

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2018

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.1875 of 2008
and
M.P.No.1 of 2008

V.Karunakaran

...Petitioner

Vs.

1. Chairman and Managing Director,
Tamil Nadu Industrial Explosives Ltd.,
137/7, G.N.Chetty Street, T.Nagar,
Chennai - 600 017.
2. The Board of Directors,
rep. By Chairman and Managing Director,
Tamil Nadu Industrial Explosives Ltd,
137/7, G.N.Chetty Street T.Nagar,
Chennai - 600 017.
3. K. Lakshmanan,

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the 2nd respondent Board to give effect to the post of Deputy Manager given to the petitioner from the date of promotion given to the 3rd respondent as Deputy Manager (Marketing) and to further promote to the petitioner Manager (marketing) as Head of the Department of marketing with applicable Monetary benefits or any other promotional post as per the promotion policy of the 1st respondent.

For Petitioner : Mr.S.T.Varadaragulu,

For R1 & R2 : Mr.M.A.Abdulwahab

For R3 : Dismissed vide Court Order dated
21.09.2016

O R D E R

The relief sought for in this writ petition is to direct the 2nd respondent Board to give effect to the post of Deputy Manager given to the petitioner from the date of promotion given to the 3rd respondent as Deputy Manager (Marketing) and to

further promote to the petitioner Manager (Marketing) as Head of the Department of Marketing with applicable Monetary benefits or any other promotional post as per the promotion policy of the 1st respondent.

2. The case of the petitioner, as averred in the Writ Petition, is as follows:

(i) The petitioner after completing his post - graduation in Business Administration, joined in the service of TamilNadu Industrial Explosives Limited, which is a Public Sector Undertaking and is under the control of Government of Tamil Nadu. It is manufacturing Explosives, Detonators and Detonating Fuses. The petitioner joined the service on 08.10.1985 as Sales Officer (Trainee) and his service was regularized from 08.10.1986. During November 1990, the management of TamilNadu Industrial Explosives Limited called for application for applications for the post of Area Sales Manager/Assistant Manager (Sales). The petitioner and the 3rd respondent herein had applied for the said post. The 3rd respondent was a holder of Diploma in Mining. An interview had been conducted on 31.01.1991. In the said interview, the 3rd respondent Mr.K.Lakshmanan was selected and appointed as Area Sales Manager during 1991. In this regard, the petitioner sent a letter to the first respondent asking the reason why he was not selected for the said post. But so far, no reply was given by the 1st respondent.

(ii) In the meanwhile, during October 1993, the petitioner was appointed as Assistant Manager (Marketing) against an open advertisement and since then the petitioner was working at the Assistant Manager grade without any elevation for better prospects. His basic pay as on March 2003 was Rs.12,675/- in the pay scale of Rs.8000-275-12,500, whereas the basic pay of the 3rd respondent, who joined the service of Technical Services Engineer in February 1987 was fixed at Rs.15,200/- in the pay scale of Rs.10,000-325-15,000/-. The 3rd respondent was appointed as Area Sales Manager in the Assistant Manager time scale in March 1991 and promoted to Deputy Manager (Marketing) in June 1995 when he was in Asonsol and the disparity between the two officers in one Department humiliates and hurts as the petitioner has higher qualification than the 3rd respondent.

(iii) Apart from that the officers who had been appointed after the petitioner's appointment, have been promoted to the next level vide the order dated 29.04.2002 with effect from 08.03.2002. The petitioner was put in more than 10 years of service and carrying out the functions and responsibilities of the Manager (Exports) and an office Superintendent since 1996 in addition to the functions and responsibilities of an Assistant Manager (Marketing), but he was not considered for higher level

promotion.

(iv) The petitioner applied for Manager (Marketing) in May 1993 against the open Advertisement. The 3rd respondent was also applied for the same post and due to lack of qualification, the 3rd respondent was not called for the interview and as the petitioner was qualified to the said post of Manager (Marketing), he attended the interview. Even though the petitioner attended the interview for the post of Manager (Marketing), he was given only the post of Assistant Manager (Marketing) in October 1993. The petitioner would submitted that the fact of calling him for the interview for the post of Manager would establish to the post of Manager.

