

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1537 of 2001

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Bishwambhar Nath Rai, Son of Late S. N. Rai, resident of village-Rampur, P.S. Chousa, Distt Buxar, presently working as Branch Manager at Danapur in Branch Office of New India Assurance Company

.... Petitioner/s

Versus

1. The General Insurance Corporation of India, through its Chairman, Industrial Assurance Building, Church Gate, Bombay-400020
2. The New India Assurance Company Ltd. through its Chairman-cum-Managing Director, New UIndia Assurance Building, 87 M. G. Road, Fort, Bombay-400001
3. The General Manager, the New India Assurance Co. Ltd. New India Assurance Building, 87 M. G. Road Fort, Bombay-400001
4. The Manager, the New India Assurance Company Ltd. New India Assurance Building, 87 M. G. Road, Fort, Bombay-400001
5. The Lower Management Service Promotion Committee through its Chairman, the new India Assurance Company Ltd., New India Assurance Building, 87 M. G. Road Fort, Bombay-400001.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.N.Pandey &
Mr. Pratap Sharma

For the Respondent/s : Mr. ASIM JHA
Mr. Indu Bhushan Singh
Mr. Ajay Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 28-07-2015

1. The petitioner in the present writ application seeks quashing of an order passed by the Manager, the New India Assurance Company Limited (Hereinafter referred to as the Company) dated 31st of July, 2000, whereby, it came to be communicated to him that the promotion Committee had refused to

include the petitioner's name in the list of promotion for the post of Assistant Manager.

2. It is the petitioner's case that he was appointed in the year 1970 under the Company as an Inspector and was promoted to the Post of Assistant Administrative Officer in the year 1985. In the year 1990, he was promoted to the post of Administrative Officer. It is his case that in the year 1996-1997, a number of persons junior to the petitioner were promoted as Assistant Managers. Names of such persons have been given in paragraph 9 of the writ application. Aggrieved by the grant of promotion to the persons junior to him, ignoring his claim, he filed a representation on 15.04.1997. It is further his case that in the year 1999 also vacancies occurred in the rank of Assistant Managers and this time also, the petitioner's name was not included in the list of Officers being considered for promotion to the said rank. According to him there are so many persons junior to the petitioner, whose names are being considered for promotion to the rank of Assistant Managers. He appears to have filed his representation, raising his grievance against non consideration of his case for promotion to the post of Assistant Manager. Through communication dated 31.07.2000 addressed to the petitioner, which is under challenge in the present writ application, he was intimated that the Promotion Committee did not recommend his name for

promotion to the higher grade.

3. The sole contention which the petitioner has raised in the present proceeding is that criteria for promotion to the post of Assistant Manager is seniority-cum-merit and there being nothing adverse against the petitioner in his Annual Confidential Report or otherwise, he had a right to be promoted to the post of Assistant Manager on the basis of his seniority and the respondents could not have granted promotion to the persons junior to him to the said post, ignoring his claim. He has relied upon a decision dated 09.05.200 of Rajasthan High Court in S.B. Civil Writ Petition No. 4881 of 1996 in order to contend that Clause 7.1 of the promotion policy of the Company has been set aside, which provided for allocation of marks for grant of promotion to the rank of Assistant Managers, after having held that it was contrary to promotion Policy of the Company i.e. seniority-cum-merit.

4. Learned counsel appearing on behalf of the petitioner has referred to the counter affidavit filed on behalf of the respondents and has contended that the respondents have relied upon Clause 7.1 of the Promotion Policy of the Company in order to deny the petitioner's such promotion, which Clause has been held to be illegal by Rajasthan High Court in the said decision.

5. He has also placed reliance upon Supreme Court



decisions in case of *B. V. Siviah Vs. K. Addankibab reported in AIR 1998 SC. 2565* and in case of *Sher Singh and ors Vs. Surinder Singh reported in AIR 1998 SC 2289* and has contended that applying seniority-cum-merit criteria, the petitioner ought to have been given promotion to the post of Assistant Manager on the basis of his position in the seniority list, taking into account the fact that there was absolutely nothing adverse against him which could have weighed while refusing his claim for grant of promotion.

6. In my opinion, in the facts and circumstances of this case, no relief as sought for by the petitioner can be granted for the reason that as per his own assertion of the petitioner, in the year 1996-1997 certain persons junior to the petitioner were granted promotion to the post of Assistant Managers, allegedly, ignoring his claim. Those persons have not been impleaded party in the present writ application. Secondly, from the impugned order dated 31.7.2000, it appears that the Manager of the Company informed him that the Promotion Committee did not recommend his name for promotion to the post of Assistant Manager, in response to the petitioner's representation filed in this regard.

7. This writ application was filed in the year 2001. Nothing has been stated as to who are the persons, though being juniors to the petitioner, were granted promotion in the year 2000. The



persons junior to the petitioner who came to be granted promotion in the year 2000 or thereafter, have not been impleaded parties in the writ application, nor their promotions are under challenge. The petitioner having not challenged the promotions granted to the persons junior to him cannot maintain this writ application on the basis of his plea that he had better right than the persons granted promotion, for such promotion to the post of Assistant Managers.

8. Learned counsel appearing on behalf of the petitioner has contended that persons junior to the petitioner who have been granted promotion to the post of Assistant Managers, ignoring the petitioner's claim are not required to be impleaded parties in the present writ application as the petitioner is challenging the very policy of the Company adopted grant of promotion to the post of Assistant Manager. I do not find much substance in the said submission. Fact remains that the persons junior to the petitioner have been granted promotion on the basis of some policy, which the petitioner intends to challenge in the present writ application. Any order passed in favour of the petitioner in present case shall certainly be adverse to the interest of the persons who have already been granted promotion as posts are limited to which they were promoted. Further, their promotion is not under challenge. It will, therefore, be a futile exercise if any direction is issued by this Court, in the present proceeding

under Article 226 of the Constitution of India.

9. This has to be noted that the petitioners before Rajasthan High Court, while questioning the correctness of Clause 7.1 of the promotion policy and thus challenging the promotions granted to other persons, had impleaded persons who were granted promotion as party respondents, though in representative capacity.

10. In view of the discussion as above, in my opinion, this application cannot be entertained in the absence of necessary parties as well as in the absence of any relief sought for quashing of promotions granted the persons said to be junior to the petitioner.

11. This application is accordingly, dismissed.

12. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

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