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ORIENTAL INSURANCE CO. LTD.

v.

T.S. SASTRY

OCTOBER 30, 2003

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[V.N. KHARE, CJ. AND S.B. SINHA, JJ.]

*Service Law :*

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*Promotion—Person put on waiting list—Claim for promotion—Oriental Insurance Company—Inspector Grade I—Eligibility for promotion to Administrative Officer (Development)—Promotion Committee considering merit of the officer and putting him on waiting list—Within the validity period of the waiting list, new vacancies arose and the officer put forward his claim—Insurance Company's stand that the new vacancies were to be filled up only*

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*from panel prepared by subsequent Promotion Committee and not from amongst candidates on panel of earlier Promotion Committee—High Court directing Insurance Company to give notional promotion and seniority with effect from the date vacancies occurred and monetary benefit from the date of filing writ petition—Held, for the purpose of filling up the posts by way of promotion what was necessary to be considered, was the total number of posts available*

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*at the time of making of and during the currency of panel—The Promotion Policy has nothing to do with the places where the vacancies arise —In terms of the promotion policy the list prepared would not only include the number of candidates equal to the number of vacancies but also a number equal to 20% of declared vacancies—Such a contingent list is prepared for the purpose*

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*of giving promotions on a vacant post as and when required prior to formation of the next Promotion Committee—The very fact that there exists a provision for preparation of waiting list, the employees who were found eligible to be promoted may be promoted on creation of any new post or by any vacancy occurring in the manner provided for in the relevant clause of the Promotion Policy—Promotion Policy must be given a purposive construction—It must be*

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*construed in such a fashion so that each and every provision contained therein must be given effect to—Insurance Company acted mala fide in depriving the officer his legitimate claim for promotion.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3756-3757 of 1998.

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From the Judgment and Order dated 3.4.97 of the Andhra Pradesh High Court in W.A.M.P. No. 298/98 in W.A. No. 527 of 1991. A

Najmi Waziri and Irshad Ahmad for the Appellant.

Dr. Rajeev Dhavan, R. Santhana Krishnan, G.Sateesh and D. Mahesh Babu for the Respondent. B

The following Order of the Court was delivered :

The respondent herein was appointed as Trainee Inspector with the appellant-Insurance Co. on 14.3.1977 w.e.f. 1.1.1978. He was categorised as Grade I Inspector. In the year 1983, 8 posts of Assistant Administrative officer (Development) fell vacant. It is not disputed that the said vacancies were required to be filled up on the basis of merit-cum-seniority. It is also not disputed that the respondent herein was also eligible for being considered for promotion to the said post. The Committee constituted for making promotion after considering the merit of the candidates, prepared a panel of 8 names for the purpose of promotion to the post of Assistant Administrative Officer (Development). However, the respondent herein was put on the waiting list at sl. No. 9 thereof. C D

In November 1984, one more post of Assistant Administrative officer (Development) was created and subsequently on 22.5.1985 a second post was further created. It is not disputed that the panel prepared by the Promotion Committee was valid from 5th July 1984 to 4th July 1985. Having regard to the availability of two more posts, the respondent herein made a representation to the competent authority for promoting him on one of these said posts. However, the respondent, having not received any reply, filed a petition under Article 226 of the Constitution before the High Court of Judicature of Andhra Pradesh at Hyderabad for issuance of a writ in the nature of *mandamus* directing the Insurance company to promote him to the post of assistant Administrative officer (Development). A learned Single Judge of the High Court dismissed the writ petition. However on a writ appeal being filed by the respondent herein, the judgment and order of the Single Judge was set aside and the appeal was allowed by issuing a direction to give notional promotion and seniority to the respondent with effect from the date when the Branches at Srikakulam and Kurnool were opened in 1984. However, the respondent herein was held to be entitled to monetary benefit only from the date of filing of the writ petition. The appellant herein filed a review petition before the High Court which was dismissed. Aggrieved, the appellant is in E F G H

A appeal before us by means of special leave petitions.

Learned counsel appearing for the appellant urged that in view of the Promotion Policy framed by the appellant-Insurance Co., the said vacancies could not have been directed to be filled up by a person on the waiting list of panel prepared in the year 1984. Learned counsel referred to the Promotion Policy for promotion of Inspector Grade I to the cadre of Assistant Administrative Officer, para 2 whereof runs as under:

C “The vacancies to be filled during the ensuing years shall be determined after taking into account the new posts created, the promotions to the higher cadres as also the retirement vacancies plus the exists on account of deaths, resignations and terminations. The vacancies so determined shall be declared by the promoting authorities by the 1st of December of the year preceding the year for which promotions are to be made.”

