

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision : December 11, 2015*

+ **LPA 117/2012**

LIFE INSURANCE CORP OF INDIA Appellant
Represented by: Mr.Kamal Mehta and
Mr.Sudeep Singh, Advocates.

versus

OP DHINGRA Respondent
Represented by: Mr.Pradeep Dewan,
Sr.Advocate instructed by
Mr.Anupam Dhingra,
Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. O.P.Dhingra, the respondent herein was appointed to the post of Assistant (Class-III) in Life Insurance Corporation of India (in short 'LIC') in March 1962. As per the Promotion Regulations of 1976 promotion to the post of Assistant Administrative Officer is from the Feeder Cadre of Superintendents and Higher Grade Assistants requiring three years and five years of service respectively. Regulation -86 of the Promotion Regulations, 1960 empowered the Executive Committee of LIC to relax the regulations in the interest of the Corporation in individual cases. In 1987 one N.K.Sharma who had worked for three years as Assistant was granted promotion as Assistant Administrative Officer on the basis of a policy decision taken that such employees of the Corporation who had contributed to the growth of the use of Hindi language should be rewarded. Since N.K.Sharma was junior

O.P.Dhingra raised an industrial dispute on which reference was made on the following terms: -

“Whether the action of the management of LIC, New Delhi in not promoting Shri O.P.Dhingra, HGA, to the post of Asstt.Administrative Officer w.e.f. 1.7.87 is legal and justified? If not, to what relief is the said workman entitled to?”

2. The learned Labour Court on the basis of evidence led by the parties decided the reference vide award dated March 26, 2014 as under: -

“The action of the management of LIC, New Delhi in not promoting Sh.O.P.Dhingra, HGA, to the post of Asstt.Administrative officer w.e.f 1.7.1987 is neither legal nor justified. His case for promotion should be considered along with Sh.N.K.Sharma. The award is given accordingly.”

3. Since LIC was directed to consider the case of promotion of O.P.Dhingra to the post of Assistant Administrative Officer w.e.f July 01, 1987, the LIC called O.P.Dhingra for an interview on July 18, 2005 in response where to he wrote on July 15, 2005 as under:

“Sub:- Award of CGIT-11 New Delhi in the matter of ID NO.43/95 titled O.P.DHINGRA vs. LIC of INDIA

Dear Sir,

I am in receipt of your letter on the above subject for consideration of my promotion for the year 1991-92. You have advised me to present my self for interview before the interview committee on 18-7-2005 for consideration of my promotion to the post of A.AO. In this matter, I am to state as under.

I raised the issue of promotion to the post of A.A.O in 1991 before RL when I was in service of LIC of India. I have now retired from the services of LIC of INDIA since October 2002. I am no longer in the employment of LIC of INDIA. Therefore, I am unable to understand this exercise of holding the interview for me. The purpose of the interview is to judge the suitability and acceptability of the candidate for the job to which he/she is to be promoted. But in my case this proposition does not apply.

The order of CGIT is to be read in letter and spirit. The CGIT has held in its judgment that the action of management of LIC of India in not promoting Shri O.P.DHINGRA from the post of HGA to the AAO is neither legal nor justified. The CGIT has further ordered for my promotion from the date when Shri N.K.Sharma was promoted. Being so I am entitled for all promotions which Shri N.K.Sharma was granted with all arrears of salary and other consequential benefits accruing out of these promotions.

It is not out of place to mention here that no interview was held in case of Shri N.K.Sharma.

I, therefore, request your good self to grant me promotions with all the benefits with retrospective effect.

Thanking you."

4. Since O.P.Dhingra refused to participate in the interview and sans allocation of marks at the interview he could not be promoted, LIC issued a letter dated October 27, 2005. The crux of the letter is that since O.P.Dhingra failed to appear for interview before the Committee he could not be considered for promotion to the Cadre of Assistant Administrative

Officer in terms of Regulation -7 of the Promotion Regulations, 1960 and was thus not promoted to the Cadre of Assistant Administrative Officer along with N.K.Sharma. This order of LIC dated October 27, 2005 was challenged by O.P.Dhingra before this Court in W.P.(C) No.10887/2006 wherein vide the impugned order dated July 27, 2011 the learned Single Judge held that the non-appearance for interview by O.P.Dhingra could not have been a ground for negating his claim for promotion after the award dated March 26, 2004 passed by the Labour Court. Since the award was not challenged by LIC the same has attained finality. There being a specific direction to promote O.P.Dhingra to the post of A.A.O. w.e.f July 01, 1987 the appellant had no option but to promote him. Vide the impugned order, the order of LIC dated October 27, 2005 was set aside and LIC was directed to grant promotion to O.P.Dhingra with effect from the same date from which N.K.Sharma was granted promotion.

