



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 20 September 2024**
Judgment pronounced on : 19 November 2024
+ **CONT.CAS(C) 31/2024 & CM APPL. 9045/2024**

SHRI SURINDER SINGH YADAVPetitioner
Through: **Ms. Bani Dikshit and Mr. Ishan**
versus

ORIENTAL INSURANCE COMPANY LIMITED.Respondent
Through: **Mr. K.K. Rai, Sr. Advocate**
with **Mr. Rahul Ranjan Verma,**
Ms. Medha Tandon, Mr.
Anshul Rai, Mr. Sreoshi
Chatterjee, Mr. Nirbhay
Shankar Tiwari and Mr. Basant
Kumar Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner is seeking initiation of contempt proceedings against the respondent under Sections 11 and 12 of the Contempt of Courts Act, 1971, read with Article 215 of the Constitution of India, 1950, for non-compliance with the directions of the Division Bench, as contained in the order dated 13.09.2023, in LPA¹ No. 630/2023.

ANALYSIS AND DECISION:

2. Having given my thoughtful consideration to the submissions advanced by the learned counsels for the parties and on perusal of the record, at the outset, this Court finds that the present contempt petition is bereft of any merits.

¹Letters Patent Appeal



3. Shorn of unnecessary details, the petitioner was aggrieved by his non-promotion to Scale-III cadre of the respondent during the supplementary promotion exercise of the year 2008-09 and the Promotion Exercise [“PE”] of the year 2009-10. According to the petitioner, this was due to adverse remarks in the ACRs² for the years 2006-07, 2007-08 and 2008-09, which were not communicated to him. It is pertinent to mention here that, during the *interregnum*, the petitioner has been promoted and is currently working in Scale-V and his grievance, however, is that despite this promotion, officers who were previously junior to him have now become senior to him. Therefore, he sought promotion to Scale-VI, claiming parity with his juniors who were promoted in the PE of the year 2008-09 and 2009-10.

4. On the petitioner filing W.P. (C) 11278/2009³, the following observations and directions came to be passed *vide* judgment dated 10.08.2023:

“28. In view of the aforesaid, this Court is satisfied that petitioner was wrongly not given the promotion to Scale III in the Promotion Exercise of the aforesaid years, i.e., 2008-2009 and 2009-2010. The ACRs for the years where there were adverse remarks against petitioner which were not communicated to petitioner, could not have been taken into account by respondent at the time of considering the case of petitioner for promotion. Non-promotion of petitioner to Scale III Cadre of respondent in the Promotion Exercise of 2008-2009 and 2009-2010, is mired with arbitrariness and is in complete contravention of law. The non-communication of adverse remarks and the manner in which marks have been allotted to petitioner in the parameter of Work Record, is completely unacceptable. However, considering the fact that a considerable time has already lapsed and that petitioner has already

² Annual Confidential Reports

³ Report case S.S. Yadav v. Oriental Insurance Company Ltd. [2023 SCC OnLine Del 4828]



been granted promotion to Scale V Cadre, no purpose would be served in directing petitioner herein to make representation against the uncommunicated ACRs containing adverse remarks or directing respondent herein to consider such representation.

29. Resultantly, it is held that petitioner is entitled to notional promotion to Scale III Cadre of respondent from the date when promotion was granted to other employees in the Promotion Exercise of the year 2009-2010 with all consequential benefits in accordance with law. Petitioner is also held entitled to notional promotion to Scale IV Cadre and Scale V Cadre from the date he would have been entitled to take part in the Promotion Exercise on the basis of his promotion to Scale III Cadre in the promotion exercise of the year 2009-2010, with all consequential benefits in accordance with law.

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35. In view thereof, it is directed that petitioner be considered in the Promotion Exercise for the next scale i.e. Scale VI, as per the policy of respondent for such promotion.”

