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

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Date of decision: 03rd December, 2021

+ **W.P.(C) 5776/2012**

R.N.BHAT

..... Petitioner

Through: **Mr.T.N. Razdan, Adv. for Ms.Smriti Razdan, Adv.**

versus

LIFE INSURANCE CORPORATION OF INDIA THROUGH: ITS CHAIRMAN

..... Respondent

Through: **Mr. Kamal Mehta, Adv.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. This petition impugns the orders dated 14th June, 2011 and 12th April, 2012. By the first order, the promotion of the petitioner to the post of Assistant Divisional Manager has come to be cancelled on account of his alleged failure to join on the promoted post. The order of 12th April, 2012 disposes of an appeal which was made by the petitioner relating to various service benefits as well as his prayer for being granted notional promotion to the post of Administrative Officer and Assistant Divisional Manager.

2. It becomes pertinent to recall that the petitioner was subjected to a disciplinary enquiry with respect to certain acts of misconduct alleged to have been committed. On culmination of that enquiry the Disciplinary

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Authority passed the penalty of bringing him down in the pay scale by three steps. The aforesaid order was assailed by the petitioner by way of Writ Petition No. 3009/1998. That petition came to be allowed on 12th April, 2010 with the following operative directions:-

“27. The petition therefore succeeds. The order of the Disciplinary Authority as well as of the Appellate Authority of the respondent LIC is set aside and quashed. The respondent LIC is directed to within six weeks hereof release to the petitioner all benefits of which the petitioner has been deprived owing to the penalty imposed by the Disciplinary Authority the order whereof has been quashed. The petitioner is also awarded costs of Rs.10,000/- of these proceedings.”

3. Undisputedly the aforesaid judgment attained finality consequent to the dismissal of the appeal that was taken by the respondent Corporation. As is manifest from the operative directions which were framed by the learned Judge, the order of punishment came to be quashed and the respondent Corporation was directed to release to the petitioner all benefits of which he had been deprived owing to the imposition of penalty by the Disciplinary Authority. Since according to the petitioner the aforesaid judgement was not complied with, he was constrained to institute proceedings in contempt, which came to be registered as Contempt Case (C) 608/2010. That petition was ultimately disposed of by a learned Judge on 16th March, 2012. Having noticed the disputes which were raised and the claims which according to the petitioner flowing from the judgment of the Court had not been provided, the learned Judge in the contempt proceedings recorded the following insofar as his claim for arrears of salary is concerned:-

“So far as the petitioner’s grievance with regard to the non-payment of arrears on account of the petitioners back dated promotion to the post of AAO on 31.08.1995 and to the post of AO on 30.04.2003 is concerned, the same

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appears to be justified. The Court had directed the respondent LIC to release to the petitioner within six weeks, all benefits of which the petitioner had been deprived and the penalty imposed by the disciplinary committee had been quashed.”

4. The aforesaid directions were entered in light of the grievance of the petitioner that although he had been granted notional promotion to the post of Assistant Administrative Officer w.e.f 31st August, 1995 and to the post of Administrative Officer w.e.f 30th April, 2003, the arrears of pay and other emoluments had not been released. It was in the aforesaid backdrop that the learned Judge directed the respondent Corporation to release those arrears within a period of six weeks. The learned Judge further observed that the difference of pay between the posts to which the petitioner was ultimately promoted, albeit on a notional basis, could not be denied on the specious ground of the petitioner having not served on those posts. The learned Judge took note of the fact that the disability of the petitioner to actually serve and discharge duties attached to those posts was on account of the fact that the order of punishment operated then and it was thus on account of an act of the respondents themselves. Insofar as the issue of promotion of the petitioner to the post of Assistant Divisional Manager is concerned, the learned Judge in contempt proceedings while noting that the order of promotion had come to be cancelled, also took into account the fact that an appeal in respect of the aforesaid cancellation was pending consideration before the Chairman and thus left it open to the competent authority to decide the same. It was in the aforesaid backdrop that the petitioner then pursued the appeal before the Chairman and which has culminated in the passing of the impugned order of 12th April, 2012.

5. In order to complete the narration of facts, it becomes pertinent to

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note that when this writ petition was taken up for hearing on 10th November, 2021, after hearing learned counsels for parties at some length, the Court passed the following order:-

“Having heard learned counsel for parties the Court notes that one of the issues which arises for consideration is whether the candidature of the petitioner for promotion as Administrative Officer was rejected by the Assisting Committee in 2002 on merits or on account of the fact that the penalties which had been imposed upon the petitioner were subsisting on that date.

Mr.Mehta, learned counsel for the respondent – LIC, prays and is granted three weeks’ time to file a short affidavit placing on record the proceedings of the Assisting Committee in respect of the above.

List on 03.12.2021.”