(v) The seniority should be considered by and taken into account while promoting an officer on completion of 6 years service as per the policy of upgradation/promotion as approved by the 57th Board met on 22.09.1993. The petitioner ought to have been upgraded to the position of Deputy Manager with a basic pay of Rs.11,625/- in the scale of pay of Rs.10,000-325-15,000 with effect from October 1999. The petitioner ought to have been considered for elevation to the post of Deputy Manager (Marketing) with effect from November 1999 as there was vacancy for the said post.

(vi) The petitioner further contended that during 1999, the post of Joint General Manager (Marketing) has become vacant, and the 1st respondent had advertised for the said post in the open market and the petitioner has applied for the same on 04.06.1999. Even though, the petitioner possess required qualification and experience, he was not called for interview. However, Joint General Manager (Finance) was given additional responsibility of Joint General Manager (Marketing) and the respondents have not chosen to promote the petitioner. In the same way, for the post of Manager (Marketing) and Deputy Manager (Marketing and Sales), the petitioner was not called for interview and the candidate, who does not possess the required explosive sales experience and not qualified in mining engineering was appointed as a Deputy Manager (Marketing and Sales). Again, an outsider Deputy General Manager (Marketing) form TANCEM was appointed on deputation as Deputy General Manager (Marketing) in October 2000. Again the petitioner had applied for the post of Manager Deputy Manager (Marketing) in 2000, but the candidate who had lesser qualification and experience and non-relevant to explosives field, was appointed as Deputy Manager (Marketing) which had humiliated the petitioner and the post of Deputy Manager (Marketing) was vacant as he had already left the company. In this regard, the petitioner had already submitted his representations dated 22.03.2001, 3.7.2001, 05.09.2001, 6.3.2002, 3.4.2002, 21.3.2003, 22.11.2003 and 03.7.2006 for necessary redressal, but till date it was not considered.

(vii) On 11.06.2006 the petitioner was promoted as Deputy Manager (Sales Admn. and Export) in the scale of pay Rs.10,000-325-15,200 with effect from 01.05.2006 without giving him the 5% promotional benefits. Even though he was promoted, it did not yield any Monetary benefits as his basic at that point of time was Rs.13,225/- in the time scale of pay of Rs.8,000-275-13,500, and his basic pay after promotion was fixed at Rs.13,250/- in the scale of pay of Rs.10,000-325-15,200/-, and only Rs.25/- was increased, for more responsibilities.

(viii) The management had sent a reply on 22.07.2006 for his representation dated 22.06.2005, wherein it was stated that he was re-appointed as Assistant Manager (Marketing) on 29.10.1993, whereas the 3rd respondent was appointed as Area Sales Manager on 06.03.1991 and for elevation, quoting a person, who was selected and appointed as Area Sales Manager in Assistant Manager earlier than him is not comparable, the request is not considered. The petitioner would submit that the earlier grievances had not been examined by the respondents properly and he was not re-appointed as stated in the reply dated 22.07.2006 and he was appointed as Assistant Manager (Marketing) on 23.10.1993. Hence, himself the petitioner and the 3rd respondent belong to the same category (i.e.,) the Assistant Manager cadre. The respondent has arbitrarily given promotions to various individuals, who do not possess required qualification and experience, which reveals that the respondents do not adopt any promotion policy. They adopted only pick and choose policy and give promotion who ever they like which indicates the nepotism in the Public Sector Undertaking. Since, he has more qualified and senior than the 3rd respondent, the 1st respondent has arbitrarily appointed the 3rd respondent as Assistant Manager in 1991 and promoted him to Deputy Manager in 1997 without any policy, procedure or rule. Denying promotion to the senior without any basis is against the decision of the Hon'ble Supreme Court, reported in 2002-SCC (L & S) P.1090. (Kaushal Kishore Singh) case and also violation of Article 14 and 16 of the Constitution.

