

# **SUPREME COURT OF INDIA**

Heavy Engineering Corpn. Ltd.

Vs.

Kamakhya Prasad

(G Pattanaik, Y Sabharwal and H Sema JJ.)

18.09.2002

## **ORDER**

1. The Heavy Engineering Corporation is the appellant against the judgment of the Patna High Court. The applicants before the High Court were those who were not promoted to the posts of junior executive manager from the post of junior executive. It was their specific case that three of the respondents before the High Court, who were admittedly junior to them in the cadre of junior executive, were promoted and yet their case for promotion had not been considered. The stand of the employer was that the question of promotion is governed by a set of promotional policy enunciated in the year 1984, and under the said promotional policy a person would be entitled to the promotion to the post of junior manager, from the cadre of junior executive, after acquiring the experience of 4, 6 or 8 years, depending upon their qualification. Since respondents 4 to 6 were qualified enough to be considered for promotion after acquiring experience of 4 years in the cadre of junior executive and as the applicants did not have that specialised qualification, they had not been considered for promotion when respondents 4 to 6 had been promoted.

2. The learned single judge of the High Court did not find fault with the promotional policy as such but being of the opinion that the respondents 4 to 6 could not have been promoted with their respective qualification after four years of experience in the cadre of junior executive, ultimately held that non-consideration of the case of the applicants while promoting respondents 4 to 6 constitutes infringement of their right of consideration. During the pendency of the matter before the learned single judge, some of the applicants were also promoted to the cadre of junior manager in December, 1991, while some of them, however, on being found unsuitable had not been promoted. Under these circumstances, the High Court directed that those of the applicants who had been found suitable for promotion to the post of junior manager in 1991, should be considered afresh as to whether they can be promoted with retrospective effect, on the basis that their juniors, respondents 4 to 6, were promoted on an earlier date. The corporation assailed the order of the learned single judge in appeal but the division bench dismissed the appeal, hence the present appeal.

3. Mr. Ranjit Kumar, learned senior counsel, appearing for corporation, contends that to acquire eligibility for promotion to the post of the "managerial cadre" as junior manager from the feeder cadre of junior executive, the corporation has indicated different years of

experience depending upon the qualification of the concerned employee. In the finance and accounts branch of the corporation, the qualification being (i) MBA with specialisation in finance management or ICWA or ACA or ASMA with 4 years experience, (ii) degree in arts/science/commerce with SAS or equivalent with 6 years experience and (iii) matriculate with SAS or equivalent accounts' exam, with 8 years experience. It is not the case of the applicants that they are either MBA with specialised qualification as mentioned in the promotional policy. This prescription being a need based prescription which the management has evolved, and the High Court not having found fault therewith, it was unjustified on the part of the High Court to direct reconsideration of the case of the applicants before it for a retrospective promotion to the higher cadre with effect from the date respondents 4 to 6 were promoted who were admittedly junior in the feeder cadre.

4. Having examined the relevant provisions of the promotional policy as well as the facts narrated in the judgment of the learned single judge, we find sufficient force in the contention of the learned counsel. These respondents 4 to 6, who were junior in the feeder cadre of junior executive, were considered for promotion and promoted earlier after having four years of experience in the cadre of junior executive on account of their higher qualification MBA, with specialisation in the subject. The applicants before the High Court not having that specialised qualification, could not have made a grievance on the score that their juniors having been promoted, they are entitled to be considered from the date their juniors were promoted.

5. In our opinion the High Court committed error in issuing the impugned direction requiring the employer to consider the case of the applicants for promotion w.e.f. the date respondents 4 to 6 were promoted. We, therefore, set aside the impugned judgments of the High Court and allow this appeal. However, there will be no order as to costs.