

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.249 of 2015
and
M.P.No.1 of 2015

1. Indian Oil Corporation Limited
rep by the Executive Director (HR), CO
Corporate Office, Plot No.3079/3
Sadiq Nagar, J.B. Tito Marg
New Delhi-110 049
 2. Indian Oil Corporation Limited
rep by the Executive Director (HR), HO
Registered Office & Marketing Division
Head Office, Indian Oil Bhavan
G-9, Ali Yavar Jung Marg
Bandra (East), Mumbai-400 051
 3. The General Manager (HR)
Indian Oil Corporation Limited
Southern Region
139, Nungambakkam High Road
Chennai-600 034
- ...Appellants/Respondents
- Vs.
- K.Karthikeyan
- ...Respondent/Petitioner

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 21.11.2014 made in W.P.No.18765 of 2013.

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the respondents to open the sealed cover and to include the name of the petitioner for promotion to the post of Grade-G Officer in the 1st respondent Corporation with retrospective effect, on the basis of the

DPC-2013, at the appropriate place to which he is eligible and grant promotion with all consequential rights and service benefits to the petitioner.

For Appellants : Mr.R.Muthukumarasamy, SC
for M/s.T.S.Gopalan & Co.

For Respondent : Mr.C.K.Chandrasekaran

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant appeal is directed against the order dated 21.11.2014 passed in W.P.No.18765 of 2013.

2 For the sake of brevity and clarity, the parties are referred to as per their rank in the instant appeal.

3 The respondent, being the Chief Law Manager, "F" Grade, seeking consideration for promotion to Grade-G, came up with the writ petition seeking a mandamus or direction to the appellants herein to open the sealed cover and to include his name for promotion to the post of Grade-G Officer with retrospective effect on the basis of Department Promotion Committee (for short "DPC") meetings held in February-March, 2013, with all consequential benefits.

4 The facts in nutshell are that the service condition of the respondent was governed by Promotion Policy-2013 (To Grade 'D', 'E', 'F' & 'G'). The case of the respondent, along with other officers, was considered for promotion to the higher post in the meetings of DPC held on 25.2.2013 and 12.03.2013. He was included in the promotion panel. On March 19, 2013, the Chairman & Competent Disciplinary Authority took a tentative decision to initiate major penalty proceedings against the respondent along with 10 other officers under the provisions of Conduct, Discipline & Appeal Rules, 1980. The Corporate office, vide inter office memo dated 28.03.2013, took a decision on the basis of the meeting of the board held on 26.03.2013 to follow the new procedure in case of promotion, where, final action of penalty proceeding was not concluded. It was decided that in cases where vigilance has recommended for initiation of penalty proceedings and CDA has also taken tentative decision for initiating penalty proceedings, those cases are to be treated as sealed cover cases. In the meantime, the order of promotion promoting the respondent in Grade-G was issued on 01.4.2013 in case of other officers. The respondent's name did not find a place in the list. Being aggrieved, the respondent was made to file the instant writ

petition, seeking for the aforestated direction / relief.

5 The learned Single Judge, examining all aspects of the matter, came to the conclusion that the respondent herein is entitled to succeed and observed as under :

"8.Coming to the second submission made on behalf of the learned Senior Counsel appearing for the respondents, this Court is of the view that the respondents have taken a contrary view in the counter affidavit regarding the application of DOPT OM dated 14.09.1992. The reliance made upon the Board's resolution dated 26.03.2013 cannot be made applicable to the present case retrospectively. Even otherwise, in the present case, the CBI has filed the closure report on 30.03.2013. Therefore, the circular also cannot have any application as it is applicable to a case where the Vigilance have recommended for initiation of penalty proceedings. From the facts, it is clear that but for the tentative decision taken, the petitioner would have been promoted along with others. Therefore, on facts, the decision made by the Board followed by the Circular cannot have application to the case on hand."

6 The question that arises for our consideration is as to whether the respondent herein can be denied promotion on the basis of the recommendation made in the DPC meetings held in February-March, 2013 in the light of the inter office memo dated 28.3.2013.