(ix) The petitioner also submitted that draft promotion Policy, announced by the 1st respondent on 12.01.2002 would reveal that length of service in the company, weightage for those who obtained technical qualification and experience in the post would be considered in giving promotion. But the same was not followed in the petitioner's case. Hence he filed this writ petition.

3. The first respondent has filed a counter wherein it was submitted that the company called for the post of Sales Officers/Sales Engineer, through open advertisement and interview was conducted, during September 1985, and the petitioner was appointed as Sales Officer (Trainee) on 23.09.1985 and after completion of one year training, his

services were regularized as Sales officer with effect from 08.10.1986 in the pay scale of Rs.1,340-2,435/- with a basic pay of Rs.1,490/-. Whereas, the 3rd respondent applied for the post of Deputy/Assistant Manager and considering his five years experience in the mining field, the interview committee recommended his name for appointment to the post of Technical Service Engineer and he was appointed in the said post on 04.02.1987 in the pay scale of Rs.1340-2435/-. During November 1990, applications for the post of Assistant Manager (Technical Services)/Area Sales Manager, were called for. Out of the three internal candidates including the petitioner and third respondent, the required qualification and post experience of the candidates were considered and the third respondent was selected for the post of Area Sales Manager on 27.02.1991 on merits. The petitioner was appointed as Assistant Manager (Marketing) on 27.10.1993, and he joined on 29.10.1993 in the pay scale of Rs.2200-4000 with a basic pay of Rs.2425/- and confirmed with effect from 29.10.1995 after sanctioning of annual increments for the years 1994 & 1995. The petitioner's basic pay was Rs.2,575/-. As per G.O.Ms.No.162, dated 13.04.1998, the petitioner's pay scale was revised to 8000-13500 with effect from 01.01.1996 with a basic pay of Rs.11,025/-. After sanctioning of annual increments for the year 1998 to 2003 the petitioner's basic pay was fixed at Rs.12,675/-, as on 01.01.2006, whereas, the 3rd respondent was promoted as Deputy manager (Marketing) with effect from 07.06.1995 in the pay scale of Rs.3000-4500 with a basic pay of Rs.3000/-. As per above said G.O.Ms.No.162, dated 13.04.1998, the 3rd respondent's pay scale was revised as Rs.10,000-15,200 and the basic pay was refixed as Rs.13,250/- with effect from 01.01.1996. The third respondent was in Asansol from 30.11.1991 to 01.03.1996. After sanctioning of his usual annual increments for the years 1996 to 2003, the third respondent's basic pay was fixed at Rs.15,200/- but not during 1995. From the date of inception of appointment, the petitioner was in the lower pay scale when compared to the third respondent and there is no justification in the petitioner's claim. The petitioner went on to compare the personnel who are posted in Engineering/Production Department. Those personnel were technically qualified and are qualified Engineers having completed B.E./B.Tech. Therefore, the petitioner's comparison with those personnel is unwarranted and unjust.

4. It is further stated in the counter affidavit that the petitioner joined in the year 1985 as Sales Officer (Trainee) and as on date, he is in the cadre of Deputy Manager, meaning thereby he was given three cadres promotion/upgradation in 23 years service. Only the persons, who possess B.E/B.Tech after completion of training are appointed as Sr.Plant Engineers, whereas the petitioner was appointed as Sales Officer, after his

