in terms of the aforementioned Rules in the year 1968 after completing the required service of five years in the post of Assistant. He also passed the required technical qualification, i.e., Associateship Examination of Insurance Institute of India, Mumbai. However he was in fact promoted as HGA only in December 1981. It is stated that the Petitioner became

eligible for the next higher post of Assistant Administrative Officer ('AAO') with effect from 1st January 1987 after completing five year of service as HGA. A new set of rules were framed in 1987 but there was no change in the criteria for promotion to the post of AAO.

3. The Petitioner states that he was denied promotion to the post of AAO while Mr. N.K. Sharma, who had worked as an HGA only for three years, was promoted to the post of AAO on 3rd September 1991.

4. The resultant industrial dispute was referred to the Central Government Industrial Tribunal ('CGIT'), Delhi. By an Award dated 26th March 2004, the CGIT held that the action of the LIC in not promoting the Petitioner to the post of AAO with effect from 1st July 1987 was neither legal nor justified and that his case for promotion should be considered along with Mr. N.K. Sharma. The said Award was not challenged by the LIC and attained finality. The Petitioner retired in October 2004.

5. By way of the implementation of the Award, the LIC issued a letter dated 7th July 2005 to the Petitioner asking him to appear before the Promotion Committee constituted for consideration of his case for promotion. The Petitioner was to appear for interview on 18th July 2005. However, by a letter dated 15th July 2005 the Petitioner informed the LIC that in view of his having retired from service, the question of his appearing before the Promotion Committee did not arise and further that the CGIT had ordered his promotion from the date when Mr. N.K. Sharma was promoted.

6. By the impugned order dated 27th October 2005, the ED (P) rejected the Petitioner's case for grant of promotion holding that the promotion granted to Mr. N.K. Sharma was on account of the contribution made by him towards implementation of the progressive use of the official language and in consonance with the proposal approved by the Executive Committee ('EC') of the LIC on 30th September 1991. On the other hand, the Petitioner was not associated with the work of implementing the progressive use of the official language. The Petitioner's case was then considered for promotion in terms of Regulation 7 of the Staff Regulations, 1960, and he was asked to appear for interview.

Since he declined to do so, the Promotion Committee could not consider his case in terms of Regulation 7 as well.

7. Aggrieved by the rejection of his candidature, the Petitioner approached the Labour Commissioner for implementation of the Award dated 26th March 2004.

8. This Court has heard the submissions of the Petitioner who appears in person and Mr. Kamal Mehta, learned counsel for the LIC.

9. The Petitioner submitted that once he had retired from service, no purpose would have been served by his appearing in the interview for the promotion. The fact remained that Mr. N.K. Sharma had completed only three years of service as HGA and, therefore, he was not qualified to be promoted to the post of AAO in terms of the Rules. Once the Award of the CGIT had become final, it was not open to the LIC to deny the Petitioner promotion on par with Mr. N.K. Sharma and, therefore, the denial of promotion in terms of Regulation 86 was not justified. As regards the consideration of the Petitioner for promotion in terms of Regulation 7, it is submitted that the LIC required the Petitioner to attend an interview after he had retired, knowing fully well that no purpose is going to be served through this exercise. This was only to defeat the judgment of the CGIT which had attained finality. The Petitioner has also filed a supplementary note of submissions on 13th January 2010 placing on record an article which appeared in the magazine dated 19th June 1994 about the closeness of the then Prime Minister of India with Mr. N.K. Sharma who was a part-time astrologer. He also placed on record an extract from an audit report of the year 1993-94 which noted that N.K. Sharma was promoted as AAO in the Chairman's Secretariat with effect from 1st September 1991 whereas as of the date of the audit there did not exist any Office of the Chairman's Secretariat in Delhi Divisional Office (DDO). It is further alleged that Mr. N.K. Sharma was not assigned any duties and was not attending the duties in the DDO-I.

10. The counter affidavit of the LIC states that the promotion granted to Mr. N.K. Sharma was in accordance with the Rules of the LIC and that there was no discrimination against the Petitioner. A reference is made to the recommendations of the Third Sub-
W.P. (C) No. 10887 of 2006

Committee on Official Languages of Parliament and a Circular dated 4th December 1990 in terms of which incentives have to be given to the employees engaged in the implementation of the progressive use of the official language. It is submitted that Mr. N.K. Sharma had done commendable work for the promotion of Hindi in the DDO. The matter was then discussed by the EC in its meeting on 31st August 1991. The EC approved the proposal that in each zonal office, one employee engaged in the implementation of the progressive use of the official language should be promoted. After considering the dossiers of HGAs who had contributed to the progressive use of Hindi, it was decided to promote four employees of the LIC to the cadre of AAO by the order dated 30th August 1991. Besides Mr. N.K. Sharma, three other employees Mr. D. Sharad Chandra, Mr. Jayantibhai Gulabbhai Desai and Mr. Tulsi Ram Verma in Hyderabad, Surat and Kanpur respectively were promoted. It is stated that the Petitioner had not made any contribution towards propagation of Hindi. When he was called for interview for considering his name for promotion to the post of AAO, he refused to attend the interview. He also refused to attend the interview in 1991 and 1992. Again in implementation of the impugned Award of the CGIT, when he was called for interview he refused to do so. Since the impugned Award of the CGIT was only for considering his case for promotion along with Mr. N.K. Sharma, the Petitioner could not demand promotion as of right.

