

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P.A. 17497 Of 2013

Anil Kumar Rai

Versus

Ircon International Limited & Ors.

For the Petitioner : Ms. Noelle Banerjee, Adv.
Ms. Pritha Ghosh, Adv.

For the Respondents : Mr. Arnab Chakraborty, Adv.
Mrs. Pragya Bhowmick, Adv.

Heard On : 21.04.2022

Judgment On : 21.04.2022

Saugata Bhattacharyya, J.:

The writ petition pertains to challenge being thrown to the promotional process resorted to by Ircon International Limited (for short “Ircon”) being the principal respondent from the post of Joint General Manager to the Post of Additional General Manager. Since in the writ petition chiefly the process of promotion which was adopted by Ircon in the year 2012 is challenged by the

petitioner this Court restricts itself to the process of promotion adopted by Ircon in the year 2012 and not beyond that.

Ms. Noelle Banerjee, learned advocate, representing the petitioner has submitted that at the material point of time petitioner was working as Joint General Manager of Ircon having commendable service record and as per his personal assessment he was a suitable candidate for being promoted from the post of Joint General Manager to the post of Additional General Manager. He offered his candidature for being appraised along with similarly circumstanced other candidates for being promoted to the post of Additional General Manager. Vide letter dated 14th June, 2012 he was asked to participate in the selection process which was scheduled to be conducted by the DPC. Ultimately, the said DPC examined the candidates including the petitioner claiming promotion to the post of Additional General Manager. It has been argued on behalf of the petitioner that in spite of being a suitable candidate his right to be promoted was denied by the Ircon and in the event of fair interview he would have been found to be suitable candidate for being promoted to the post of Additional General Manager. On placing reliance on the consolidated score sheet prepared by the four members of the DPC it has been argued on behalf of the petitioner that one of the members was inimical to the petitioner while petitioner was posted in Kashmir for construction of most difficult railway track since petitioner broke the chain of some corrupt officers and their nexus between the contractors and said officers were exposed at the instance of the petitioner; he was not in the good book of the said member of DPC which resulted in

awarding of lower marks than other candidates. Taking cue from the incident as narrated in paragraph 12 of the writ petition petitioner has made out a case of personal bias against one of the four members of the DPC being respondent no. 3 and it has been submitted that petitioner became the victim of the situation due to his posting in Kashmir as narrated in paragraph 12 of the writ petition, as a result whereof, he was not selected for the promotion to the post of Additional General Manager.

In support of such submission and on the point of personal bias on behalf of the petitioner following Judgments have been relied upon.

- (i) AIR 2002 SC 678, Paragraph 6
- (ii) 1987 (4) SCC page 611 paragraph 15
- (iii) (1976) 3SCC 585 paragraph 11.

Mr. Arnab Chakraborty, learned advocate, appears on behalf of Ircon and he submits that following the extant rules the DPC was conducted on 5th July, 2012 consisting of four members and on strict compliance of the norms marks were awarded in favour of the participants and the consolidated score sheet has been annexed, at page 8 of the supplementary affidavit, affirmed on behalf of the respondents, such supplementary affidavit was affirmed on 26th February, 2016. Upon drawing notice of this Court to page 8 of the said supplementary affidavit it has been submitted on behalf of the respondents that Anil Kumar Rai being the petitioner, was awarded total 57 marks and was found unfit and on perusal of such consolidated score sheet it further appears that there was a candidate named V.K. Jayashankar who was awarded 83 and

was found fit to be promoted to the post of Additional General Manager. It has further been submitted on placing reliance on the said consolidated score sheet that there is no irregularity in selecting other candidate for the post on promotion since petitioner obtained marks which was lower than the selected candidate. It has also been submitted that there was no question of bias as argued on behalf of the petitioner by the respondent no. 3 since there were four members in the DPC and unanimously marks were awarded by the said four members.

This Court has heard learned advocates representing the parties and also perused the relevant documents and pleadings available on record.

Since Ms. Noelle Banerjee, learned advocate, representing the petitioner has emphatically made submission on the point of personal bias upon pointing finger to the respondent no. 3 and also upon placing reliance on the averments made in paragraph 12 of the writ petition this Court in order to satisfy its conscience thought it fit to direct the Ircon to produce the relevant records relating to the process of promotion adopted in 2012. Accordingly, entire records relating to the promotion of 2012 from the post of Joint General Manager to the post of Additional General Manager were produced before this Court and at the same time it was submitted on behalf of the respondents that there was no system of awarding individual marks by the four members of the DPC rather unanimously marks were allotted in favour of the participants by those four members. It was in the mind of this Court that had there been system of awarding marks individually by the members of DPC then it could

have been elicited from awarding such marks whether there was any personal bias on the part of any member of the DPC.

However, on production of records and perusal of the same it appears that there is no such system of awarding individual marks therefore the Court is not in a position to ascertain that what was the objective consideration in assessing the performance of the participants in DPC by the four respective members of the DPC. This Court on perusal of the records produced before this Court relating to the process of promotion of 2012 directed the Ircon to file an affidavit indicating the procedure followed by the members of the DPC in awarding marks. Pursuant thereto, an affidavit has been filed on behalf of the Ircon affirmed on 18th April, 2022 where in paragraph 3 and 4 the system followed by the members of the DPC for awarding marks has been disclosed. It has been stated in the said affidavit that for considering the promotion of the candidates from the rank of DJM and above in DPC, 2012 there were four members including one external expert and there was no practice of assessment by each members of the selection committee separately and as per prevalent practice of DPC members made unanimous decision and filled single evaluation sheet which was signed by all the members. It has further been stated therein that this practice was uniformly followed for all promotional cases.

