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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : November 24, 2009*

+ **W.P.(C) 20981/2005**

ASHOK KUMAR VERMA Petitioner
Through: Mr.Naresh Kaushik, Advocate.

versus

UOI & ORS. Respondent
Through: Mr.R.V.Sinha, Advocate and
Mr.A.S.Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J. (Oral)

1. Since the issue is short we are deciding the writ petition at the admission stage itself. Rule DB. Heard for disposal.

2. As per the notified Recruitment Rules for the post of Commandant (Senior Veterinary Surgeon) under ITBP, the applicable service Rule stipulates that the post would be filled up firstly by promotion and failing which by deputation. In respect of the promotion, the feeder cadre is the post of Deputy Commandant (Veterinary Surgeon) with 5 years regular service in the grade and being in Medical Category Shape-I.

3. The post of Commandant (Senior Veterinary Surgeon) was vacant and required to be filled up as per the notified Recruitment Rules in the year 2001.

4. The petitioner had rendered the requisite 5 years of regular service as a Deputy Commandant (Veterinary Surgeon) and was also in the Medical Category Shape-I. Another officer; namely, Dr.Mala Ram Dewan also working as a Deputy Commandant (Veterinary Surgeon) was found eligible to be considered for promotion and the DPC which met on 11.1.2001 considered the candidature of the petitioner and said Dr.M.R.Dewan and found that none had the prescribed benchmark of 'Very Good'. The DPC submitted its recommendations on 11.1.2001 and as a result thereof a decision was taken to fill up the post through the process of inviting applications on deputation.

5. Processing the matter further, applicants who had

sought to be considered for appointment on deputation were considered in the month of June and July 2002 and one Dr.M.P.Wase was offered the post on deputation basis.

6. The petitioner filed a writ petition before the High Court of Punjab & Haryana at Chandigarh which was registered as CWP No.5769/2007. He questioned the appointment of Dr.M.P.Wase as a Commandant (Senior Veterinary Surgeon) under ITBP.

7. The grievance of the petitioner raised in the writ petition was that when the DPC met on 11.1.2001 the ACR of the petitioner for the preceding year and going backwards by another 4 years were considered. When appointment on deputation basis was considered in the month of June/July 2002, 2 more ACRs for the years 2000-01 and the year 2001-02 were available. It was urged in the said petition that the respondents were obliged to reconsider the suitability of the petitioner for promotion with reference to his 2 ACRs pertaining to the year 2000-01 and the year 2001-02.

8. The writ petition succeeded before the Division Bench of the Punjab & Haryana High Court at Chandigarh vide judgment and order dated 27.1.2005. Allowing the writ petition it was directed as under:-

“In view of the factual position acknowledged above, it is apparent that the respondents were obliged to evaluate the claim of all eligible candidates for

promotion to the post of Commandant (Senior Veterinary Surgeon) and only when a suitable candidate was not available for promotion from the feeder cadre, it was open to the official respondents to make appointment by way of deputation. Since, at the juncture when the claim of respondent No.3 was considered for appointment by way of deputation, two more Annual Confidential Reports of the above petitioner had become available (which had not been taken into consideration when the claim of the petitioner was considered on 11/2/2001), it was obligatory for the official respondents to first re-assess and re-evaluate the claim of the petitioner and only if, the petitioner did not satisfy the prescribed bench mark, it was open to the official respondents to effect appointment by way of deputation. Since the aforesaid procedure, which flows from the statutory rules under reference, was not adhered to, it is imperative for us to set aside the appointment of respondent No.3 to the post of Commandant (Senior Veterinary Surgeon) by way of deputation. Ordered accordingly."

9. The grievance raised in the instant writ petition is that the mandamus issued by the Punjab & Haryana High Court has been violated, in that, the DPC which was convened on 8.6.2005 pursuant to directions issued by the Punjab & Haryana High Court has not reconsidered the matter as per the mandamus issued by the Punjab & Haryana High Court and that the ACR for the year 2001-02 has not been considered.

10. We note that in para 12 of the writ petition, the petitioner has specifically averred as under:-

"12. That after considering the matter at length, Hon'ble Punjab and Haryana High Court allowed the aforesaid writ petition vide its judgment dated 27/1/2005. True typed copy of the judgment dated 27/1/2005 is annexed herewith as **Annexure P-5**. In the said judgment it has been inter alia held that

“Since, at the juncture when the claim of respondent No.3 was considered for appointment by way of deputation, two more Annual Confidential Reports of the above petitioner had become available (which had not been taken into consideration when the claim of the petitioner was considered on 11/2/2001), it was obligatory for the official respondents to first re-assess and re-evaluate the claim of the petitioner and only if, the petitioner did not satisfy the prescribed bench mark, it was open to the official respondents to effect appointment by way of deputation.”