5. Aggrieved by the aforesaid decision, the respondent preferred LPA No. 630/2023, wherein the Division Bench of this Court *vide* order dated 13.09.2023 observed and directed as under:

“6. Learned Counsel for the Appellant Company contends that an automatic notional promotion to Scale III, Scale IV and Scale V cadre with retrospective effect could not have been granted to the Respondent by the Learned Single Judge. On instructions, he suggests that the issue concerning grant of notional promotion to the Respondent can be remanded to the Appellant Company for reconsideration by the appropriate Promotion Committee.

7. In order to put a quietus to the matter, Learned Counsel for the Respondent, on instructions, submits that the suggestion put forth by the Appellant Company is acceptable to the Respondent.

8. Therefore, in light of the unanimous consent of the parties, the directions passed by the Learned Single Judge, as recorded above, are modified to the following limited extent:

a) The Appellant Company, through the appropriate Promotion Committee, is directed to reconsider the candidature of the Respondent for promotion to Scale III cadre as per the PE undertaken in 2009-2010 *by excluding the non-communicated ARCs i.e., for the years 2006-2007, 2007-2008 and 2008-2009.*



b) The reconsideration exercise under a) must be undertaken according to the Promotion Policy that was applicable during the PE in 2009-2010.

c) The reconsideration exercise under a) must be completed by the Appellant Company and communicated to the Respondent, within three months from today.

d) If upon reconsideration, the Respondent is recommended for promotion to Scale III cadre, a notional promotion with all consequential benefits, shall be effectuated with retrospective effect from the date when such promotion was granted to other employees after the PE in 2009-2010.

e) In the event that the Respondent is granted notional promotion under d), as a natural corollary, the Respondent shall also be entitled to notional promotion to Scale IV and Scale V cadre with all consequential benefits, with retrospective effect from the date he would have been entitled to take part in the requisite PEs, if he had received promotion to Scale III cadre after the PE in 2009-2010.

f) If, after receiving retrospective notional promotion to Scale III, Scale IV and Scale V cadre under d) and e), it appears that the Respondent is eligible to be considered for promotion to Scale VI cadre, his candidature shall be considered by the Appellant Company as per the applicable Promotion Policy.

g) In consideration of the joint consent of the parties, the cost imposed on the Appellant Company is waived off.

9. Learned Counsel for the Appellant Company, on instructions, has assured this Court that the aforementioned directions shall certainly be complied with within three months.

10. Accordingly, as nothing remains in the present LPA, it stands disposed of.”

6. Consequent to the aforesaid directions, the respondent *vide* letter dated 30.11.2023, issued the following impugned communication:

“Re: LPA No. 630/2023 OICL Vs. Sh. S.S. Yadav

Dear Sir,

In compliance of Hon 'ble High Court of Delhi order dated 13.09.2023 the matter regarding reconsideration of your candidature for promotion to Scale III cadre as per the Promotion Exercise 2009 -10 by excluding the non-communicated ACRs for the years 2006 - 07 , 2007- 08 and 2008-09 was considered by a



Special Promotion Committee constituted as per relevant provisions of Promotion Policy.

The Special Promotion Committee has decided to promote you to the cadre of scale-3 w.e .f. PE 2009-10. You will be entitled for fitment and seniority accordingly along with admissible arrears. The Committee further noted that the batch of 2009 - 10 of Scale 3 officers appeared in Zone of Consideration for promotion to Scale 4 cadre in PE 2015-16 first time . It is further observed that you got promoted to scale 4 cadre in PE 2015- 16 itself.

This is for your information .

Thanking you

Yours faithfully,

Sd/-

GENERAL MANAGER”

7. The plea of the learned counsel for the petitioner is that the impugned letter dated 30.11.2023 is in deliberate violation to the directions dated 13.09.2023 passed by the Division Bench of this Court. It is argued that, since the petitioner was found eligible for retrospective promotion to Scale-III in 2009-10 PE, the respondent was only empowered to grant notional promotion to Scales IV and V as a natural corollary, on the basis of such disposition he would have been entitled to participate in the requisite PEs for Scales- IV and V. In other words, it was submitted that since DPC⁴ found him eligible for promotion to Scale-III in the PE of 2009-2010, the petitioner automatically became entitled to seniority/fitment in Scales IV and V from the date he entered the ZOCs⁵.