11. Having examined the above submissions of the learned counsel for the parties, it appears that the only justification given by the LIC for granting an out-of-turn promotion to Mr. N.K. Sharma as AAO was that he had made significant contributions to encourage the use of Hindi in the DDO -I while working as an HGA in the Chairman's Secretariat. It is in fact not denied that Mr. Sharma otherwise did not satisfy the eligibility requirements for promotion to the post of AAO. Significantly, there was no change in the criteria for promotion and no such change was notified under Section 48(2) (cc) of the Act. The LIC has no answer to the supplementary submissions filed by the Petitioner on 13th January 2010. There is no denial of the audit report which notes that there is no such office as Chairman's Secretariat in the DDO and that Mr. Sharma was not assigned any duties. Consequently, this Court finds the justification shown by the LIC to deny promotion to the Petitioner while granting it to Mr. Sharma not to be convincing at all.

12. The impugned order passed by the Executive Director (P) on 27th October 2005 refers to Regulation 86 of the LIC of India (Staff) Regulations, 1960 which purportedly vests the EC with 'special powers' to approve the out-of-turn promotion of the four HGAs. The notification concerning the need to incentivize those employees who encouraged the use of Hindi as an official language does not state that out-of-turn promotions should be given to such employees. That notification by itself does not appear to be a sufficient justification for granting an out-of-turn promotion to Mr. Sharma particularly when he had not completed five years as HGA. Although this Court does not propose to interfere with the promotions already granted, including that of Mr. Sharma, there appears to be no justification for the LIC to not consider the grant of promotion to the Petitioner when in fact he had completed five years as HGA.

13. Even if one were to accept the stand of the Respondent LIC that for the purposes of Regulation 7 the Petitioner had not earlier appeared for interview despite being called by the management, that could not have been a ground for negating his claim for promotion after the Award dated 26th March 2004 of the Labour Court. It is important to note that the said Award was not challenged by the LIC. The Labour Court categorically held that the action of the management in not promoting the Petitioner to the post of AAO with effect from 1st July 1987 was neither legal nor justified. The consequential relief granted by the Labour Court was that the Petitioner's case "for promotion should be considered along with Mr. N.K. Sharma." This has to be read in the context of the earlier finding that the action of the LIC in not promoting the Petitioner was "neither legal nor justified". The LIC was therefore obliged to consider the case of the Petitioner for grant of promotion along with Mr. N.K. Sharma.

14. The third ground on which the LIC has rejected the Petitioner's case for promotion is that he failed to appear for an interview repeatedly and for a third time on 18th July 2005. However, this time around the Petitioner's refusal to attend the interview appears to be justified. Since he had already been superannuated, there was little purpose in requiring a retired employee to appear for a promotion interview. The ground adduced by LIC for refusal of promotion to the Petitioner in terms of Regulation 7 is also not legally tenable.

15. On behalf of the LIC, reference is made to the decisions in *State of Mysore v. Syed Mahmood Ali AIR 1968 SC 1113*, *State of Mysore v. C.R. Seshadri AIR 1974 SC 460*, *LIC of India v. Jagmohan Sharma 1998 (9) SCC 219*, *State Bank of India v. Mohd. Mynuddin (1987) 4 SCC 486*, *State of Madhya Pradesh v. Shrikant Chaphaker 1992 (65) FLR 926* and *State of NCT of Delhi v. Sanjeev 2005 (5) SCC 181*. It is submitted that unless there is illegality in the decision-making process, the Court ought not to interfere with the decision of the authority. The further submission is that even if the Court holds the denial of promotion to an officer to be improper or illegal, the only direction that it can issue is for reconsideration of his case for promotion as AAO in accordance with law and not the grant of promotion itself.

16. In the present case, the LIC accepted the Award of the Labour Court which directed it to consider the Petitioner's case for promotion along with Mr. N.K. Sharma. Despite such direction, the LIC by the impugned order dated 27th October 2005 on erroneous grounds again held that the Petitioner was not entitled to promotion as AAO. The procedure of requiring the Petitioner to attend a promotion interview after he had retired from service was legally flawed. Moreover, the grounds for denying the Petitioner promotion, even after the Award of the Labour Court, are legally unsustainable. In the circumstances, requiring the LIC to once again 'consider' the case of the Petitioner for promotion would be a futile exercise and only multiply litigation. The logical consequence of setting aside the impugned order dated 27th October 2005 of the ED(P) of the LIC would be that the LIC has now to pass orders granting the promotion from the date when Mr. N.K. Sharma was promoted as AAO.

17. For the aforementioned reasons, this Court sets aside the order dated 27th October 2005, passed by the Executive Director (P) of the LIC and directs the LIC to grant the Petitioner promotion to the post of AAO with effect from the same date from which Mr. N.K. Sharma was granted promotion. The arrears of pay owing to the Petitioner with effect from the date of his promotion as AAO and till the date of his superannuation will be paid to the Petitioner within a period of eight weeks from today. The retiral benefits and other dues will also be recalculated and the differential amount paid to him during the same period. The Petitioner's pension if any will also be re-fixed by the LIC on this basis

within the same period.

18. The writ petition is allowed in the above terms with costs of Rs. 5,000/- which will be paid to the Petitioner by the LIC within a period of four weeks.

S. MURALIDHAR, J

JULY 27, 2011
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