11. The response to the said paragraph is to be found in paras 11 and 12 of the counter affidavit, wherein it has been averred as under:-

“11. In reply to para 11 it is submitted that after receipt of the judgment of the Hon’ble Punjab & Haryana High Court dated 27.01.2005, a DPC for the vacancy year 2002-03 was convened on 08.06.2005 to fill up one carried forward vacancy of Commandant (Sr.Veterinary Surgeon) for 2001-02 as available on 01.04.2002. As per the instructions of the Government ACRs of 5 preceding years on the crucial date of eligibility i.e. 01.01.2002 were required to be considered while considering the claim of employees for promotion. Accordingly, DPC had considered the ACRs of petitioner as well as other eligible officers. On the basis of their service record and ACR gradings as obtained by them, the DPC did not recommend the petitioner for promotion to the post of Commandant (Sr.Veterinary Surgeon) as he has not obtained the prescribed bench mark of ‘Very Good’ as prescribed for promotion. The DPC proceedings have since been approved by the competent authority. As per Rule his ACR for the year 2001-02 were not required to be considered for the vacancy year 2002-03 for this promotion as Commandant (Sr.Veterinary Surgeon), being the crucial date as on 01.01.2002 that had been prescribed for promotion for the vacancy year 2002-03.

12. Reply to para 8 and 11 above may be treated as a reply to para 12.”

12. We note that for unexplainable reasons a second counter affidavit has been filed by the respondents. Reply to para 12 of the writ petition is in the following words:-

“Para No.11 & 12: That in reply to the corresponding para of the application it is submitted that Dr.Mala Ram Dewan, Chief Veterinary Officer filed a writ petition No.10736 of 2007 in the Hon’ble Punjab & Haryana High Court at Chandigarh requesting repatriation of respondent No.3 (Dr.M.P.Wase) and considering him for promotion to the post of Chief Veterinary Officer (Selection Grade). The Hon’ble Court passed the following order dated 21.05.2008:-

“the petitioner has joined as Commandant/Chief Veterinary Officer on 28.04.2006 and he completes two years on 27.04.2008. It is only on acquiring this eligibility criteria that he can be further considered for promotion. Unfortunately, the petitioner is due to retire on 31.05.2008 and there is hardly any occasion to consider him for such promotion. Apart from the above, the only vacancy which is available, is presently occupied by respondent No.3 on deputation. Even if respondent No.3 is repatriated to his parent cadre still the consideration for selection to the Selection Grade post had to be accorded by the DPC which is likely to take some time. The petitioner is at the verge of retirement. Hence, no relief can be granted to him at this stage. Under the given circumstances, the only direction which can be given is for repatriation of respondent No.3 to his parent cadre as his continuance on deputation is beyond four years and for no valid reasons. It is, accordingly, directed that respondent No.3 be repatriated to his parent cadre forthwith.”

In compliance of Hon’ble Court order dated 21.05.2008, Dr.M.P.Wase (respondent No.3) was repatriated from ITBP to SSB on 22.08.2008 (AN) vide Directorate General, ITBP order No.I-21018/1/2002/Pers.1-1812 dated 22.08.2008 (Annexure-I).”

13. It is apparent that the respondents have not complied with the mandamus issued by the Punjab & Haryana High Court.

14. The respondents seem to be fixed with the idea of the post being considered as a carry forward vacancy for being filled up.

15. Right or wrong, the mandamus issued by the Punjab & Haryana High Court has attained finality. It has to be implemented. The respondents are bound to consider the candidature of the petitioner for being appointed to the post of Commandant (Senior Veterinary Surgeon), by considering ACRs of the petitioner for the years 2000-01 and the year 2001-02.

16. We note that Dr.M.P.Wase who came on deputation has now been repatriated to his parent department.

17. We dispose of the writ petition directing the respondents to convene a Review DPC and in the DPC consider the ACRs of the petitioner for the years 2001-02 and backwards for the preceding years so that 5 years' ACRs are considered. We clarify that 5 years in respect whereof ACRs would be considered would be as under:-

(a) 1997 – 1998.

(b) 1998 – 1999.

(c) 1999 – 2000.

(d) 2000 – 2001.

(e) 2001 – 2002.

18. Needless to state, if the petitioner is found eligible for promotion the promotion would be granted to the petitioner with retrospective effect for the purpose of pay fixation and seniority. In respect of actual pay to be paid, the Competent Authority would take a decision as per the applicable service rules.

19. The respondents would do the needful within four months from today.

20. No costs.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

NOVEMBER 24, 2009
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