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W.P.No. 8666 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.09.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No. 8666 of 2021

A.Chengalvarayan

..Petitioner

Vs.

1. National Insurance Company Ltd,
Rep. by the Chairman-cum-Managing Director,
Head Office, No.3, Middleton Street,
Kolkata – 700 071.

2. The General Manager (Personnel)
National Insurance Company Ltd.,
Head Office,
No.3, Middleton Street,
Kolkata – 700 071.

3. The Deputy General Manager,
National Insurance Co.Ltd.,
Chennai Regional Office,
No.190, Anna Salai,
Chennai – 600 006.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for Writ of Mandamus, to directing the respondent to promote the petitioner with effect from 12.09.2018 to Scale III as per the order in Ref. HO/Pers. MPL Deptt./Prom./CNRO/18-19 dated 12.09.2018 issued by the second respondent along with all attendant benefits.



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For Petitioner : Mr.Navin Suresh
for Richardson Wilson
For Respondents : Mr.Anand Gopalan
for M/s. T.S.Gopalan & Co.

ORDER

The prayer sought for herein is for a writ of mandamus to direct the respondent to promote the petitioner with effect from 12.09.2018 to Scale III as per the order in Ref. HO/Pers. MPL Deptt./Prom./CNRO/18-19 dated 12.09.2018 issued by the second respondent along with all attendant benefits.

2. The petitioner was working as a Branch Manager at the respondent Company viz., National Insurance Company Limited, George Town Branch, Chennai. His next promotion avenue is Senior Branch Manager.

3. Having considered the seniority and other aspects of the petitioner's case, the promotion committee decided to give promotion to the petitioner to the post of Senior Branch Manager and passed the order on 12.09.2018, under which, the petitioner was promoted as Senior



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Branch Manager and posted at Honavar Branch at Karnataka. In the said order, joining time was given upto September i.e., 28.09.2018. In the said order in Clause (6), the following has been stated:

“6. Non-acceptance of this promotion-cum-posting for any reason shall be entered in your Confidential Report and such entry shall be taken into account when considering your case for promotion for subsequent one year.”

4. Despite the said promotion and posting order given to the petitioner dated 12.09.2018 directing him to join in the promoted post at Honavar Branch, Karnataka on or before 28.09.2018, the petitioner has not chosen to join, of-course on the health reason of one of the family members of the petitioner, as the petitioner at that time was required to be at Chennai to give continuous treatment to one of the family members, who was suffered with a disease, which is one of the major diseases cataloged under Clause (8) of the Transfer & Mobility Policy for Class -I Officers of the respondent Insurance Company.

5. Since the petitioner did not join in the promoted post at the place, where he has been given posting on or before the cut off date, the respondent Insurance Company by 05.10.2018 has passed an order under



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the heading “Deemed Refusal of Promotion”, wherein the following has been stated:

*“Please refer to HO letter under Ref. **HO/Pers.MPL Deptt./Prom./CNRO/18-19, dated 12th September, 2018,** offering you promotion to the cadre of Deputy Manager (Scale -III) with posting as Senior Branch Manager at Honavar Branch.*

In accordance with the said promotion letter, you were advised to take charge of the post in the promoted cadre at an early date on receipt of the promotion-cum-posting letter, but not later than 28th September, 2018.

*In view of the facts that you did not join at your new place of posting(Honavar Branch) in the promoted cadre, we are accordingly treating your non compliance of above orders as **DEEMED REFUSAL** of order of promotion and the said offer of promotion vide letter ref. **HO/Pers.MPL Deptt./Prom./CNRO/18-19, dated 12th September, 2018** stands withdrawn.*

In this connection, we would like to draw your attention to para – 6 of our aforesaid letter which reads as under:-

“Non-acceptance of this promotion-cum-posting for any reason shall be entered in your Confidential Report and such entry shall be taken into account when considering your case for promotion for subsequent one year.”



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6. Having accepted the said proceedings dated 05.10.2018, as the said proceedings has not been agitated in the manner known to law, the petitioner had been continuing in the existing place i.e., at Chennai as a Branch Manager.

7. Subsequently, in the year 2020 the promotion Committee again considered the case of the petitioner and this time also the petitioner having been selected for the purpose of promotion to the post of Senior Branch Manager and has been promoted as such and had been placed at Sowcarpet Branch in Chennai, as at that time there was a Senior Branch Manager post vacant at the said Branch. This order was passed on 19.09.2020, the similar conditions as that of the earlier order dated 12.09.2018 has been incorporated in this order also, here the last date for joining in the promoted post was 16.10.2020. Having accepted this proceedings dated 19.09.2020, the petitioner joined before the cut off date in the promoted post at the posting place i.e., at Sowcarpet Branch and had been working.

