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05.09.2024
KAUSHIK

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 16183 of 2024

Life Insurance Corporation
of India & Ors.

Vs.

Central Government Industrial
Tribunal at Kolkata & Ors.

Mr. Dilip Kumar Paul

...for the petitioners

Notwithstanding repeated service, the respondents remain unrepresented.

This is a challenge to an award dated November 21, 2023. Briefly, the private respondent was a Havildar Clerk working at the Electrical Mechanical Corps of the Indian Army. He was born on June 5, 1958 and as per certificate of discharge joined the Defence services on April 12, 1980. He was ultimately discharged from defence service on July 1, 1988.

Thereafter, he was appointed as typist in the cadre of Class-III Clerical Staff in LIC in the year 1989 on re-employment as an Ex-serviceman. As a typist clerk, he appeared in the Departmental Test for promotion on August 31, 1997 and was declared to be qualified for the subject post.

The grievance of the private respondent before the Tribunal pertains to the right to seek regular

promotion to the post of Higher Grade Assistant with retrospective effect from August 23, 1990.

On behalf of the petitioner it is contended that the private respondent being an ex-serviceman and not an Ex-Emergency/Short Service/Regular Commissioned Officer or Schedule Caste/Schedule Tribes candidate is not entitled to get the relaxation provided under Clause-7 of LIC (Promotion) Rules, 1987.

It is also alleged on behalf of the petitioner that to avail any promotion to the higher rank, one has to obtain minimum aggregate marks in respect of the seniority, qualification and confidential report. In short, the promotion is based on merit, suitability of the candidate for a particular post and seniority. Merit and suitability are judged by confidential report or interviews or through examinations.

The private respondent having failed to pass the necessary examination and attain the minimum marks for promotion was not justifiably considered in the zone of consideration. In passing the impugned order, the Tribunal has, *inter alia*, held as follows:

“Therefore, this Tribunal holds that LIC is not justified in not giving promotion to Sri Amar Kumar Dey, Typist though having qualified for the same in the year 1997. Thus, the concerned workmen is entitled to get all the promotional financial benefits to which he is entitled to as HIG (Administration) from the date he qualified the

promotional test or departmental test by virtue of result declared on 09-09-1997 (Exhibit-W-12). The Management of LICIM is hereby directed to give all financial benefits to the concerned workman Sri Amar Kumar Dey from September, 1997 in the scale of HGA (Administration) till his superannuation either in the year 2016, if the age of superannuation is 58 years or in the year 2018 if the age of superannuation is 60 years and to fix all his pensionary benefits in the revised scale within two months of publication of award.”

The impugned order fails to consider that the private respondent did not qualify in the promotional process despite repeated attempts and as such was not entitled to promotion. The Tribunal failed to also consider that the relaxation was only in favour of Ex-emergency/ Short Service/ Regular Commissioned Officer or Schedule Caste/Schedule Tribes candidates and the private respondent was not entitled to claim such relaxation.

In passing the impugned order, the Tribunal has erroneously relied on and placed emphasis on the Ex-Emergency /Short Service/Regular Commissioned Officer or Schedule Caste/Schedule Tribes Rules, which were inapplicable to the private respondent. There was no such relaxation provided in the matter of promotion in respect of employees appointed under the Ex-Servicemen category. The private respondent though an Ex-servicemen was appointed against a vacancy, which was filled up by way of direct recruitment. Clause 7 of the Life Insurance of India Class III and IV Employees

(Promotion) Rules 1987 was inapplicable to the private respondent. The fact that the private respondent for a period of more than 14 years has not passed the necessary examination and in effect never succeeded in the promotional process for years, disentitled him for any promotion.

In view of the above, the impugned order dated November 21, 2023 passed in Reference Case No. 6 of 2011 is unsustainable and is set aside. There shall be an order in terms of prayers (a) and (b) of the writ petition.

With the above directions, the writ petition stands allowed.

(Ravi Krishan Kapur, J.)