7 The learned Senior Counsel appearing for the appellants would submit that the said inter office memo provides that if the Chairman-cum-Disciplinary Authority has taken a tentative decision for initiating penalty proceedings, such case should be treated as sealed cover cases and as such, no promotion order was issued to the respondent and his case was treated as sealed cover case. Accordingly, the sealed cover was adopted without passing the order for promotion on the basis of the recommendation made by the DPC. It is further contended that mere decision to initiate disciplinary proceedings is enough to withhold the promotion of a delinquent employee. Thus, the view taken by the learned Single Judge is contrary to the service conditions and also the executive instructions.

8 On the other hand, Mr.C.K.Chandrasekaran, learned counsel appearing for the respondent would submit that the said inter office memo would be applicable in case of only those employees where DPC

held meeting after 28.03.2013. In the case of the respondent, a recommendation was made for promotion on an earlier point of time, as is evident from the information received from Central Public Information Officer of the appellant corporation, vide communication dated 03.06.2013 to the effect that the respondent was empanelled for promotion from Grade-F to Grade-G in the meeting held in February-March, 2013. Thus, the respondent could not have been denied promotion to Grade-G on the basis of the recommendation of the DPC. It is further contended that the learned Single Judge has taken a just and proper view in accordance with the rules and executive instructions governing the service conditions of officers/employees of the appellant Corporation.

9 Heard the learned counsel for the parties and perused the pleadings and documents appended thereto.

10 The facts of holding of DPC meetings and also the date of inter-office memo are incontroverted and admitted. It is also beyond cavil that the respondent was considered in the DPC meetings and recommended for empanelment in the promotion list for promotion to Grade-G officer.

11 It is well known that the DPC comprises senior officers who sit together to take a decision in respect of subordinate officers, examining the suitability, merit and other relevant criteria for empanelling them for promotion to the higher post. In the process of consideration, the DPC adopts two processes. The first process is to recommend the officers/employees for promotion. The second process is, even if found suitable, yet, if there is some departmental enquiry/proceedings or criminal case pending against them, the DPC keeps the recommendation made in respect of those officers/employees in a sealed cover, after rejecting the un-suitable officers/employees. Placing the recommendation in a sealed cover has to be exercised at the time of taking a decision for recommendation. As is luculent and manifest, the DPC held its two meetings on 25.02.2013 and 12.03.2013. In the last meeting, the decision was taken to recommend some names, including the respondent, for promotion. The sealed cover process is also complete in the last meeting of the DPC.

12 The issue about the applicability of inter office memo dated 28.03.2013 is relevant for our consideration. Since the processes of recommendation and keeping the recommendation in a sealed cover have come to an end on the last date of the meeting, i.e., 12.03.2013, there was no occasion to act on the subsequent inter office memo and take a contrary decision on the basis of the

instructions contained therein, as the said inter office memo does not have a retrospective applicability. The same is applicable only in those cases, where the DPC is convened after the said memo came into force.

13 We are not examining the validity of the said inter office memo as the same is not the subject issue in the case on hand. In such view of the matter, the decision of the appellants to withhold the promotion of the respondent on the basis of subsequent inter office memo is unsustainable in the eye of law. Once the recommendation has been made having regard to the fact of prevailing conditions for recommendation, the subsequently inter office memo cannot be held applicable to deny the respondent's entitlement on the basis of recommendation made by the DPC.

14 As a sequel, the decision of the learned Single Judge cannot be faulted with and the same is accordingly upheld.

15 Resultantly, the writ appeal is dismissed. Costs made easy. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vvk/cad

To

1. The Executive Director (HR), CO,
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1 CC to Mr.C.K.Chandrasekaran, Advocate SR.No. 33290

1 CC to M/s.T.S.Gopalan & Co., Advocate SR.No. 33207

W.A.No.249 of 2015

JSV (CO)
PSI (14.07.2015)



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