

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.313 of 2018

In

Civil Writ Jurisdiction Case No.84 of 2016

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

... .. Appellant/s

Versus

1. L I C Of India, Through The Chairman
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

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Appearance :

For the Appellant/s	:	Mr. Sanjeev Kumar Mishra, Advocate Ms. Neha Gupta, Advocate
For the Respondent/s	:	Mr. Abhimanyu Vatsa, Advocate Ms. Priti Jaiswal, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-06-2019

Heard learned counsel for the appellant.

The principal argument advanced by the learned counsel is that the ratio of the decision in the case of **Dev Dutta Vs. Union of India A.I.R. 2008 SC 2513** had not been correctly



appreciated by the learned Single Judge and, therefore, the denial of the relief in spite of the fact that the entries had not been communicated to the appellant vitiates the judgment.

We have given our thoughtful consideration to the same, but apart from the aforesaid finding recorded by the learned single Judge, it had also been recorded that a reasoned and speaking order was passed by the Executive Director, Personnel who has also recorded the entire assessment already made with regard to the entries awarded to the appellant which has neither been challenged on facts nor the rules applied have been questioned.

In order to appreciate this second part of the finding, we extract the following lines from the impugned judgment:-

“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.”

The aforesaid finding is clearly based on the facts recorded in the reasoned order passed by the Executive Director on 15th of January, 2015. The same is also extracted hereinunder:-

Whereas, Shri Alok Kumar Sinha, S.R. No. 237632 was appointed as Assistant Administrative Officer in Life Insurance Corporation of India in the year 2004. The batch of Assistant Administrative Officers appointed in the year 2004 was considered for promotion to the cadre of Administrative Officer for the first time in the promotion year 2010-2011.

Whereas, promotion within the Class I cadres of the Corporation are effected in terms of the Regulation 7 of the Staff Regulations, 1960. Regulation 7 (1) stipulates that the promotions shall be against vacancies in sanctioned posts. Regulation 7 (2) prescribes the constitution of the committees, which would assist the Competent Appointing Authority (as prescribed in the Regulation 6, read with the Schedule I to the Staff Regulations, 1960). Performance is adjudged by the confidential reports of the officer and the promotion rules/ criteria are applicable equally to all officers within the group considered for selection for promotion. As per Regulation 7(3), the promotions shall be based on



merit, suitability for the higher post and seniority, where merit and suitability might be adjudged by the Confidential Reports (on the performance of the officers concerned in the current cadre) and /or examinations and/or interview.

Whereas, promotions are limited to the number of vacancies in the given cadre and the basis for promotion to a particular cadre is relative merit, suitability as adjudged by the Confidential Report and seniority in the feeder cadre. Since promotions are based on selection of relatively meritorious officers limited to available vacancies, there are chances that officers who could not be promoted, possess satisfactory work record, but on relative merit of work record, do not figure in the promotion list within the given vacancies.

In the year 2010-11 as well as in the subsequent years, the Assisting Committee constituted for promotions, did not recommend Shri Alok Kumar Sinha for promotion on the basis of the criteria of relative merits, suitability and seniority.

Whereas, Shri Alok Kumar Sinha filed Writ Petition No. 21066 of 2013 before the High Court of Patna against his non-promotion which was disposed of by the Hon'ble High Court of Patna by its Order dated 22.08.2014 with liberty to the petitioner to file a fresh representation before the respondents raising his grievances, which would be disposed of by the respondents by speaking order, on its own merits.

Whereas, honouring the decision of the Hon'ble High Court, I have considered the representation dated 29.12.2014 of Shri Alok Kumar Sinha with regard to his claim for promotion with effect from the year 2010-11 onwards.

Whereas, Promotions to the cadre of Administrative Officer are effected on Zonal basis. In the years 2010, 2011 and 2012 the petitioner was working in the North Central Zone of the Corporation and in 2013, was under East Central Zone. As per the



numeral rating method of Development Oriented Performance Appraisal (DOPA), the petitioner had obtained total marks of 45.90, 55, 53, and 58.89 respectively during the promotion round of 2010, 2011, 2012 and 2013 respectively. The marks obtained by the last selected candidate in the main round from NCZ during 2010, 2011 and 2012 were 59.70, 59.90 and 60 respectively. During the supplementary round of promotions, the marks obtained by the last selected candidate of NCZ were 59.40, 59.50 and 59.30 respectively. In the year 2013, the marks obtained by the petitioner was 58.89, whereas the marks obtained by the last candidate in the main round of promotions was 59.85 and in the supplementary round was 59.78 in the East Central Zone. The marks obtained by the petitioner in the promotion years 2012-13 and 2013-14 are inclusive of the marks obtained for his seniority. Thus, the selection of the petitioner for promotion was not possible in the above years. Detailed summary of marks obtained by the petitioner and the last selected candidate in the Main Round and Supplementary Round of promotions for the promotion years 2010-11, 2011-12, 2012-13 and 2013-14 is appended below:-