completion as Sales Officer (Trainee), and the post of Sales Officer is one scale below the Sr.Plant Engineer and hence his comparison is incorrect. Mere attending on various interviews will not confer any right to the petitioner to get appointed to the post applied for. Since the petitioner was not suitable for the post of Manager (Marketing), the interview committee felt it fit to appoint him in the post of Assistant Manager (Marketing) by which he was given double promotion by skipping the Sr.Sales Officer post in between the posts of Sales Officer and Assistant Manager in the pay scale of Rs.2200-4000. The petitioner's allegation that he should have been upgraded to the pay scale of Rs.10000-325-15200 was denied by the respondents 1 and 2 as the same is unjustifiable because as per the Upgradation Policy approved by the Board with effect from 29.01.1993, the petitioner was given upgradation for the post of Joint General Manager during May 1999, when the Management called for applications from the post Graduate holders. The petitioner was not a mining graduate and he was in the Assistant Manager Cadre and hence he was not at all called for the interview. Similarly the post of Joint General Manager (Finance) was given the additional charge of Marketing Department due to administrative reasons. Similarly, when the respondent company conducted interview for the post of Deputy Manager (Marketing/Sales) whereas 150 persons had applied and only 12 candidates were called for the interview and one Thiru Babu Lourdhuraj was appointed to the said post. To fulfill the urgent need of the respondent's company, the management called a Deputy General Manager from another public Sector Undertaking on deputation basis during 2000 with same post that he was holding in the parent department. This is the administrative decision taken by the management. The petitioner cannot be aggrieved, and the petitioner cannot raise question and the petitioner has no Locus Standi to question the administrative decision taken by Management. The petitioner is habitually applies for all the higher positions knowing fully well that he do not possess the requisite qualification. As per Board approval, the petitioner was given one scale elevation and promoted as Deputy Manager (Sales Admn & Export) from 01.05.2006 and his pay scale was revised to Rs.10,000 - 15,200/-. The company nowhere indicated that on promotion 5% benefit will be given. The said 5% benefit was not considered till now for all the employees, including the petitioner. The petitioner was appointed as Assistant Manager (Marketing) with effect from 29.10.1993. In the letter dated 22.07.2006, it was mentioned as re-appointed. It is true that the 3rd respondent was appointed as Area Sales Manager against an open advertisement made by the company. The 3rd respondent was also an internal candidate working as Technical Service Engineer with effect from 04.02.1987. Promotion will be given as per the company policy and not based on the representation of the individuals. Due to

administration decision, the respondent company decided to promote the internal Senior Executives as Joint General Manager (Marketing) to look after the marketing functions. The services of the internal Senior Executives, who had about 20 years experience in the respondent company and have knowledge in the relevant field, were utilized. The Mining Engineer looking after Technical Services and the petitioner can not compare the promotion or other monetary benefits given to the candidates. The petitioner has all along been comparing the entire Technical Officers or the Senior-most officers of the own department and his claim was rejected. The petitioner has been given promotion, increment and other monetary benefits periodically as per his service, experience and seniority. The seniority of the third respondent in the Assistant Manager cadre commences from 06.03.1991. Therefore, it is clear that the third respondent is senior than the petitioner in the Assistant Manager cadre. Even though as per the settlement under Section 12 (3) of the Industrial Disputes Act 1947 dated 19.06.2000 signed with the Workmen Trade Unions, it has been agreed to evolve a Promotion Policy applicable to workmen. Accordingly, a draft Promotion Policy was framed and given to the Unions for their suggestions. Due to differences of opinion among the unions, the draft Promotion Policy was not implemented. However, as demanded by the workmen, the management is giving increments, upgradations/elevations, additional increments. The case cited by the petitioner is not applicable, to the case on hand. The petitioner is not entitled to any relief as sought for in this writ petition.

5. Heard both sides and Perused the materials available on records.

6. The petitioner has filed this present Writ petition in the year 2008. At the time of filing this writ petition, the petitioner's age was 52 years and he seems to have retired from service in the year 2014. The present Writ petition is filed seeking to direct the 2nd respondent Board to give effect to the post of Deputy Manager given to the petitioner from the date of promotion given to the 3rd respondent as Deputy Manager (Marketing) and to further promote the petitioner to the post of Manager (Marketing) with all monetary benefits or any other promotional post as per the promotion policy of the 1st respondent.