In addition thereto learned advocate representing the Ircon has also relied upon paragraph 15 of the Judgment of the Apex Court reported in (1976)

3 SCC 585 and paragraph 11 of the same Judgment has also relied upon on behalf of the petitioner.

On consideration of averments made in paragraph 12 of the writ petition as well as three aforesaid judgments relied upon on behalf of the petitioner this Court does not find any specific case of personal bias has been made out on behalf of the petitioner. Merely making averments in the writ petition that while the petitioner was posted in Kashmir for construction of railway track he raised objection and unearthed the chain of corruption does not involve the respondent no. 3 which can lead to a situation unleashing probability wherein the said respondent no. 3 being member of DPC may award lower marks than the marks which were required to be awarded in favour of the petitioner. In addition thereto apart from respondent no. 3 there were three other members of the DPC. Therefore appreciation of performance of the petitioner at the time of DPC was not solely dependent upon the individual assessment of the respondent no. 3.

In above context, facts narrated in paragraph 12 of the writ petition does not impress upon this Court to come to a finding that there was element of personal bias. In view of the proposition of law enunciated by the Hon'ble Apex Court in the Judgment reported in (2020) 3 SCC 86 (***Rajneesh Khajuria –vs- Wockhardt limited & Anr.***) specifically in paragraphs 16 to 18 it has been succinctly held that action taken must, therefore, be proved to have been mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts

and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand. This Court finds it fit to quote paragraph 16 of **Rajneesh Khajuria (supra)** below:

16. The act of transfer can be unfair labour practice if the transfer is actuated by mala fide. The allegations of mala fides have two facets—one malice in law and the other being malice in fact. The challenge to the transfer is based upon malice in fact as it is an action taken by the employer on account of two officers present in Conference. In a judgment, in State of Bihar V. P.P. Sharma, this Court held that mala fide means want of good faith. Personal bias, grudge, oblique or improper motive or ulterior purpose. The plea of mala fides involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. As far as second aspect is concerned, there is a power of transfer vested in the employer in terms of letter of appointment. Even in terms of the provisions of the Act, the transfer by itself cannot be said to be an Act of unfair labour practice unless it is actuated by mala fides. Therefore, to sustain a plea of mala fides, there has to be an element of personal bias or an oblique motive. This Court held as under: (SCC pp. 260 & 264-65, paras 50-51 & 59)

“50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An Act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of this statute, or the bias of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fides involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made mala fide for such consideration. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such consideration or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without

there being reasonable relation to the purpose of the exercise of statutory power. Malice in law is not established from the omission to consider some documents said to be relevant to the accused. Equally reporting the commission of a crime to the Station House Officer, cannot be held to be a colourable exercise of power with bad faith or fraud on power. It may be honest and bona fide exercise of power. There are no grounds made out or shown to us that the first information report was not lodged in good faith. State of Haryana v. Bhajan Lal is an authority for the proposition that existence of deep seated political vendetta is not a ground to quash the FIR. Therein despite the attempt by the respondent to prove by affidavit evidence corroborated by documents of the mala fides and even on facts as alleged no offence was committed, this Court declined to go into those allegations and relegated the dispute for investigation. Unhesitatingly, I hold that the findings of the High Court that FIR gets vitiated by the mala fides of the Administrator and the charge-sheet are the results of the mala fides of the informant or investigator, to say the least, is fantastic and obvious gross error of law.”

It is well settled principle that the judgment is an authority on what Court decides and not what can be deducted therefrom. The judgment alluded above as relied upon on behalf of the petitioner do not come in aid of the

petitioner since in different set of facts those pronouncements were made by the Hon'ble Apex Court.

In view of the discussion made by this Court above it appears that the law enunciated by the Hon'ble Apex Court in ***Rajneesh Khajuria*** (supra) is attracted.

It does not appear that it is a case of personal bias which resulted in awarding less marks to the petitioner at the time of holding DPC for promoting the petitioner from the post of Joint General Manager to the Additional General Manager.

On behalf of the petitioner effort has been made to impress upon this Court with regard to the promotional process carried out by the Ircon in subsequent years since to that extent supplementary affidavit has been affirmed by the petitioner. However, considering the prayer couched in the writ petition this Court does not find it fit to go beyond the promotional process resorted to by the Ircon in 2012.

In the above conspectus this Court does not find any merit in the writ petition and accordingly the same stands dismissed. However, there shall be no order as to costs.

However, this order shall not preclude the petitioner to offer his candidature before the future DPC for the purpose of appraising his candidature for being promoted from the post of Joint General Manager to the post of Additional General Manager. If such application is made, it is expected

that the concerned authority of the Ircon shall appraise the candidature of the petitioner upon strictly observing the extant rules.

The copies of the records which were filed on behalf of the Ircon on 6th April, 2022 are returned to the learned advocate representing the Ircon.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)

BD