

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

+ **W.P. (C.) No.3380/2010**

% **Date of Decision: 31.05.2010**

UNION OF INDIA & ANR. PETITIONERS
Through Mr.A.K.Bhardwaj, Advocate

Versus

CHANDER MOHAN & ORS. RESPONDENTS
Through Mr.L.R.Khatana, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. By way of this writ petition, the petitioner/Union of India has assailed the judgment dated 11.11.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") in OA No. 1373/2007, whereby the benefits of the judgment delivered by the Chandigarh Bench of Central Administrative Tribunal in *S.C. Panda Vs. Union of India & Ors. (O.A.No. 463/PB/2002)* decided on 19.12.2002 and upheld by the Punjab and Haryana High Court in CWP-14378/2003 vide order dated 11.09.2003, were also extended to the respondents.

2. Briefly stating, the facts of this case are that :-

(i) The respondents, who are the officers of the Armed Forces Headquarters Civil Service, on being denied consideration for in situ promotion to the grade of Joint Director on completion of 7 ½ years of service, have approached the Tribunal by claiming parity as such benefit was given to others by the authorities relying upon a judgment delivered by the Punjab and Haryana High Court in the case of *S.C. Panda (supra)*.

(ii) The respondents took a preliminary objection with regard to non-communication of the impugned order and also pleaded that verification was not done properly. On merits, it was stated by them that the grant of in situ promotion to others was one time measure in special circumstances, where officers of 15 years approved service have been stagnating in the grade of Deputy Director (earlier CSO). For want of vacancies, it was decided in 1999 to mitigate the stagnation by temporarily upgrading 166 posts of CSOs.

3. The Tribunal considered the submissions made by both the parties and made the following observations in its order dated 11.11.2009:-

7. Insofar as preliminary objection with regard to authorization by all the applicants has not been done is concerned, though there is an authorization by all the applicants in the name of applicant No.1 to verify the contents of the application, learned counsel for applicants has taken us to provisions of Rules 4 (5) (a) of CAT (Procedure) Rules, 1987 as well as Rules, 14, 15, 17 and 18 of CAT Practice Rules. A preliminary objection was raised by the Registry as to verification but on being

satisfied as to authorization, the OA was listed before the Court for admission, which clearly establishes that this objection is not tenable in law.

9. On merits, a similar issue had come before the Tribunal in *K Vijayan v. Union of India & another* (OA-484/2005) decided on 17.1.2006, which stood complied with by the respondents on 30.10.2006.

10. Moreover, the Chandigarh Bench of this Tribunal in *S.C. Panda v. Union of India & others* (OA-463/PB/2002) decided on 19.12.2002 on the same issue. Taking cognizance of one time scheme of the respondents, the Tribunal has not approved it and directed consideration of in situ promotion, which stood affirmed by the Punjab and Haryana High Court at Chandigarh in CWP-14378/2003 by an order dated 11.9.2003. As there is no conflicting decision of the High Court of Delhi on the subject, the decision of Punjab and Haryana High Court is binding on us. We respectfully follow the same.

11. Applicants are entitled to the benefits of the decision and also for in situ promotion/upgradation on completion of seven and a half years service, as has been given to their counterparts. Resultantly, OA is allowed. Impugned order is set aside. Respondents are directed to accord to the applicants the benefits of in situ promotion to the grade of Joint Director with all consequential benefits of arrears and pay and allowances from the date they had completed seven and a half years of service, as stipulated, within a period of three months from the date of receipt of a copy of this order. No costs.

4. At this juncture, it would be appropriate to take note of a chart placed on record by the respondents before the Tribunal which goes to show that all the respondents as on 30.06.2007 had already completed approved service of more than 11 years. Rather most of them have completed 12/13 years of service.

5. The chart also goes to show that they were promoted as CSO/Deputy Director on 1.10.1993. They were to complete 7 ½ years of service as Deputy Director on 01.04.2001. On the alleged cut off date i.e. 27.06.2000, which as stated by the petitioners was a relevant date, they were short of about ten months in completing 7 ½ years of approved service and therefore, had been praying that they may be granted promotion from the date on which they would complete 7 ½ years service as was permitted by the Chandigarh Bench of the Tribunal.

6. In this regard, it would be appropriate to take note of the judgment of the Chandigarh Bench of the Central Administrative Tribunal in OA No. 463/PB/2002 decided on 19.12.2009. The relevant observations are reproduced hereunder:-

1. The learned counsel for the respondents vehemently argued that this was a one-time exception only, therefore, the benefit cannot be extended to all other in the department. Such promotion was given only to those who had completed 12 years of service on the cut off date, i.e., 31st December, 1999 and since the applicant had not completed 12 years of service on the 31st December, 1999 he was not considered to be entitled to such promotion.

