

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6901 of 2015

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Surendra Prasad Singh Son of Sri Mathura Singh, Resident of Quarter No. C-4/1, Walmi Campus, P.S.- Phulwari Sharif, District- Patna-801505 at present working as Divisional Manager, The Oriental Insurance Company Ltd., Divisional office- Hajipur, Kanhauli Complex P.S.- Hajipur Town, District- Vaishali

... .. Petitioner/s

Versus

1. The Oriental Insurance Company Ltd. Through the Chairman cum Managing Director Oriental House, A-25/27, Asaf Ali Road, New Delhi 110002
2. The General Manager Personnel the Oriental Insurance Company Ltd. Oriental House, A-25/27, Asaf Ali Road, New Delhi 110002
3. The Deputy General Manager Personnel the Oriental Insurance Company Ltd. Oriental House, A-25/27 Asaf Ali Road, New Delhi 110002
4. The Chief Manager Personnel the Oriental Insurance Company Ltd. Oriental House, A-25/27, Asaf Ali Road, New Delhi 110002
5. The Chief Regional Manager the Oriental Insurance Company Ltd., Kadam Kuan, Patna-800001

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Singh Mr. Surinder Kumar
For the Respondent/s	:	Mr. Satyabir Bharti

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 24-07-2019

Heard learned Counsel for the petitioner and the learned Counsel for the respondent Company.

Petitioner was an employee in Scale III in respondent Company. The Company had come out with a fast track progression scheme to promote outstanding employees. One of the requirements for benefit under the fast track progression scheme was consideration of ACR. The petitioner was granted outstanding



ACR for the period between 2009-2010 to 2011-2012. This period was the relevant period for considering his claim for benefit under the fast track progression scheme for promotion to scale IV in the year 2012-2013.

Petitioner's Counsel relies upon the decision of the apex court in the case of Dev Dutt vs. Union of India reported in (2008) 8 SCC 725 as also the decision of the Union of India pursuant thereto for communicating adverse entries to employees in terms of the decision of the Apex Court. He submits that by virtue of second review his outstanding ACR was altered to his disadvantage without communicating the same. As a result of second review of ACR for the period 2009-2010, 2010-2011 and 2011-2012 the petitioner was wrongly deprived of the benefits for progression to scale IV. Counsel for the petitioner submits that having been denied his promotion without communication of ACR the petitioner has been made to suffer contrary to the mandate of the Apex Court in the case of Dev Dutt (supra) which process has also been strictly adopted and is admittedly binding on the respondent Company. It is therefore stated in the writ petition that without taking into consideration assessment in the second review, to the disadvantage of the petitioner and without communication to the petitioner, the petitioner should be allowed promotion to scale



IV with effect from 2012 as on all other count he was eligible on an all India basis for being considered as outstanding employee for the purpose of promotion to scale IV.

Mr. Satyabir Bharti, learned Counsel appearing for the respondent Company submits that the decision in the case of Dev Dutt (supra) is admittedly applicable to the respondent company. It is also submitted that the second review was permissible in terms of the record and to that extent there is no dispute. However, placing reliance on the prayer made in the writ petition and the conduct of the petitioner in approaching the Court by delay, he submits that the cause of action for claiming promotion with effect from 2012-2013 arose upon its rejection in that year itself. The petitioner thereafter has participated in the promotion process in 2013-2014 and 2014-2015. He has finally been promoted in scale IV in the year 2015-2016. It is also a matter of record that for the further promotion to scale V he was considered and denied the same in the year 2018-2019. The facts are being stated to say that the petitioner has not been diligent about his claim based on cause of action arising in the year 2012-2013.

Placing reliance on the decision of the apex court in the case of Union of India vs. Chaman Rana reported in (2018) 5 SCC 798 he submits that in the matters of promotion as declared by



the Hon'ble Apex Court in the said judgment is that parties are expected to approach the Court immediately and without any delay. The reasonable time for approaching the courts for grievance relating to promotion, which are likely to have effect on third party rights occurring in between, has been laid down as minimum six months and maximum one year.

The facts are admitted that the petitioner has approached this Court in the year 2015 in respect of claim for promotion with effect from 2012-2013.

The petitioner's Counsel in reply submits that he has approached this Court diligently since the petitioner's claim was denied on the basis of same ACR in the year 2013-2014 as well as 2014-2015.

The said submission has been noted only to be rejected as admittedly the petitioner, as per the prayer made in the writ petition, is claiming promotion with effect from 2012-2013. Rejection of his claim in the year 2014 cannot give him sustenance so as to over come delay in respect of his claim which was in relation to 2012-2013.

Reliance placed by Mr. Bharti in para 8 of the judgment in the case of Chaman Rana (supra) appears to be correct in the facts of the instant case. The petitioner has approached this Court



for grant of promotion with effect from 2012-2013 in the year 2015 and admittedly promotion has been granted to others who were found to be higher than him on merit based on assessment of their qualification and ACR as contained in Annexure 2 of the writ petition. The third party rights have also accrued long back. The case of the petitioner stands squarely covered by the judgment of the Apex Court in the case of Chaman Rana (supra).

Whether in such circumstances this Court would exercise jurisdiction in favour of the petitioner has also been dealt by the Apex Court in the same judgment in para 9, 13 and 16 which reads as follows:

9. As far back as in *P.S. Sadasivaswamy v. State of T.N.* [*P.S. Sadasivaswamy v. State of T.N.*, (1975) 1 SCC 152 : 1975 SCC (L&S) 22] , considering a claim for promotion belated by 14 years, this Court had observed that a period of six months or at the utmost a year would be reasonable time to approach a court against denial of promotion and that it would be a sound and wise exercise of discretion not to entertain such claims by persons who tried to unsettle the settled matters, which only clog the work of the court impeding it in considering genuine grievances within time in the following words: (SCC p. 154, para 2)



“2. ... A person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal.”

13. The High Court erred in placing absolute reliance on *Dev Dutt* [*Dev Dutt v. Union of India*, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] and *Sukhdev* [*Sukhdev Singh v. Union of India*, (2013) 9 SCC 566 : (2014) 1 SCC (L&S) 279] without noticing the fact situation of the respondents. In *Union of India v. Bahadur Singh* [*Union of India v. Bahadur Singh*, (2006) 1 SCC 368 : 2006 SCC (L&S) 959] , it was observed: (*Bahadur Singh case* [*Union of India v. Bahadur Singh*, (2006) 1 SCC 368 : 2006 SCC (L&S) 959] , SCC p. 373, para 9)



“9. The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. ...”

16. In the facts and circumstances of the present case, any direction to consider retrospective promotion of the respondents at such a belated passage of time of over 17 to 20 years, would virtually bring a tsunami in the service resulting in administrative chaos quite apart from the financial implications for the Government. The order of the High Court is therefore held to be unsustainable and is set aside.”

Having regard to the judgment of the apex court and the facts in hand which are squarely covered by the judgment of the Apex Court in the case of Chaman Ram this Court is not inclined to interfere in the matter or pass any direction in favour of the petitioner in light of the law laid down by the Apex Court in the said judgment.



The writ petition is dismissed.

(Madhuresh Prasad, J)

SNkumar/-

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