6. At that stage it was not clear as to whether the promotion of the petitioner to the post of Administrative Officer with effect from the year 2002, as claimed, was on the basis of a consideration of his candidature on merits or merely on account of the fact that the original order of punishment operated at that time. In view of the aforesaid question which arose, Mr. Kamal Mehta, learned counsel appearing for the respondents, was granted time to file a short affidavit. Pursuant to the liberty so granted, the respondent has placed its affidavit on the record. In that affidavit it is averred that insofar as the question of notional promotion of the petitioner on the post of Administrative Officer w.e.f 13th April, 2002, as claimed by the petitioner is concerned, the same was considered by the Assisting Committee on merits and it was found that the petitioner was unsuitable for notional promotion. The affidavit further asserts that the claim for promotion on that post was ultimately accepted with effect from 30th August 2003. Similarly, insofar as the claim of the petitioner for promotion

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as Assistant Divisional Manager is concerned, the Court takes note of the contention of the petitioner that the aforesaid promotion was liable to be accorded from the year 2009 and not from the year 2011. Even in respect of this promotion, the stand taken by the respondent is essentially identical to that expressed on the issue of notional promotion on the post of Administrative Officer. It becomes pertinent to note that in the appeal, the petitioner had essentially sought redressal of the following grievances as were noted by the Chairman in his order:-

- “1. To consider his promotion as Administrative Officer from 2002 instead of 2003,
2. To release his salary of promoted cadre from the date of his promotion under sealed cover and
3. To reconsider his promotion and posting as Assistant Divisional Manager due to its cancellation for failure to join duty due to his health problem.”

7. Dealing with the same, insofar as the claim of the petitioner for payment of arrears of salary is concerned, the Court is constrained to note that the Appellate Authority has failed to assign or record any reasons which may sustain the action of the respondents in refusing to release arrears of salary either in terms of the original judgment delivered by the Court or in light of the observations entered by the learned Judge while disposing of the contempt petition.

8. The Court also takes into consideration the fact that the denial of arrears of pay for a period of notional promotion is sought to be explained in terms of a Circular setting forth the Sealed Cover Procedure which is liable to be followed by the Corporation and is dated 18th May, 2005. The relevant part of that circular which stands extracted in the impugned order is reproduced herein below:-

"Whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into account consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. There may be cases where the proceedings, whether disciplinary or criminal, are for example delayed at the instance of the employee or. The clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified."

As would be evident and manifest, the reliance placed on the Circular is wholly misconceived since the claim of the petitioner for grant of consequential benefits must necessarily be recognised to flow from the original judgment which was rendered by this Court on his writ petition as well as the decision on the contempt petition No.608 /2010. In terms of the judgment that was rendered inter partes and the consequential relief granted to the petitioner, no discretion vested in the respondent to independently assess or evaluate whether the petitioner would be entitled to back wages. The right of the petitioner to seek arrears of pay and other emoluments as a result of his notional promotion rested and flows from the judgment rendered in the writ petition as well as the contempt petition. That right cannot be possibly be denied or refused on the strength of an internal circular.

9. Insofar as the claim of notional promotion to the post of Administrative Officer and Assistant Divisional Manager is concerned, as noted above, the petitioner asserted that he was entitled to promotion on those posts w.e.f 30th April, 2002 and 2009 respectively. The respondent, insofar as the claim for notional promotion on the post of Administrative

Officer is concerned, has merely held that the petitioner was found unsuitable and unfit by the Assisting Committee in the year 2002 and was ultimately upon due consideration accorded promotion w.e.f 30th April, 2003. The respondents have failed to spell out any reasons which weighed with the Assisting Committee in finding the petitioner unsuitable for promotion to that post with effect from 2002. The impugned order deals with this claim as under:-

“We have assessed Mr. R N Bhatt on the criteria of merit, suitability and seniority, as provided under Regulation 7 (3) of the Life Insurance Corporation of India (Staff) Regulations, 1960, based upon the Confidential Reports in the cadre of "Higher Grade Assistant" (which is the feeder cadre for promotion/entry into the cadre of officer). Shri. R.N. Bhatt was promoted to the cadre of "Assistant Administrative Officer" with notional seniority w.e.f. 28th August: 1995. As such, he came into the zone of consideration for promotion to the cadre of "Administrative Officer" for the first time in the year 2002.

However, the Committee found him suitable for promotion to the cadre of "Administrative Officer" with notional seniority from the year 2003, based on the criteria of merit, suitability and seniority, as provided under Regulation 7 (3) of the Life Insurance Corporation of India (Staff) Regulations, 1960.

The cadre of "Administrative Officer" is the feeder cadre for promotion/entry into the cadre of Manager. The next promotion to the cadre of "Assistant Divisional Manager" thus falls due in the Promotion Year 2010. However, on assessment of Shri. R N Bhatt, on the criteria of merit, suitability, and seniority, as provided under Regulation 7 (3) of the Life Insurance Corporation of India (Staff) Regulations, 1960, based upon the Confidential Reports in the cadre of "Higher Grade Assistant", the Committee has not found him eligible for promotion to the cadre of "Assistant Divisional Manager" in the Promotion Year 2010.”