5. Since in the meantime, O.P.Dhingra passed away his LR's have been impleaded. Learned counsel for the LR's of O.P.Dhingra contends that in view of the award directing promotion of O.P.Dhingra to the post of Assistant Administrative Officer w.e.f. July 01, 1987 there was no requirement of O.P.Dhingra to appear for interview and promotion should have been automatically granted without any formality. It is further urged that to participate in an interview was not the essential requirement as the same was done away in the case of N.K.Sharma.

6. Regulation-7 of the Staff Regulations, 1960 of the LIC which deals with the direct recruitments and promotions provide as under:-

“Direct Recruitment & Promotions:

7. **(1) All recruitment and promotions shall be made against the vacancies in sanctioned posts.*

(2) In making selections and promotions the appointing authority (vide Schedule I) shall be assigned by Committee herein prescribed: -

**(i) Posts belonging to Class I:*

- (a) Posts in the cadre of Zonal Managers and above or equivalent cadres –Executive Committee.*
- (b) Posts in the cadres of Dy.Zonal Manager/Sr.Divisional Manager, Divisional Manager and equivalent cadres – Chairman and three officers not below the rank of Zonal Manager.*
- (c) Posts in the cadres of Assistant Divisional Manager/Sr.Branch Manager and equivalent cadres-Managing Director and three Officers not below the rank of Zonal Manager.*
- (d) Posts in the cadres of Administrative Officer/Branch Manager and equivalent cadres-Three officers not below the rank of Zonal Manager.*
- (e) Other posts in Class I – One officer not below the rank of Dy.Zonal Manager and two officers not below the rank of Divisional Manager at least one of whom will be from the Central Office.*

(ii) Posts belonging to Class II:

One officer of the Zonal Office not below the rank of Assistant Divisional Manager and two

*officers not below the rank of [Administrative Officers]** from the Divisional Office.*

(iii) Posts belonging to Class III:

- *(a) Superintendants –one officer not below the rank of Divisional Manager and two officers not below the rank of Assistant Divisional Managers.*
- (b) Higher Grade Assistants and Section Heads-one officer not below the rank of Assistant Divisional Manager and two officers not below the rank of [Administrative Officers.]***
- (c) Assistant, Record Clerks and other similar posts–three officers not below the rank of [Administrative Officers.]***

(iv) Posts in Class IV:

*One officer not below the rank of [Administrative Officer]** and two officers not below the rank of [Assistant Administrative Officers.]***

Provided, however, the appointing authority may nominate on the aforesaid Committees additional members if necessary.

- (3) Promotion shall be based on merit, suitability of the candidate for a particular posts and seniority. Merit and suitability may be judged by confidential reports and/or interviews and/or examinations.*
- (4) Where an appointing authority subordinate to the Corporation is unable to accept the recommendations of the Committee it shall record in writing the reasons for disagreeing with the recommendations of the*

committee and pass such orders as it may deem fit.”

7. Regulation-7 of the Staff Regulations, 1960 thus provide for promotion based on merit-cum-seniority and merit to be judged from confidential report and/or interview and/or examinations.

8. It may be noted that in the reference before the learned Labour Court the challenge was not to the promotion of N.K.Sharma to the post of Assistant Administrative Officer but as to the action of the management of LIC in not promoting O.P.Dhingra, HGA to Assistant Administrative Officer w.e.f July 01, 1987. Thus even if the contention of the respondent is accepted that in the case of N.K.Sharma no interview was conducted and the Committee had no power to relax the regulations, the same cannot be used to the benefit of O.P.Dhingra that even he should be promoted without an interview. One wrong cannot give rise to another wrong and no parity can be claimed thereto. For ascertaining merits since interview has been prescribed O.P.Dhingra could not have got away by saying that he was not required to undergo the interview because N.K.Sharma was not interviewed or that he had superannuated. Further the award though stated in the first line that the action of LIC in not promoting O.P.Dhingra, HGA to the Post of Assistant Administrative Officer w.e.f. July 01, 1987 was neither legal nor justified however, directed LIC to consider the case of O.P.Dhingra for promotion along with Shri N.K.Sharma. Thus there was no mandate of promotion of N.K.Sharma but a direction to consider the case of O.P.Sharma. Since O.P.Sharma failed to take part in interview the order of LIC dated October 27, 2005 stating that O.P.Dhingra retired HGA could not be promoted to the Cadre of Assistant Administrative Officer along with

N.K.Sharma cannot be faulted with.

9. The appeal is allowed. The impugned order dated July 27, 2011 passed by the learned Single Judge is set aside.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

DECEMBER 11, 2015
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