

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.84 of 2016

=====

1. Alok Kumar Sinha, Son of Sri Sachchida Prasad, Resident of Mohalla- Ekwana, Chandmari, P.S.- Town Thana, Motihari, District East Champaran, Bihar

.... Petitioner/s

Versus

1. LIC of India, through the Chairman, Yogakshema, Jeevan Bima Marg, Mumbai
2. The Chairman, Life Insurance Corporation of India, Yogakshema, Jeevan Bima Marg, Mumbai
3. The Executive Director (Personnel) Life Insurance, Corporation of India, Yogakshema, Jeevan Bima Marg, Mumbai
4. The Zonal Manager, Life Insurance Corporation of India, East Central Zone, Jeevan Deep Building, Exhibition Road, Patna-1
5. Regional Manager (Personnel), Life Insurance Corporation of India, East Central Zone, Jeevan Deep Building, Exhibition Road, Patna-1.
6. Sr. Divisional Manager, Life Insurance Corporation of India, Bhagalpur Division, Jeevan Prakash, Near Zero Mile, Bhagalpur

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Mishra, Adv.
For the Respondent/s : Mr. Rajeev Ranjan Prasad, Adv.
Mr. Abhimanyu Vatsa, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 10-01-2018

Heard Mr. Sanjeev Kumar Mishra, learned counsel for the petitioner and Mr. Abhimanyu Vatsa, learned counsel for the Life Insurance Corporation.

Although the petitioner has been granted promotion in the cadre of Administrative Officer/Branch Manager vide office order dated 23.4.2014 with effect from the said date, the grievance of the petitioner is that he should have been granted promotion with effect from April, 2010 when his batch mate/juniors have been promoted.



An earlier attempt by the petitioner through C.W.J.C.No.21066 of 2013 was disposed of vide order dated 22.08.2014 placed at Annexure-7 giving liberty to the petitioner to represent the respondents in this regard and following which the petitioner did represent and the claim has been disposed of by the order impugned dated 15.01.2015 of the Executive Director (Personnel) of the Life Insurance Corporation impugned at Annexure-8. The explanation given by the Executive Director at paragraph 3 at running page 61 read alongside the chart present at running page 62 is sufficient explanation as to why the petitioner was not found fit for promotion.

Mr. Mishra learned counsel for the petitioner has very passionately referred to a judgment of the Supreme Court since reported in **AIR 2008 SC 2513 (Dev Datt vs. Union of India)** to submit that in case any of the entries was acting prejudice to the petitioner and was a obstacle for his promotion in the earlier period in comparison to his juniors, the same should have been communicated to the petitioner to enable him to improve the performance. Learned counsel has next referred to the numerical grading adopted by the respondents under the Development Oriented Performance Appraisal System, a copy of which is placed at Annexure-9 to the writ petition to submit that in case any particular remark was required to be obtained by the petitioner for his promotion, then he should have been



given information as such and its non communication has prejudiced the case of the petitioner.

Contesting the argument of Mr. Mishra, it is the argument of Mr. Vatsa learned counsel for the Corporation that under the circular of the Life Insurance Corporation dated 10.10.1991 it is only where an incumbent obtains a 'D' remarks which is in a case where performance is found below 'Average', that it needs to be communicated and since the petitioner never obtained any such remarks it was not required to be communicated. Learned counsel has next referred to paragraphs 6 and 7 of the counter affidavit to submit that since the remarks obtained by the petitioner as calculated on the basis of numerical rating method present at Annexure-9 was lesser than the last promoted candidate for the previous years as demonstrated in the chart present in the impugned order as well as at paragraph 7 that he was not found fit for promotion. According to Mr. Vatsa, the promotion in question is based on remarks collected by the employee for the period in question as well as his seniority as mentioned in paragraph 6 of the counter affidavit. It is stated that the basis for promotion in the cadre is the merit of the candidate, the suitability adjudged on the basis of a confidential report as well as seniority in the feeder cadre.

Responding to the judgment of the Supreme Court in the case



of **Dev datt** (supra) it is submitted that the judgment was in the different context for in the said case the bench mark for promotion to the higher post was fixed as 'very good' in the A.C.R in the last 5 years. Referring to paragraph 10 of the judgment it is submitted that since in view of the bench mark so fixed the non communication of 'Good' remarks was held to be the adverse entry and required to be communicated to the incumbent which is not the situation here for there is no bench mark fixed for promotion rather it is remarks obtained by each candidate on the numerical ratings under the Development Oriented Performance Appraisal System which is the basis for promotion.

I have heard learned counsel for the parties and I have perused the records.

The explanation given by the Executive Director for the failure of the petitioner to make the grade in the earlier years is well discussed and requires no interference. The selection process is not under challenge nor the numerical grading is put to challenge herein which has been followed by the respondents for grant of promotion to the employees including the petitioner. A system which is equally applied to the employees for a decision on the promotion cannot be held arbitrary. In fact it is under this very system that the petitioner was declared fit for promotion albeit in the year 2014. As rightly



submitted by Mr. Vatsa the judgment in **Dev Datt** (supra) is not applicable in the present case because there is no bench mark fixed for a promotion to the post of Administrative Officer rather it is the cumulative effect of assessment of each employee as per the numerical rating method under the Development Oriental Performance Appraisal System at Annexure-9 which is guiding factor. The counter affidavit clearly explains that it is in totality of assessment including the merit of the candidate, his suitability as per ACR together with the seniority in the feeder cadre which is the foundation for such promotion and since the petitioner failed to secure the grade for promotion in the earlier years as explained from the chart present in the impugned order as also at paragraph 7 of the counter affidavit, that he was not promoted.

Though a feeble attempt was made by Mr. Mishra to refer to paragraph 12 of the judgment in **Devi Datt** (supra) to submit that any circular which prohibits the non communication of entries other than the adverse entries has been held illegal but in my opinion, the expression of the Supreme Court is in context with the office memorandum put to test before the Court which mandated a bench mark for the incumbent for further promotion and which is not the case here. In so far as the present case is concerned, there are no bench mark fixed for promotion as an Administrative Officer rather it



is the marks obtained by each of the candidate as per the numerical method subject to the available vacancies which entitles them a promotion without fixing any bench mark for such promotion. The reliance on the judgment of the **Dev Datt** (supra) in the circumstances governing the present issue is completely out of context and in the nature of the procedure followed by the Corporation for grant of promotion even paragraph 12 of the judgment passed in the case of **Dev Datt** (supra) would not come to the aid of the petitioner.

The writ petition is dismissed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	13.02.2018
Transmission Date	NA