8. It was urged that the impugned letter dated 30.11.2023 makes no mention whatsoever of Scale-V. It is reiterated that the petitioner entered the ZOC for promotion to Scale-V in the 2018-19 PE and, as a

⁴ Departmental Promotion Committee

⁵ Zone of Consideration



natural corollary, should have been granted seniority in Scale-V in accordance with the 2017-18 PE.

9. Learned counsel for the petitioner further referring to the tabular depiction **Annexure P-8** and **P-9**, attempted to demonstrate that three officials, who were junior to the petitioner have been placed senior to him, namely Mr. S.V. Krishna Rao, Ms. Anita Gupta and Mr. Santosh Choudhary. It was vehemently urged that petitioner entered ZOC for promotion to Scale-IV in the 2014-15 PE. However, since he had been considered for grant of promotion in Scale-III in the 2009-10 PE, he would have entered the ZOC for Scale-IV in the 2013-14 PE. A significant grievance is raised that officials junior to him were promoted to Scale-IV in the 2014-15 PE, while the petitioner has not even been considered for possible promotion to Scale-VI due to the failure to address his seniority/fitment to Scale-V as per the order dated 13.09.2023 passed in the LPA.

10. Without further ado, the aforesaid plea raised by the learned counsel for the petitioner cuts no ice inasmuch as the order in the LPA dated 13.09.2023 was a consent order. As rightly urged by the learned counsel for the respondent, there was no question of automatic promotion to Scale-V, which was accorded to the petitioner in accordance with the applicable Rules at the relevant time. Merely because the petitioner was considered for promotion for Scale-III after the PE in 2009-10 did not automatically advance the date for promotion to Scale-IV or for that matter to Scale-V.

11. It is pertinent to mention here that the learned counsel for the respondent also brought to the fore that the petitioner is not



approaching this Court with clean hands and has suppressed material facts inasmuch as he had applied for the Fast Track Channel Promotion for the PE 2014-15, and although he was provisionally allowed to appear for the written examination, he failed to appear in the examination. There was no denial to the fact that up to the promotion exercises carried out until the year 2010-11, there was a normal channel of promotion. However, post 2011-12, a Fast Track Channel Promotion was approved by the Board of the Company, and the first exercise for the Fast Track Channel was conducted for the PE 2012-13, wherein 20% of the total vacancies were earmarked for Fast Track Channel. This is evidenced by the notice/circular dated 27.12.2013, which provided as under:

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The Oriental Insurance Co. Ltd.
Head Office,
A-25/27, Asaf Ali Road,
New Delhi-110002

Deplo: HR Dated: 27.12.2013

NOTICE

Re: PROMOTION OF OFFICERS UPTO SCALE V - PROMOTION EXERCISE 2014-15

It has been decided to initiate Promotion Exercise 2014-15, for promotion of officers upto Scale V as per the projected seniority as on 01.04.2014. The Online Test is scheduled to be held on 25.01.2014 (Saturday). The Vacancies and Centres will be informed in due course. Subject to the approval of the Competent Authority, the vacancies for PE 2014-15 are as under:-

Promotion From	Total Vacancies	Vacancies under Normal Channel (80% of the total vacancies)	Vacancies under Fast Track Channel (20% of the total vacancies)	Projected Seniority No. (as on 01.04.2014) of last eligible candidate under Normal Channel
Scale 1 to 2	174	139	35	56114, Mr. Subhash Chander Goel
Scale 2 to 3	95	76	19	53114, Mr. S. Manojee
Scale 3 to 4	38	30	8	50614, Mrs. Gopalan
Scale 4 to 5	17	17	N/A	5514, Ms. Smita Srivastava

It may be noted that the cut off date for Insurance Qualification both for the purpose of eligibility for Fast Track as also computation of final marks for selection for promotion shall be 31.03.2014. In respect of normal channel, Insurance qualification acquired before 31.03.2014 shall be reckoned for inclusion in the scheme of marks.