8. In this context, it is now the grievance of the petitioner that the petitioner since was eligible to be promoted as Senior Branch Manager



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with effect from 12.09.2018 and in fact the promotion was given to him, where due to personal reasons because of the health reason of one of the family members of the petitioner, the petitioner could not join in the promoted post and therefore, he now wanted to get such promotion, which has now been given by order dated 19.09.2020 only with effect from 19.09.2020 instead, he wants it from 12.09.2018, the date on which actual promotion was given by order dated 12.09.2018.

9. In this regard representations have been given by the petitioner, which have not been considered according to the petitioner by the respondents, therefore, he has approached this Court by filing the present writ petition with the aforesaid prayer.

10. Heard Mr.Navin Suresh, learned counsel appearing for the petitioner, who would submit that, since the petitioner has become eligible to be considered and promoted to the post of Senior Branch Manager in the year 2018 itself, he was promoted and orders have been issued by order dated 12.09.2018 of-course in an out station i.e., Honavar Branch at Karnataka State, where the petitioner did not join due to the health reason of one of the family members, who suffered with a disease,



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which is one of the major diseases under Clause (8) of Transfer & Mobility Police for Class -I Officers of the respondent Company.

11. In order to give continuous treatment, the petitioner was required at Chennai, therefore, he had given representation to the respondent Company to give him the promotion to the post of Senior Branch Manager, however the posting shall be given to him in anyother Branch as Senior Branch Manager in Chennai city itself, when that request has been given, it cannot be treated that the petitioner has refused to take the promotion. Therefore, the very order dated 05.10.2018 passed by the respondents cannot be sustained, he contended.

12. His further ground is that under Clause (8) of Transfer & Mobility Police for Class -I Officers of the respondent organization, the hardship faced by the employees i.e., Class – I Officers due to various disease enumerated therein has to be allevated by retaining them without subjecting them to transfer. The relevant portion of Clause (8) of Transfer & Mobility Police for Class -I Officers of the respondent company reads thus:

“(8) CASE OF HARDSHIP DUE TO MAJOR DISEASES:



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An officer, who himself or whose spouse/any of the dependent children is suffering from any of the thirteen specified major disease i.e., diseases of Malignant cancer, Leprosy, Tuberculosis, Paralysis, Brain Tumor, CABG/Heart valve Replacement/ Angioplasty (Max.1 year), Chronic Kidney disease, AIDS, Mental disease, Total replacement of Joints (exemption – Max 1 year), spinal surgery, Diseases of liver leading to Hepatic failure or transplantation, Thalassemia Major), subject to the satisfaction of the Internal Committee(s) on the basis of documentary evidence to that effect, may not be transferred from one station to another, for the period specified by the said committee, but he/she will continue to be liable to job rotation in terms of Para – 5.

Further, exemption from transfer shall be subject to Company nominated doctor certifying that the officer, his/her spouse or dependent child is suffering from one of the above diseases which requires continuous treatment/follow up treatment necessitating posting of the concerned officer at the existing station. The exemption so granted shall be subject to review every year.”

13. By relying upon this Clause (8), Mr.Navin Suresh, learned counsel appearing for the petitioner would contend that, by invoking this Clause (8), the petitioner would be entitled to get retainment in Chennai



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city itself. As he has achieved the promotion as Senior Branch Manager on 12.09.2018, therefore, in consonance with Clause (8) only the petitioner had given representation after getting 12.09.2018 order to retain him in Chennai in the promoted category of Senior Branch Manager, which ought to have been conferred on the petitioner. However, the respondents treated the period as refusal period on the part of the petitioner and now only they given the promotion with effect from 19.09.2020, therefore the petitioner is entitled to such promotion with effect from 12.09.2018, hence, he seeks for a direction to the respondents to treat him as Senior Branch Manager by giving such promotion with effect from 12.09.2018 atleast as notional promotion and accordingly, his service benefits has to be extended to him, he contended.

14. *Per contra*, Mr.Anand Gopalan, learned Standing Counsel appearing for the respondents would submit that, Clause (6) of the promotion order dated 12.09.2018 has made it clear that non-acceptance of the promotion-cum-posting for any reason shall be entered into in the confidential report of the employee concerned and it shall be taken into account when considering the case of such promotion for subsequent one year. Reiterating the same, after giving such promotion, since the



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petitioner not joined in the promoted post, an order was passed on 05.10.2018, where the non-joining of the petitioner in the promoted post was considered to be a deemed refusal and accordingly, the order has been passed and the offer of promotion has been withdrawn.