It becomes pertinent to note that despite opportunities having been accorded to the respondent to explain the backdrop in which the claim for notional promotion from the year 2002 has been rejected, no material has been placed by the respondent in support of the decision ultimately taken. The

Court has not been apprised of any material that may have been taken into consideration by the Assisting Committee in the year 2002 on the strength of which it came to hold that the petitioner was disentitled to be accorded notional promotion from that year. The respondents have also not explained or disclosed the change of circumstance between the years 2002 and 2003 which may have explained or sustained the denial of notional promotion as claimed by the petitioner. It is not the case of the respondents that the confidential record as was available underwent a drastic reformation or transformation between the years 2002 and 2003 resulting in the petitioner becoming entitled to be promoted in the latter year.

10. Similarly, insofar as the case of the petitioner being notionally promoted to the post of Assistant Divisional Manager is concerned, the position remains the same namely an abject failure on the part of the respondent to explain his non-promotion in the year 2010 and ultimately being accorded promotion in the year 2011. Again the respondents have failed to record any cogent reasons to reject the claim of the petitioner in this respect. Even the affidavit that has been subsequently filed in these proceedings, fails to allude to any justifiable reason why the claim of the petitioner did not merit consideration or acceptance with effect from 2010 at least. The respondents have failed to disclose the reasons that may have been taken into consideration by the Assisting Committee in not recommending the promotion of the petitioner in 2010.

11. That only leaves the Court to consider the validity of the action of the respondents in cancelling the promotion of the petitioner on the post of Assistant Divisional Manager. The facts as disclosed and existing on the

record establish that the petitioner initially did seek a review of his place of posting as an Assistant Divisional Manager citing various family constraints and difficulties. However and undisputedly, the petitioner did make an attempt to join the place of posting at Jhansi as is evident from the contents of his representation dated 30th May, 2011. According to the petitioner, he suffered a heart attack which resulted in him being rushed to hospital. It is also his case that he had to undergo an emergency medical procedure prior to him commencing his journey to Jhansi and that the aforesaid facts were duly brought to the notice of the respondents by way of the representation noted hereinabove. While it is not the case of the respondents that this representation dated 30th May, 2011 was not mailed to or received by the competent authority, the decision to cancel the promotion of the petitioner on the post of Assistant Divisional Manager is based on a notice which was issued and which required all promotees to join their posts by 9th June, 2011. It is further asserted by the respondent that as many as 138 promotees failed to join the post of Assistant Divisional Manager consequent to the orders of promotion which were made. It is stated that the promotion of all those 138 officers, which included the petitioner herein, were ultimately cancelled on 14th June, 2011.

12. However, that clearly does not detract from the fact that prior to the issuance of the notice placing promotees who had failed to join of the likelihood of their promotion being cancelled, was preceded by the representation that was made by the petitioner. The respondent Corporation was duty-bound, as an organ of the State and one which would clearly answer the description of an authority falling within the ambit of Article 12

of the Constitution, to act fairly with its employees. The factum of the sudden medical condition which befell the petitioner is not disputed. Irrespective of the initial disinclination or unwillingness to join at Jhansi, the petitioner had referred to certain unforeseen incidents which occurred and rendered him unable to undertake the journey to Jhansi. It is not the case of the respondents that this explanation which was tendered was sheer falsehood. In the opinion of this Court, it was incumbent upon the respondents to consider whether the circumstance which befell the petitioner would have justified a further opportunity being afforded to him to join the promotional post. The unforeseen medical procedure which the petitioner had to undergo while preparing to join at Jhansi was a circumstance which clearly required the respondents to approach the issue with at least a degree of empathy. This more so bearing in mind the long period of service that had been rendered by the petitioner. All that the respondents have chosen to do is essentially place the petitioner alongwith 137 others who had failed to join without bestowing any consideration upon whether circumstances and reasons for not joining were identical. In light of the above backdrop, this Court is of the considered view that the act of cancellation of promotion was clearly arbitrary and illegal.

13. On an overall conspectus of the aforesaid conclusions, this writ petition must consequently be allowed. The impugned orders of 14th June, 2011 insofar as it relates to the petitioner and 12th April, 2012 are quashed and set aside. The petitioner is held entitled to arrears of pay and other emoluments connected with the promotional post in terms of the judgment of the Court dated 12th April, 2010 and the order dated 16th August, 2011 passed on the contempt petition. The respondent is hereby held obliged to

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also re-consider the claim of the petitioner for being accorded notional promotion to the post of Administrative Officer and Assistant Divisional Manager w.e.f 30th April, 2002 and 2010 respectively. The respondent shall also pass a fresh decision with respect to the placement of the petitioner on the promoted post of Administrative Divisional Manager bearing in mind the facts which have been alluded to and mentioned in the representation dated 30th May, 2011. A fresh decision shall be taken and communicated by the respondent in respect of the above with expedition and in any case within a period of one month from today.

DECEMBER 3, 2021
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YASHWANT VARMA, J.



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