

ORISSA HIGH COURT, CUTTACK.

O.J.C. No. 8460 of 1996

(In the matter of an application under Article 226 read with Articles 14 and 16 of the Constitution of India).

Rabinarayan Nath

... Petitioner

Versus

**The Industrial Development Corporation
Orissa Ltd. and others**

... Opposite Parties

For Petitioner : M/s. P.K. Padhi and D.K. Nayak.

For Opp. Parties : M/s. S.B. Nanda, A.K. Mishra-2,
S.K. Mishra, P.K. Mishra,
D.P. Nanda, U.N. Nayak and J.K.
Nanda.
(for opp. party nos.1 and 2)

M/s. R.K. Rath and N.R. Rout.
(for opp. party no.16)

PRESENT :

**THE HONOURABLE MR. JUSTICE L. MOHAPATRA
AND
THE HONOURABLE MR. JUSTICE C.R. DASH**

Date of Judgment : 25.08.2011

C.R. Dash, J. The petitioner's claim for promotion to the grade of Assistant Manager with effect from 01.01.1990 is the subject matter of this writ petition. The basis of such claim by the petitioner is the undertaking given by the erstwhile IDCOL Cements Ltd. [opp. party no.2] in O.J.C. No. 1272 of 1992.

2. Petitioner had approached this Court in O.J.C. No. 1272 of 1992 claiming promotions to different grades within different time frames. The O.J.C. was disposed of in terms of the settlement arrived at between the parties in course of hearing. The matter was settled between the parties on the following terms :-

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- (i) The petitioner shall be deemed to have been promoted to Grade VI of the Cement Wage Board and designated as a Junior Officer with effect from 1.1.1987;
- (ii) The petitioner shall be deemed to have been promoted to Grade VII of the Cement Wage Board with effect from 1.1.1991;
- (iii) The petitioner having deemed to have completed three years of his service in Grade VI of the Cement Wage Board on 1.1.1990 and if vacancy was available thereafter in Executive 'E' Grade in the General Cadre (Stream), i.e., in the cadre of Assistant Manager, the review D.P.C. shall, within a period of three months, consider his case for

promotion on the basis of the required criteria laid down in Rule 4(2)(b) of the Promotion Rules, (Policy); and

- (iv) All consequential benefits arising out of the above promotions will be made available to him within a period of three months after the appraisal made by the D.P.C.

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3. So far as terms of settlement, vide Term Nos. (i) and (ii) are concerned, there is no grievance by the petitioner; but so far as term of settlement vide Term No.(iii) is concerned, it is alleged that though vacancy was available as on 01.01.1990, the case of promotion of the petitioner to the grade of Assistant Manager was not properly considered by the Review D.P.C. In order to justify his claim, the petitioner, in sub-paragraphs (A) to (D) of paragraph-7 of the writ petition, has referred to some instances, which are alleged to have been occasioned at the instance of the Management just to harass the petitioner. It is alleged that the petitioner has been deprived of the promotions by intentional machinations of the Management, as he filed O.J.C. No.1272 of 1992. It is also alleged that the petitioner deserves promotion to the post of Deputy Manager, but to notch the possibility of the petitioner's promotion to the post of Deputy Manager, the Review D.P.C. was hands in gloves with the Management to deny promotion of the petitioner to the grade of Assistant Manager.

4. The opposite party, i.e. IDCOL Cements Ltd. has filed counter affidavit denying the allegations. In the counter affidavit it has been described in detail as to how the Review D.P.C. has taken into consideration all the materials before coming to a decision to the effect that the petitioner is not fit for promotion to the grade of Assistant Manager. The petitioner has filed rejoinder further explaining his claim and has questioned the wisdom of the Review D.P.C. He, in the rejoinder, has also questioned the sanctity of examination conducted during the previous years for promotion to the post of Assistant Manager.

5. This Court, in view of the rival averments in the writ petition, counter affidavit and the rejoinder, in view of rival contentions of learned counsels appearing for the parties and in view of disposal of the earlier writ petition, i.e. O.J.C. No.1272 of 1992 on the basis of amicable settlement, has to find as to whether the case of promotion of the petitioner to the post of Assistant Grade was undertaken by the authorities concerned in accordance with the amicable settlement, vide Term No.(iii) supra. This Court cannot necessarily question the wisdom of the Review D.P.C. and cannot also go behind the scope of amicable settlement vide Term no.(iii) as quoted supra.

6. All the facts constituting the allegation of harassment as mentioned in sub-paragraphs (A) to (D) of paragraph-7 of the writ petition relates to period prior to disposal of O.J.C. No.1272 of 1992.

In spite of the alleged harassment, the petitioner having arrived at amicable settlement with opposite party no.2 (erstwhile IDCOL Cements Ltd.) in O.J.C. No.1272 of 1992, cannot now press the same to claim the relief sought for. The facts constituting averments prior to the date of disposal of the aforesaid O.J.C. No.1272 of 1992 do not have any relevance to decide as to whether the Management has acted pursuant to the terms of settlement vide Term No.(iii) supra and as to whether the term of settlement arrived at by the parties have been complied with. According to Term No.(iii), as quoted supra, within three months from the date of disposal of O.J.C. No.1272 of 1992 the Review D.P.C. was required to consider the case of the petitioner for promotion on the basis of the required criteria laid down in Rule 4 (2) (b) of the Promotion Rules (Policy). Rule 4 (2)(b) of the Rules (Annexure-10 to the rejoinder affidavit) provides thus :-

4 (2)(b) – For consideration of promotion to the Executive in ‘E’ Grade in the general cadre, the feeder grade shall include all the junior officers in Grade ‘A’ and employees in Grade-VII of Cement Wage Board in general cadre of the Corporation including projects and units, having three years satisfactory service in the grade. The promotion shall be subject to availability of vacancies through written test, interview and assessment of appraisal by D.P.C. and only up to 50 % of such vacancies may be filled up by promotion from within the Corporation. When no suitable in-service

candidates are available in this process, the posts will be filled up by direct recruitment.