15. The learned counsel would further contend that, the said order dated 05.10.2018 has not been questioned by the petitioner and still it holds good. The learned counsel would further submit that subsequently the promotion committee considered once again the case of the petitioner for promotion in the year 2021, for which, the petitioner also participated in the examination conducted by the respondent Corporation for promotion since he did participate in the examination and based on his performance in the examination, his case was considered in the year 2021 and such promotion again was given to the petitioner on 19.09.2020. This time since there was a vacancy in one of the branches in Chennai, he has been accommodated in Chennai i.e., in Sowcarpet Branch. Therefore, all of a sudden now the petitioner cannot turn around and say that he should have been given such promotion with effect from 12.09.2018 unmindful of withdrawal order passed by the respondent on 05.10.2018 by considering the non-joining of the petitioner at the promoted post and



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accordingly the respondent treated it as a deemed refusal, therefore, the learned Standing Counsel appearing for the respondents Corporation would submit that, this writ petition deserves to be dismissed.

16. I have considered the said submission made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

17. As has been rightly pointed by the learned Standing Counsel appearing for the respondents Insurance Company that Clause (6) of the order dated 12.09.2018 is binding both on the petitioner as well as the respondents.

18. Insofar as the said condition is that non-acceptance of the promotion-cum-posting for any reason shall be entered in the confidential report of the employee concerned and that would be taken into account when considering the case for promotion of the said employee in the subsequent one year also.

19. In this context, by invoking Clause (6) subsequent proceedings



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was issued under the heading “Deemed Refusal of Promotion” by order dated 05.10.2018 by the respondents, where they have clearly stated that accordingly treating the non compliance of the petitioner of the orders dated 12.09.2018 as deemed refusal of the order of the promotion, the said order or offer of promotion vide letter dated 12.09.2018 stands withdrawn.

20. Therefore, it has been concluded that the order dated 12.09.2018 stood withdrawn and the said order has never been revived. If at all the petitioner has got grievance against such order, he could have agitated the same by challenging the said order dated 05.10.2018. Mere giving representation after representation to the respondents cannot be treated that order has been challenged and it has been set aside or modified by subsequent proceedings issued by the company or by Court of law as the case may be.

21. Subsequently the further promotion for 2021 was considered based on the procedure to be followed in this regard, wherein examination was conducted as usual and the petitioner also participated in the examination, where he has stated that based on the earlier



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promotion he would not be entitled to get promotion from 2019, therefore, he participated in the said examination for 2021 and without any demur or refusal since the petitioner participated in this promotion process by writing the examination, where he has passed out, based on his performance his case was considered for promotion and such promotion was given to him by order dated 19.09.2020. This time since there was a vacancy in Chennai Branch that posting was given in one of the Chennai Branches and the petitioner has happily accepted the same.

22. However, now by a subsequent plea, the petitioner has come out with this writ petition saying that since he was entitled to get promotion from 12.09.2018, he shall be deemed to have been promoted as Senior Branch Manager with effect from 12.09.2018.

23. In this context, though the petitioner has heavily relied upon Clause (8) of Transfer & Mobility Policy for Class -I Officers of the respondent Company, which has already been quoted herein above, that policy document only is related to transfer of the employees i.e., Class – I employees. If the employees in the Branch Manager category is transferred to any outstation, which is inconvenient to him because of the



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health condition of one of the family members of the petitioner certainly,

Clause (8) can be invoked by the petitioner, here it was promotion under posting. Once a person is given promotion in the promoted post, posting orders would be given depending upon the vacancy available in the organization, therefore, the organization cannot be filled with a promotee in the place, where he works, which is depending upon the vacancy and therefore, this Court cannot go into that aspect in view of the representation claimed to have been given by the petitioner subsequently. Moreover, when the order dated 05.10.2018, where offer of promotion dated 12.09.2018 has been withdrawn and it has been communicated under the heading “deemed refusal of promotion” the said order since has not been questioned and it is still starring on the petitioner, the petitioner has no right to claim the promotion benefit even notionally with effect from 12.09.2018.

24. Apart from that, the petitioner himself participated in the subsequent examination, which is part of the promotion process of the year 2021 and he passed out in the examination, based on his performance only in the examination since he was considered for promotion by the promotion committee and the promotion now has been



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given by order dated 19.09.2020 and he has also pursuant to the same joined in the promoted post, even for that ground also, the petitioner cannot seek for any notional promotion as Senior Branch Manager with effect from 12.09.2018.

For all these reasons stated above and the discussions herein above made, this Court has no hesitation to hold that the prayer sought for in this writ petition cannot be granted. Hence, this writ petition stands dismissed. No costs.

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R.SURESH KUMAR, J.

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