

HIGH COURT OF DELHI
Bench: JUSTICE ANUP JAIRAM BHAMBHANI
Date of Decision: December 7, 2023

W.P.(C) 3478/2020 and CM APPL. 49574/2023

SHALINI SINGH **Petitioner**

versus

UNITED INDIA INSURANCE CO.LTD. & ORS. **Respondents**

Sections, Acts, Rules, and Articles mentioned in the judgment:

Section 151 of the Code of Civil Procedure, 1908
Article 16 of the Constitution of India

Subject:

Eligibility criteria for a promotional examination from Scale II to Scale IV in the context of the petitioner's application seeking permission to apply for the exam.

Headnotes:

Service Law - Promotion Exercise – Eligibility Criteria – Petitioner seeks permission to apply for promotion from Scale II to Scale IV – Petitioner presently holds a job in Scale II and lacks eligibility criteria of three years of continuous service in Scale III – Last date for applying for the examination has passed – Court's observation on eligibility criteria in promotion exercises. [Para 10-26]

Dismissal of Application – Court finds no merit in the prayer made in the application – Application is dismissed. [Para 27]

Referred Cases:

No specific referred cases with citations are mentioned in the judgment.

Representing Advocates:

Petitioner: Mr. Ravi Kumar, Advocate

Respondents (1 and 2): Mr. Nikhil Jain, Advocate for R-1 and 2, Mr. Harish Vaidhyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Alexander Mathai Paikaday, Mr. Krishnan V., Advocates.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

CM APPL. No. 59788/2023

By way of the present application filed on the principles of section 151 of the Code of Civil Procedure 1908, the petitioner prays for a direction to respondents Nos. 1 and 2 to permit her to apply for, and appear in, the exam scheduled on 17.12.2023 as notified *vide* notice dated 15.11.2023 titled “*Re: Promotion Exercise 2024-2025 within Class I Officers*” as read with revised notice dated 16.11.2023 issued for that examination.

2. Notice on this application was issued on 22.11.2023.
3. Reply/counter-affidavit dated 30.11.2023 was filed on behalf of contesting respondents Nos.1 and 2.
4. Mr. Ravi Kumar, learned counsel appearing for the petitioner has submitted that *vide* order dated 21.07.2020 made in the present petition, this court had “protected the interest” of the petitioner insofar as promotion from Scale II to Scale III in the year 2020 is concerned, by observing as under :

*“..... any further action of holding the interviews will be subject to the outcome of the present petition qua the Petitioner.
.....”*

5. Furthermore, counsel has pointed-out that *vide* order dated 10.09.2021, this court had observed as under :

“4. In fact, I note in an Intra-Court Appeal filed by the petitioner before the Division Bench, it is clearly observed that, in terms of order dated July 21, 2020 of this Court, the interest of the Petitioner is sufficiently protected. If that be so, I do not see any reason to entertain this application. The same is dismissed.”

6. It has also been brought to the notice of this court that *vide* order dated 29.05.2023 made in LPA No. 469/2023, the Division Bench had observed as follows :

“..... In the considered opinion of this Court, the learned Single Judge was certainly justified in not staying the entire process of promotion which was being done for filling up 405 vacancies and has directed that all promotions will be subject to the final outcome of the Writ Petition.”

7. Counsel has however urged, that if the petitioner is not permitted to apply for and appear in the exam scheduled on 17.12.2023, the protection so granted would become “..... *vacuous and immaterial even if Petitioner succeeds in the present petition*”.

8. Mr. Kumar has also submitted that if the petitioner is not permitted to take the exam scheduled on 17.12.2023, it would not be possible for the respondents to conduct a separate examination for her in isolation.
9. For clarity, it requires to be noted that the examination scheduled on 17.12.2023, which the petitioner seeks to appear for, is for promotion from Scale III to Scale IV.
10. On the other hand, Mr. Nikhil Jain, learned counsel appearing for respondents Nos. 1 and 2 has submitted, that it is settled law that for being able to apply for an examination, the intending applicant/candidate must fulfil the eligibility criteria for such examination. He has contended that the eligibility criteria for the examination in question are clearly set-out in notice dated 15.11.2023 as read with revised notice dated 16.11.2023. Mr. Jain has also drawn attention, in particular, to the following eligibility criteria prescribed in the aforesaid notices, in the backdrop of the admitted position that the petitioner is *presently holding a job in Scale-II* :

“Fast Track Channel:

For Promotion to the higher cadre up to Scale V, for Promotion Exercise 2024-25, an officer having completed minimum three years of continuous service as on 31st March, 2024 from the date of his selection to the existing cadre and qualified Associate from Insurance Institute of India (For promotion to Scale-II) as on 15.11.2023 and qualified Fellow from Insurance Institute of India (For promotion to Scale-III, IV and Scale V) as on 15.11.2023 is eligible to participate in the Fast Track Channel.