7. It could be seen from the affidavit of the petitioner that the petitioner and the 3rd respondent have been appointed on the same scale of pay at the time of entry level. However the petitioner's counsel argued that the petitioner was appointed on 08.10.1985 when compared with the 3rd respondent who was appointed on 04.02.1987. It could be seen from the records that the 3rd respondent seems to have qualified to be a Technical

Service Engineer with Technical Qualification and the petitioner has only obtained Post Graduation in Business Management. For the sake of fixing pay parity, it could be seen whether the petitioner and the 3rd respondent were appointed in the same cadre or different cadre. It is not in dispute, that the petitioner is not holding Technical qualification while appointing as Sales Officer. It could be seen from the records and the arguments put forth by the learned counsels that the during Feb 1987 the 3rd respondent was appointed as Technical Service Engineer with 5 years experience in the mining field, apart from holding technical qualification. The 3rd respondent, thereafter, was selected and appointed to the post of Area Sales Manager on 27.02.1991 out of three candidates including the petitioner, who have participated in the interview. Even though, the petitioner was aggrieved by the said selection dated 27.2.1991, till date he has not challenged the said selection. Though the petitioner and the 3rd respondent were drawing the same scale at the entry level, they were appointed on different years (i.e) 1985 and 1987 respectively. However, it is not in dispute that they were selected for different posts having different avenue of promotion. The petitioner cannot compare himself with the 3rd respondent on pay parity.

8. Though the seniority of the 3rd respondent is questioned, it is seen that the petitioner, was selected only to the post of Sales Officer (Trainee) in the year 1985 and appointed in the Sales Department, whereas, the 3rd respondent, who possessed Technical qualification with 5 years experience in the field of mining, had been appointed as Technical Service Engineer in 1987 and promoted accordingly, which is evidenced from the counter affidavit.

9. The appointment and promotion details of the petitioner and the third respondent are as follows:-

THIRU K. LAKSHMANAN, DIP. IN MINING					THIRU V. KARUNAKARAN, B.Sc., & M.B.A.			
S l . N o .	DESCRIP TION	DESIG NATIO N	D.O. A	REMARKS	DESCRIP TION	DESIGN ATION	D.O.A	REMARKS

THIRU K. LAKSHMANAN, DIP. IN MINING					THIRU V. KARUNAKARAN, B.Sc., & M.B.A.			
1	APPOINTED AS	TECHNICAL SALES ENGINEER	04.02.1987	OPEN ADVERTISEMENT IN "HINDU" DT.31.10.1985	JOINED AS	SALES OFFICE (TRAINEE)	08.10.1985	AS PER PAPER ADVERTISEMENT "INDIAN EXPRESS" DT.04.06.1985
2	CONFIRMATION ORDER GIVEN	TECHNICAL SALES ENGINEER	04.02.1989	AS PER CMD'S APPROVAL	REGULARISED AS (PROBATION)	SALES OFFICER	08.10.1986	CMD's APPROVAL
3	APPOINTED AS (PROBATION PERIOD)	AREA SALES MANAGER	06.03.1991	INTERVIEW WAS CONDUCTED AND SELECTED	CONFIRMED AS	SALES OFFICER	08.10.1988	CMD's APPROVAL
4	CONFIRMATION AS	AREA SALES MANAGER	06.03.1993	INTERVIEW WAS CONDUCTED AND SELECTED	ATTENDED INTERVIEW BUT, HE WAS NOT SELECTED		27.02.1991	INTERVIEW
5	PROMOTED AS	D.M. (MKTG)	07.06.1995	AS PER CMD'S APPROVAL	UPGRADATION AS	SELECTION GRADE SALES OFFICER	29.01.1993	

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THIRU K. LAKSHMANAN, DIP. IN MINING					THIRU V. KARUNAKARAN, B.Sc., & M.B.A.			
6	PROMOTED AS	MANAGER (MKTG)	01.05.2006	AFTER COMPLETION OF 10 YEARS SERVICE, AS PER BOARD'S APPROVAL DT.27.04.2006, HE WAS PROMOTED AS M.MKTG. - FROM DM., MKTG. - (ALL OFFICERS WERE GIVEN ONE PROMOTION)	APPOINTED AS	A.M. (MKTG)	29.10.1993	
					CONFIRMED AS	A.M. (MKTG)	29.10.1995	
					PROMOTED AS	DY.MANAGER (SALES ADMN. & EXPORT	01.05.2006	
CONCLUSION: (1) As per P&AR Dept. Note Dt.15.07.2006 and 22.07.2006 there is no anomaly between Thiru K.Lakshmanan and V.Karunakaran since Thiru V.Karunakaran was recruited as Trainee and Thiru K.Lakshmanan was recruited directly in time scale.								
(2) Note Dt.01.11.2006 given by GM/TEL that, Thiru.K.Lakshmanan was given A.M. (MKTG) 06.03.1991 WHEREAS Thiru V.Karunakaran was given A.M.(MKTG) during 29.10.1993. Therefore, his grievance for M(Mktg) has not been considered.								