D On the strength of para 2 above, it was argued that the said two vacancies could have been filled up only from the panel prepared by the subsequent Promotion Committee and not from amongst the candidate on the panel of the earlier Promotion Committee.

E Dr. Rajeev Dhavan, learned senior counsel appearing on behalf of the respondent, however, submitted that waiting list procedure in the matter of grant of promotion is a well-known procedure and as the appellant herein failed and neglected to give effect thereto, the Division Bench of the High Court must be held to be correct in passing the impugned judgment. Our attention has in this connection been drawn to the Promotion Policy for promotion of the Inspector in the cadre of Assistant Administrative Officer, the relevant portions whereof are as under:

G “13. *Ranking list:* The Promotion Committee shall finalise the recommendations on the basis of the marks gained on all the criteria and arrange the list in the descending order of the marks gained. The Ranking List will be valid for period of one year from the date of its publication, which may, in an exceptional case be extended by the three months at the discretion of Chairman-cum Managing Director.

H 14. The list so prepared shall include the number of candidates equal to the number of vacancies declared for the purpose of promotion plus a number equal to 20% of the declared vacancies to be kept as

Contingent List from which the promotions can be made as and when required before the formation of the next promotion Committee.”

It is no doubt true, as has been submitted by the learned counsel appearing on behalf of the appellant that eligibility criteria was required to be completed with in relation to the vacancies occurring in a particular year was to be determined upon taking into account new posts created, the promotion to the higher cadres as also the retirement vacancies plus vacancies which might occur on account of deaths, resignations and terminations. Paragraph 2 of the Promotion Policy as referred to hereinbefore is a procedural provision for the purpose of calculation of the number of vacancies which are to be declared, but the same is not exhaustive as it does not lay down that no vacancy occurring owing to creations of new posts cannot be filled up from panel during which it remains valid. The Promotion Policy must be given a purposive construction. The Promotion Policy must be construed in such a fashion so that each and every provision contained therein must be given effect to. This Court on a number of occasions has emphasised the need of grant of promotion. If such a construction is put, as has been suggested by the learned counsel appearing on behalf of the appellant, paragraphs 13 and 14 of the said policy decision would become otiose.

The very fact that there exists a provisions for preparation of waiting list, we have no doubt in our mind that the employees who were found eligible to be promoted to the post of the Assistant Administrative Officer may be promoted on creation of any new post or by any vacancy occurring in the manner provided for in Clause 2.

In terms of Clause 14 of the Promotion Policy, the list prepared would not only include the number of the candidates equal to the number of vacancies but also a number equal to 20% of the declared vacancies. Such a contingent list is prepared for the purpose of giving promotions in a vacant post as and when required prior to formation of the next Promotion Committee. The appellant accepts that the respondent herein was eligible for promotion in the year 1984. It also stands accepted that two branch offices were opened at Kurnool and Srikakulam.

Learned counsel appearing on behalf of the appellant made a submission to the effect that as the said posts were filled up by transferring two officers who were from the Veterinary Department, the other two posts from which said officers were transferred, did not fall vacant. The said submission must be rejected. For the purpose of filling up the posts by way of promotion what

A was necessary to be considered, was the total number of posts available at the time of making of and during the currency of the panel. The Promotion Policy has nothing to do with the places where the vacancies arise. The posts of Assistant Administrative Officer at Kurnool and Srikakulam were required to be filled up. If the said posts were filled up by way of transfer, evidently the other two posts which were available should have been filled up by way of promotion in terms of Clauses 13 and 14 of the a Promotion Policy.

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E Furthermore, the vacancies at Kurnool and Srikakulam although were to be filled up from the panel by the subsequent Promotion Committee according to the appellant, were actually filled up by the transfer of existing cadre. The contention raised by the appellant was that such posts were required to be filled up by the Assistant Development Officer, Veterinary, had been found to be incorrect. The High Court, having regard to the conduct of the appellant herein had, arrived at a finding of fact that filling up of the said post of Assistant Administrative Officer, while two branches in Kurnool and Srikakulam were opened, by transferring two Veterinary officers working elsewhere, was an act of *malafide* on the part of the appellant. The High Court further held that the appellant had failed to establish that the two branches which were opened during the currency of the list prepared by the Selection Committee were to be managed only by the Veterinary Officer and thus the grievance of the respondent herein that the said vacancies were to be filled up only to deprive him of the right of promotion as he was No.1 in the contingent reserve, was correct.

We are, therefore, in agreement with the view of the High Court holding that the appellant-Insurance Co. acted *malafide* in depriving the respondent herein his legitimate claim for promotion.

F In that view of the matter, we are not inclined to interfere in the matter. The appeals are dismissed.

No costs.

G R.P.

Appeals dismissed.