* * * * *

“Officers eligible for and desirous of applying for the Fast Track Channel of Promotions under Promotion Exercise 2024-25 in terms of Para 14A (as amended) of the Promotion Policy may submit their applications (On line) through an option available as

“Promotion Exercise” in My page login in our Intranet site latest by 22.11.2023 6.00 P.M.

“Only online submission of application will be accepted and system will not allow any officer to submit application beyond the last date stipulated for submission of the application.”

(emphasis supplied)

11. Mr. Jain has argued that *firstly*, the last date for applying for the examination was 22.11.2023 by 6 p.m., and the present application came to be listed before this court only on that very date *i.e.* 22.11.2023¹, after it was released

¹ The petitioner moved CM APPL. No. 59788/2023, which was listed before a Co-ordinate Bench on 20.11.2023; on which date the Co-ordinate Bench recused from the matter and directed it to be placed before another Bench on

by a Co-ordinate Bench. Counsel submitted, that on 22.11.2023 this court was not persuaded to grant to the petitioner any interim relief; and the last date of applying for the exam is now long past. He added further, that since the application process is entirely „online“, the last date for application cannot be varied; and therefore, the petitioner’s application will not be entertained by the system belatedly.

12. *Secondly*, and more importantly, Mr. Jain has pointed-out that it is also settled law that an applicant may participate in a promotion exercise *only if* the applicant meets the eligibility criteria for the post advertised. It has been submitted that in this case, by her own admission, the petitioner is presently holding a post in Scale II, whereas one of the eligibility criteria for promotion from Scale III to Scale IV is clearly specified in the said notices as follows :

“..... For Promotion to the higher cadre up to Scale V, for Promotion Exercise 2024-25, an officer having completed minimum three years of continuous service as on 31st March, 2024 from the date of his selection to the existing cadre.”

(emphasis supplied)

13. Counsel has submitted that since the petitioner is presently in *Scale II*, she has evidently not “..... *completed minimum three years of continuous service* ” in *Scale III*; and cannot therefore, be permitted to participate in the exercise for promotion from Scale III to Scale IV.
14. Moreover, counsel has pointed-out that the petitioner also does not have a completed “*latest year Annual Performance Assessment Report („APAR“)* for *06 months i.e. April to September*”, which she could have completed even on a self-appraisal basis, which APAR is also required for going further with the promotion exercise.

15. Responding to the petitioner’s contention arising from order dated 21.07.2020, Mr. Jain has argued that that order was made *only* in the context of the circular issued for conducting interviews for promotion from *Scale II to Scale III*; and accordingly, in order dated 21.07.2020, the court had observed that “..... *Needless to state that any further action of holding the interviews will be subject to the outcome of the present petition qua the Petitioner.*” It is accordingly the submission on behalf of the respondents, that order dated 21.07.2020 was made *only* in relation to *promotion from Scale II to Scale III*

01.12.2023. The very next day, the petitioner moved CM APPL. No. 60178/2023 seeking early hearing of CM APPL. No. 59788/2023, which application also came to be listed before the very same Co-ordinate Bench, which again passed an order of recusal and directed the matter to be placed before another Bench on 22.11.2023; whereupon the matter came to be placed before this Bench. This Bench dismissed the early hearing application on 22.11.2023 and issued notice on CM APPL. No. 59788/2023, calling for a reply from the respondents within 01 week; with the rejoinder to be filed before the next date; and re-notified the matter on 01.12.2023, on which date arguments were heard and judgment was reserved.