The Rule/Policy speaks of availability of vacancy and filling up of 50% of the vacancy by promotion through written test, interview and assessment of appraisal by D.P.C.

7. It is contended in the counter affidavit that after disposal of O.J.C. No.1272 of 1992 vide order no.15 dated 02.05.1996, the Managing Director of the erstwhile IDCOL Cements Ltd. passed order on 10.07.1996 constituting the Review D.P.C. with Sri K.R.P. Khosla, Deputy General Manager (Finance), Sri S.N. Tripathy, Deputy General Manager (HRD), Sri D.K. Mishra, Senior Manager (Purchase), Sri B.K. Panda, Manager (Sales), Sri J. Chandra, General Manager (Technical) as its members. The Review D.P.C. met on 13.07.1996. The Review D.P.C. went through all the relevant materials placed for consideration, namely report of the D.P.C. dated 14.12.1990, report of the D.P.C. held on 11.02.1992, 12.02.1992 and 03.03.1992, report of the D.P.C. held on 16.02.1996, service files containing appraisals of Rabi Narayan Nath (petitioner), Rabi Narayan Panda, H.H. Baliarsingh (O.P.4), Premananda Dalai (O.P.5), R.C. Kar (O.P.6), M.N. Raj (O.P.7), S.N. Dhar (O.P.8), P.K. Mohapatra (O.P.9), S.N. Patnaik (O.P.10), A.S. Das (O.P.11), Bhagirathi Tadu (O.P.12), Bhisma Mall (O.P.13), B.K. Bal (O.P.14), Basanta Prasad (O.P.15), G.C. Sahu, P.K. Behera, S. Meher, R.K. Panda and R.P. Das and the vacancy position in different periods in

respect of the grade of Asst. Manager in the general cadre during 1992 to 1996. The Review Committee on consideration of all the aforesaid materials came to the unanimous finding that the petitioner was not found suitable for promotion to the post of Asst. Manager, General Cadre (to which post he claims to be promoted) at any time retrospectively in any of the D.P.C. and it was observed that he should improve his performance to enable himself to be fit to be cleared by the D.P.C. in future. It is further explained by the opposite party no.2, i.e., erstwhile IDCOL Cements Ltd. that there was some delay in holding the D.P.C. for administrative grounds and the petitioner is in no way prejudiced by such delay, as the D.P.C. sat on 13.07.1996 and took the decision in compliance of the order of the Hon'ble Court passed in O.J.C. No.1272 of 1992.

8. An exception is taken by the petitioner to the effect that if the D.P.C. sat on 13.07.1996 and decided that the petitioner is not suitable for promotion, he should have been communicated about such fact; but, in spite of communicating the result of the Review D.P.C., the authority concerned, i.e. Managing Director of IDCOL Cements Ltd. vide Annexure-9 has communicated him about his unsuitability for promotion on the basis of interview / written test / D.P.C. held on 16.02.1996. In view of such fact, it is submitted that the Review D.P.C. has been ante-dated.

9. Such an allegation is denied by the opposite party, i.e. the erstwhile IDCOL Cements Ltd. From Annexures A/1 and B/1 and the averments in the counter affidavit on the point of relative ranking of

different persons in the written test and viva voce held in previous years and the result of the D.P.C. held in previous years, it is clear that the petitioner was never found suitable in any previous year and there was no occasion for the erstwhile IDCOL Cements Ltd. to ante-date the Review D.P.C.

10. As we have held earlier, the petitioner has relied on so many facts prior to the date of disposal of O.J.C. No.1272 of 1992 and those facts, in view of the amicable settlement in the aforesaid writ petition, assume no relevance in the present writ petition. As found from the relevant Rule 4(2)(b) of the Promotion Rules / Policy, promotion to the post of Assistant Manager, to which the petitioner claims promotion, is not automatic and one has to go through the written test, interview, service record appraisal and other things and also one has to clear the D.P.C. as a suitable candidate to get promotion to that post. The petitioner having failed to clear the tests and the D.P.C. and the Review D.P.C. having conducted the review on very objective manner as found from records and having acted fairly in taking into consideration the cases of all the contesting parties, are to be held to have acted bona fide. We do not find any justification to question the wisdom of the Review D.P.C. after about 15 years it took the decision. The petitioner and some of the opposite parties having retired from service in the meantime on superannuation, we do not find any merit in the claim of the writ petitioner even otherwise to disturb the finding of the Review D.P.C.

In view of the above, the writ petition is devoid of merit
and the same is dismissed.

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L. Mohapatra, J. I agree.

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Orissa High Court, Cuttack.
The 25th day of August, 2011. /*Parida.*