Year	Petitioner working in the ZONE	Marks obtained by last selected candidate in the main round	Marks obtained by last selected candidate in the supplementary round	Marks obtained by Shri Alok Kumar Sinha
2010-11	NCZ	59.70	59.40	45.90
2011-12	NCZ	59.90	59.50	55
2012-13	NCZ	60	59.30	53
2013-14	ECZ	59.85	59.78	58.89

Whereas, the petitioner made representation to the Corporation for consideration for promotion to the cadre of Administrative Officer in the years 2010, 2011, 2012 and 2013. Representation against non-promotion forms the basis for consideration for promotion in the Supplementary round of



Promotions. In the Supplementary Round of Promotions, the Assisting Committee considers all the Officers who have represented against non-promotion and recommends to the Appointing Authority, the officers found suitable for promotion based on the criteria of merit, suitability and seniority as per Regulation 7(3). Based on the representation of the petitioner his case for promotion was also considered by the Competent Authority based on the criteria as above, but could not be acceded to since the marks obtained by the petitioner were on lower side as cited above.

Whereas, when promotion is based on selection of relatively meritorious officers limited to available vacancies, there are chances that an officer may possess satisfactory work record, but, does not figure in the promotion list within the given vacancies because of relative merit of work record. Non-promotion to higher cadre constitutes neither a penalty nor an adverse reflection on the capability or competence of the officer. Hence, the reasons of non-promotion are not communicated to the employees.

Whereas, communication of adverse entries in respect of confidential reports in the Corporation is governed by Circular Ref:Per.Admn./ZD/2 dated 10.10.1991 which lays down that adverse remarks are to be communicated only when the rating falls below 'D' (Below Average). Since the rating of the petitioner was never below "D" (Below Average), the provision does not apply in his case.

Whereas, the petitioner has contended that he was unaware about the bench marks of confidential report which were the relevant factors on the basis of which promotion has been granted to the persons who were appointed along with him or junior to him. Since, promotions are based on selection of relatively meritorious officers limited to available vacancies, there are no bench marks of confidential report to grant promotion.

Whereas, the petitioner has prayed for grant of



promotion to him with retrospective effect from the year 2010. I have perused the relevant Confidential Reports of Shri Alok Kumar Sinha in the light of his representation dated 29.12.2014 and after considering the entire facts on record and circumstances afresh, I do not find it appropriate to interfere with the recommendations of the Assisting Committees constituted for promotion to the cadre of Administrative Officer in the years 2010, 2011, 2012 and 2013 in the Main Round and Supplementary Round of Promotions and the decision taken by the Appointing Authority in the respective years.

I have also noted that Shri Alok Kumar Sinha has been promoted in the year 2014 to the cadre of Administrative Officer on the criteria of merit, suitability and seniority by obtaining 60 marks as per the numerical rating method of Development Oriented Performance Appraisal (DOPA).

NOW, THEREFORE, I order that the representation dated 29.12.2014 preferred by Shri Alok Kumar Sinha (S.R. No. 237632) be and is hereby rejected and disposed of.

Dated at Mumbai this the 15th Day of January, 2015.”

Reference be had to the judgment in the case of **Anil Kumar vs. Union of India and Ors.** reported in **(2019) 16 SCC 146.**

In the aforesaid peculiar facts of the case, even if we assume that the arguments advanced on the strength of the decision in the case of Dev Datt (supra) can be applied due to non-communication of the entries, yet on merits, we find that there is a complete absence of challenge to the entries awarded



and the assessment made on merits which stands recorded in the order quoted above.

Consequently, no prejudice has been caused to the appellant and substantial justice has been done. We therefore see no reason to exercise our discretion under Article 226 of the Constitution of India to interfere in the matter.

The appeal is consigned to records.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

AFR/NAFR	NAFR
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