*in the promotion exercise conducted in 2020-2021; which order was also subject to the petitioner qualifying on all parameters and securing a place in the merit list; but in any case, the observation of the court made in that context cannot be construed as a *general protection* for the petitioner in *all examinations for all times to come*.*

16. Mr. Jain has further submitted that the petitioner has also challenged her APARs for the years 2018-2019 and 2019-2020, which were filled in compliance with judgment dated 27.07.2020 made by the Division Bench in LPA No.184/2020; and it is therefore clear that the petitioner does not want a proper assessment of her performance but seeks promotion to a higher cadre straight-away, without her performance being assessed. It has been urged that if promotion is granted in this manner, the rights of other employees and officers of the respondents will be seriously prejudiced.
17. Mr. Jain has also submitted, that as stated in the reply filed by the respondents, the petitioner has admitted that she has not been doing any work in office; and though work allocation order dated 03.02.2020 is still in force and effect, the petitioner has repeatedly refused to execute any task assigned to her, in an act of gross insubordination; for which reason also she is not entitled to any relief from this court.
18. Lastly, counsel has argued, that in W.P. (C) No. 6073/2022 and in several other applications filed by her, the petitioner has in fact challenged the respondents' existing promotion policy; and that therefore, she ought not to be permitted to participate in a promotion exercise conducted under the very same promotion policy, which she has challenged.
19. Insofar as the allegation that the respondents have tweaked and changed their promotion policy to favour some select candidates, while prejudicing the petitioner, Mr. Jain has pointed-out that that allegation is far-fetched inasmuch as the promotion policy for all public sector insurance companies is uniform; and the respondent company does not tweak its promotion policy to suit anyone.
20. In the circumstances, it has been argued that the prayer made in the application, ought not to be allowed.
21. Upon a conspectus of the averments contained in the application and in the reply; and after hearing the submissions made at the Bar; and having perused the documents on record, the following inferences clearly arise :
 - 21.1. Admittedly, at present, the petitioner *holds a job in Scale II* in the respondent company;

21.2. The petitioner seeks permission to apply for and appear in the examination scheduled on 17.12.2023 as part of the promotion exercise for 2024-2025 for promotion from Scale III to Scale IV - in an effort to jump straight from Scale II to Scale IV.

21.3. The petitioner has never held any job in Scale III and therefore does not fulfil the eligibility criteria for the promotion exercise viz. that she should have completed minimum 03 years of continuous service in the existing cadre, that is to say, in the previous Scale III.

21.4. Also, the last date for applying for the examination was 22.11.2023 by 6:00 p.m., which deadline is long past.

22. Furthermore, it is the settled position of law that in order to appear in an examination, an applicant must fulfil the eligibility criteria prescribed therefor; and the consistent view of the courts has been that courts must not interfere with the eligibility criteria and other conditions laid-down for examinations for service under the State, since that can have wide-ranging repercussions, including upsetting promotional prospects and settled seniority amongst State employees.

23. A brief reference in this behalf may be made to the following observations of the Supreme Court in **Jagdish Prasad vs. State of Rajasthan**²:

“34. We also cannot ignore the fact that a government servant gets a right (though not indefeasible right) to be considered for promotion to the appropriate post to which he is eligible and entitled, in accordance with law. In Union of India v. Hemraj Singh Chauhan [(2010) 4 SCC 290 : (2010) 1 SCC (L&S) 1002] this Court while dealing with somewhat similar situation held as under : (SCC pp. 298-99, paras 35-36)

“35.

* * * * *

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.”

“35. It is equally true that the rule of fairness in government action is an essential feature. However, such fairness has to be founded on reasons. Usually, the providing of reasons demonstrates the concept of reasonableness but where the statutory rules provide the circumstances and criteria, ambit and methods by which the

² (2011) 7 SCC 789

selection should be governed, they would become the yardstick of fairness. In *Govt. Branch Press v. D.B. Belliappa* [(1979) 1 SCC 477 : 1979 SCC (L&S) 39] this Court held that the essence of the guarantee under Articles 14 and 16 of the Constitution is “fairness founded on reasons”.

(emphasis supplied)

24. The constant refrain of Mr. Kumar has been that no prejudice would be caused to anyone if the petitioner is *merely permitted to appear* in the promotional examination and the results are made *subject to the final decision* of the present petition. In the opinion of this court however, this is a very simplistic, shallow, convenient and non-legal perspective, since a candidate *must first be eligible* to sit for an examination before they are permitted to do so, which in the present case, the petitioner is not.
25. The examination in question is part of a promotion exercise being conducted by the respondent company, which will decide the future career-path of several officers. The eligibility criteria for participating in this promotional exercise have been clearly enunciated in the notices issued. Every applicant who wishes to participate in this promotional exercise is required to cross the threshold of the eligibility criteria, since that would be the foundation of selecting as to which candidate is fit to be promoted to the next scale. These eligibility criteria cannot be ignored or waived, just for the asking.
26. As a sequitur to the above, this court finds no merit in the prayer made in the application.

27. The application is accordingly dismissed.

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28. Re-notify on 14th December 2023, the date already fixed.

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