

07.05.2024
Sl No.7
Court No.8
(gc)

MAT 1688 of 2023
CAN 1 of 2023
CAN 2 of 2023

Ranajit Sajjan
Vs.
The Life Insurance Corporation of India & Ors.

Mr. Ujjal Ray,
Mr. Arpa Chakraborty,
Sk. Abdur Rahim
...for the Appellant.

Mr. Avishek Guha,
Mrs. Sonal Agarwal,
Mr. Ankush Majumdar,
...for the Private Respondents/LICI.

Re: CAN 1 of 2023

1. There is a delay of 152 days in filing the memorandum of appeal.
2. Sufficient cause being shown for not being able to file the memorandum of appeal within the period of limitation.
3. The delay of 152 days in filing the memorandum of appeal is condoned.
4. Accordingly, the application for condonation of delay is allowed and disposed of.

Re: MAT 1688 of 2023
CAN 2 of 2023

5. This appeal is arising out of a judgment and order passed by the learned Single Judge on 1st March, 2023 in a writ petition where the appellant/writ petitioner challenged the

selection process for promotion to the post/cadre of Higher Grade Assistant (Administration) under the Employees (Promotion) Rules, 1987.

6. The contention of the writ petitioner before the learned Single Judge was that despite the appellant/writ petitioner, being more qualified and senior than the other selected candidates, was not considered for promotion when his juniors whose names appear in Serial No.7, 9 and 12 of the Gradation List have been considered for promotion. During the course of hearing, the LICl produced two reports which include the Annual Performance Assessment Report (APAR) of the officers promoted and justified the promotion of the juniors on the ground of outstanding marks awarded to each of them from the Reporting Officers for the years 2018, 2019 and 2020. The reason for giving outstanding marks to the said three candidates has been also categorically stated by the Reporting Officers.
7. The learned Counsel for the appellant/writ petitioner has argued before the learned Single Judge that the petitioner should not have been given 16 in the qualification table. The three candidates have been awarded full

marks of 25 for work records where the petitioner was not awarded full marks of 20 in the seniority table. The same argument has been advanced in the appeal together with the fact that every entry in the ACR/APAR of a public servant must be communicated to him within a reasonable period whether it is poor, fair, average, good or very good entry as stated in ***Dev Dutt Vs. Union of India & Ors.*** reported at **(2008) 8 SCC 725** followed by a Coordinate Bench judgment in ***Pradip Kumar Banerjee Vs. Union of India & Ors.*** reported at **2012 SCC OnLine CAL 8635** and the non-communication of the entry has adversely affected the chance of the petitioner for promotion. Although this point was canvassed before the learned Single Judge, it appears that the relief was denied only on the ground that he had participated in the promotional process and thereafter challenged the same after the writ petitioner was considered ineligible for promotion. On the basis of the decision of the Hon'ble Supreme Court in ***AIR Commodore Naveen Jain Vs. Union of India & Ors.*** reported at **(2019) 10 SCC 34**, the relief was denied. While parting with, the learned Single Judge

has also made an observation that there is no irregularity, arbitrariness and/or mala fide in the ratings of the ACRs. The Reporting Officer has given his reasons and the Reviewing Officer has accepted the said reasons for granting outstanding marks to the said three candidates.

8. Mr. Roy has submitted that the appellant was unaware of his APAR and his marks was disclosed only in the writ proceeding, hence the appellant did not have the opportunity to challenge it earlier. Moreover the ACR/APAR of the writ petition was never produced before the learned Single Judge. When the relevant record of the ACR was produced, nothing could have prevented the appellant to seek disclosure of his ACR/APAR and upon such disclosure to demonstrate that he was on a better footing than the juniors who have been promoted. We could not find any explanation from Mr. Ujjal Roy, learned Counsel appearing on behalf of the appellant for not taking exception to the ACRs of the three candidates or to seek direction upon the LICl to produce the ACR of the petitioner.

9. The learned Counsel for the LICl has submitted that there is no rule requiring LICl to communicate the ACR/APAR to the

employees, however, for the transparency and good governance in view of the judgment in **Dev Dutt** (supra), it is desirable that entries in the ACR/APAR should be communicated to the employee concerned as it would enable him either to raise objection or to improve his performance in future.

10. In view of the fact that no contemporaneous challenge was thrown to the ACR of the three candidates whose cases were considered by the learned Single Judge and thereby denying the relief to the writ petitioner nor any direction was sought for production of APAR of the writ petition and prima facie the three candidates have better performance report, we are not inclined to interfere with the order passed by the learned Single Judge. However, it would be open for the appellant to seek a review of the DPC, if so advised. The observation that there is no irregularity, arbitrariness and/or mala fide in the ratings of the ACRs of the three candidates shall not stand in the way of seeking a review of the ACR of the writ petitioner. Any finding in favour of three candidates by the Reviewing Authority cannot defeat the claim of the writ petitioner if it is established by the writ petitioner on a review

of the DPC that his performance is equally good, if not better. In the event of any such request, the LICI shall provide APAR of the writ petitioner within a week from such requisition in order to enable him to take a decision in this regard.

11. Mr. Roy has submitted that in the event the writ petitioner is able to establish that he was not promoted in spite of requisite qualification and eligibility and LICI refused to grant him such relief, he shall not be precluded from challenging the said decision of the LICI in future litigation and the observation made in the judgment by the learned Single Judge under appeal shall not operate as *res judicata*.

12. In the event the appellant is aggrieved by the reviewed DPC it would be open for him to challenge such decision in accordance with law as it would furnish him a fresh cause of action and the decision in the earlier proceeding cannot operate as *res judicata*.

13. With the aforesaid observation, the appeal and the connected application are disposed of.

14. However, there shall be no order as to costs.

15. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Soumen Sen, J.)

(Uday Kumar, J.)