10. From the above chart, we can compare both persons with each other. The qualification and the period of experience vary for each other. It is clear that the petitioner was appointed as Assistant Manager (Marketing) on 27.10.1993, which post he joined on 29.10.1993 in the pay scale of Rs.2200-4000 with a basic pay of Rs.2425/- and confirmed with effect from 29.10.1995. After sanctioning of annual increments for the years 1994 & 1995, the petitioner's basic pay was Rs.2,575/-. Subsequently, as per G.O.Ms.No.162, dated 13.04.1998, the petitioner's pay scale was revised to 8000-13500 w.e.f.

01.01.1996 with a basic pay of Rs.11,025/-. After sanctioning of annual increments for the years 1998 to 2003, as on 01.10.2006, the petitioner's basic pay was Rs.12,675/-. On the other hand, third respondent was promoted as Dy.Manager (Marketing) w.e.f. 07.06.1995 in the pay scale of Rs.3000-4500 with a basic pay of Rs.3000/-. As per G.O.Ms.No.162, dt.13.04.1998, the third respondent's pay scale was revised as Rs.10000-15200 and the basic pay was refixed as Rs.13,250/- w.e.f. 01.01.1996. The third respondent was in Asansol from 30.11.1991 to 01.03.1996. After sanctioning of his usual annual increments for the years 1996 to 2003, the third respondent's basic pay becomes Rs.15200/- but not during 1995 as stated by the petitioner. Therefore, it is clear that right from the inception of appointment, the petitioner was in the lower pay scale when compared to the third respondent and there is no justification in the petitioner getting humiliated by exercise of administrative power vested with the respondents company.

11. From the averments of the petitioner and the counter affidavit it could be seen that for recruitment of each and every post, when it was called for, the petitioner is in the habit of applying for the same without having prescribed qualification and aggrieved by the non-selection, he would raise hues and cries, but had never challenged the same before any Court of law. The petitioner not satisfied with the promotion given, as per the qualification and as per seniority, has kept quiet for a long period and has sent petitions and representations to the respondents. The petitioner has suppressed the vital point that for various lapses, disciplinary action has been initiated against him. It could be seen from the additional typed set filed by the respondents that there was a charge memo- cum-show cause notice was issued against the said petitioner on 17.12.2009/12.01.2010 and asked him to submit his explanation within 7 days from the date of receipt of the same as to why disciplinary action should not be initiated against the petitioner. After Audit Enquiry another show cause notice was issued on 20.05.2011. Again another charge memo was issued on 11.06.2013, which would show various allegations and serious charges against the petitioner. The petitioner was relieved from service on 30.06.2013 pending disciplinary charges which was to be finalised. Since the petitioner was relieved from the service pending disciplinary charges, no promotion can be granted by the respondents.

12. Based on the above facts and circumstances, this Court is of the Prima facie view that this case is not a fit case for granting any relief to the petitioner as prayed for and the writ petition fails, accordingly.

13. In the result, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

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To

1. Chairman and Managing Director,
Tamil Nadu Industrial Explosives Ltd.,
137/7, G.N.Chetty Street, T.Nagar,
Chennai - 600 017.

2. The Chairman and Managing Director,
The Board of Directors,
Tamil Nadu Industrial Explosives Ltd,
137/7, G.N.Chetty Street T.Nagar,
Chennai - 600 017.

+1cc to Mr.S.T.Varadarajalu, Advocate, sr.no.60716

W.P.No.1875 of 2008

KJI (CO)
RMP (26/09/2018)

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