Applications are invited for promotion under Fast Track Channel from candidates who fulfil the following criteria:-

1. The Applicants should have completed/will complete three years of continuous service from the date of selection to the existing cadre, as on 31st March 2014; and
2. Should be an Associate (for promotion from Scale I to II or II to III) or Fellow (for promotion from Scale III to IV) of Insurance Institute of India or equivalent qualification

12. It is also brought to the fore that the examination was held on 25.01.2014, and the petitioner who was allotted Roll No. 1623740200 in the General Category, was absent. The said plea was sought to be



countered by the learned counsel for the petitioner by introducing a new twist to the story that the petitioner was not issued any Admission Card, which belied from the record of the matter. No documents have been produced on record to suggest that there was any issue or deliberate act by the respondent preventing the issuance of the Admission Card to the petitioner.

13. It was also highlighted that all candidates who did not possess the requisite qualification on the date of examination were provisionally allowed to appear, subject to acquiring the qualification by 31.03.2014. In any case, it is also borne from the record that the required fellowship was obtained by the petitioner only in August 2014, well after the completion of the 2014-15 PE.

14. That being the case, the petitioner was promoted to Scale-IV in the 2015-16 PE in the usual course of service, along with other similarly situated candidates. Furthermore, though the petitioner was included in the ZOC for promotion in year 2018-19, it appears that he scored significantly fewer marks than the last selected candidate in the PEs of 2018-19, 2019-20, and 2020-21. Lastly, addressing the plea advanced by the learned counsel for the petitioner, that he is otherwise eligible for inclusion in the ZOC for Scale-VI, the Promotion Policy of Officers, 2006 (amended), lays down the following eligibility and zone consideration:

“8. Eligibility and Zone of Consideration:

8.1 For the empanelment for consideration of promotion to the cadres of Scale-VI & Scale-VII, an officer should have completed a minimum two full years of continuous service in the existing cadre 3.1[and should have minimum two full years of balance service remaining before attaining the age of superannuation....”



15. Learned counsel for the respondent rightly pointed out that the petitioner was promoted to Scale-V in the September 2021 and is set to retire on 30.09.2025. Hence, the petitioner is not eligible for the PE of 2024-25 for Scale-VI, as he would not be having two full years of service remaining before attaining the age of superannuation.

16. To sum up, the direction of the Division Bench of this Court dated 13.09.2023 was limited to the consideration of the promotion of the petitioner in the PE of 2009-10 for Scale-III. There was no direction for automatic promotion, *de hors* the eligibility conditions, for promotion to Scale IV and V. The petitioner did not appear in the Fast Track Channel Promotion. There is no *iota* of whisper about such fact in the contempt petition and the plea of the petitioner that he should have been accorded parity with other officers who were junior to him cannot be sustained. Elementary as it may look, the issue of parity is to be based and considered with regard to the qualification and eligibility of the petitioner as well as his colleagues, who were junior to him but evidently stole a march over him.

17. This Court, therefore, finds that this is not a case where the respondent has been found to be in deliberate and contumacious contravention of the directions of this Court. The directions passed by this Court are subject to interpretation, and the interpretation leads to only one conclusion: that the petitioner was entitled to consideration in the PE conducted in 2009-10 for Scale-III. However, there was no direction for automatic promotion to Scale-IV and Scale-V by the Division Bench of this Court thereby disregarding eligibility



conditions and bypassing the fast track procedure.

18. In view of the foregoing discussion the present Contempt Petition is dismissed.

19. The pending application also stands disposed of.

DHARMESH SHARMA, J.

NOVEMBER 19, 2024

Sadiq

Signature Not Verified

Digitally Signed By PRAMOD
KUMAR VATS
Signing Date: 19.11.2024
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