2. We are unable to agree with the learned counsel for the respondents as ground for discrimination is not based on any rationale. There should be some valid reason for discrimination between one category of Audience Research Officer and other category of Audience Research Officers. If the basis for promotion is 12 years of service in the lower grade and the fact that there is stagnation for one category of Audience Research Officers then a similar principle would also be applicable for the applicant. We, therefore, find no

reason to deny similarly placed persons the same benefit. The O.A. is, therefore, allowed and the respondent department is directed to give in-situ promotion to the applicant to the post of Deputy Director, even if there is no vacancy, as has been done in case of ten other officers. Not only the applicant, but similarly placed other persons who have not approached this Tribunal should also be given the benefit from the date when they complete 12 years in their present post. This order may be executed within a period of 3 months from the date a certified copy of this order is produced before the respondent department.

7. The Punjab and Haryana High Court while hearing Writ Petition bearing No.CWP No. 14378/2003 against the order of the Chandigarh Bench dated 19.12.2002 further clarified the matter vide order dated 11.09.2003. The relevant observations are reproduced hereunder:-

We have heard Mr. Mukesh Kaushik, Additional Central Government Standing Counsel, who appears on behalf of the petitioners. The contention raised by him is that the in situ promotion as Deputy Director granted to 10 other Audience Research Officers, who had completed 12 years of service as such on 31.12.1999, was a one time measure. The extension of Assured Career Scheme in their case cannot be generalized and the CAT has erred in granting the benefit of Assured Career Scheme to respondent No.1 and other similarly situated persons, who are Group 'A' officers and, as such are not covered under the said Scheme. According to him, the case of 10 other Audience Research Officers for granting them the benefit of in situ up-gradation was considered in the light of acute stagnation in the cadre of Audience Research Officer and as it was a one time relief, it cannot be treated as a precedent in future. Moreover, it has been contended by him, the Government has the prerogative to fix a cut-off date for granting some benefits to its employees.

We do not find any logic in the contention raised by the learned counsel for the petitioners. There does not seem to any rational basis for discriminating

respondent No.1 from 10 other similarly situated Audience Research Officers, who had been granted the benefit of Assured Career Scheme, even though they were also Group 'A' officers. In case the petitioners considered the case of 10 other Audience Research Officers for granting them in situ promotion as Deputy Director on the ground that they were stagnating on the said posts for the last 12 years, the denial of the same benefit to respondent No.1 and similarly situated other persons is illogical and arbitrary. The only difference between respondent No.1 and 10 other Audience Research Officers was that while the former had completed 12 years of service as such on 11.05.2000, the latter had completed the tenure of 12 years about four months earlier to that, i.e., 31.12.1999. The fixation of cut-off date for denying the benefit to respondent No.1 and other similarly situated persons was grossly unreasonable. There should be some valid reason for creating discrimination between one category of Audience Research Officers and other category of Audience Research Officers. Admittedly, the 10 other Audience Research Officers were granted promotion as Deputy Director on completion of 12 years of service on the ground that there was stagnation in their cadre. The same principle would also be applicable in the case of respondent No.1 and other similarly situated persons. We do not see any infirmity in the well-reasoned order dated 19.12.2002 passed by the CAT.

Consequently, there is no merit in the present writ petition. It is, accordingly, dismissed in limine.

8. Thus, the ratio of the judgment of the Punjab and Haryana High Court is that if on a cut off date the incumbent was not having the requisite service, he was entitled to the benefit of the concession given on the day when he acquires the eligibility service, that is to say, if a person completes 12 years as on 11.05.2000 he would be treated similar to a person who acquired approved service on 31.12.1999 though benefit would be granted to him from the date i.e. 11.5.2000.

9. It is an admitted fact that the judgment of the Punjab and Haryana High Court had not been assailed by the petitioners. Thus, the said judgment is binding on the petitioners. Nothing has been pointed out as to why the same principles be not applied to the case of the respondents.

10. Another important aspect which needs consideration is that before the Tribunal on 6.4.2010, the petitioners themselves made the following statement when they wanted extension of time to comply with the order of the Tribunal:-

Present: Sh. L.R. Khatana, counsel for applicant.

Shr. R.N.Singh, counsel for respondents.

Averments made in this application for extension of time to implement the order of the Tribunal are that the department is willing to implement the judgment but consultation of various departments is required and which is being done as well.

Order passed by this Tribunal be implemented by four weeks from today. MA—807/2010 is disposed of accordingly.

11. It is, however, interesting to note that at that time they did not inform the Tribunal that they want to challenge the order of the Tribunal before us. This hide and seek of the petitioners also disentitle them to seek any relief from us which even otherwise has not been applicable to them for the reasons stated above.

12. In these circumstances, we do not find any reason to interfere with the order passed by the Tribunal where similar benefits have been granted to the respondents who had completed 7 ½ years of service and

in fact have completed more service than the eligibility service by directing awarding similar benefits to the respondents in situ promotion to the grade of Joint Director with all consequential benefits of pay and allowances from the date they completed 7 ½ years of service as stipulated.

13. Thus, we do not find any ground to interfere with the order of the Tribunal while exercising our powers under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed without any order as to costs.

C.M.No.6770/2010

In view of the orders passed above, this application has become infructuous and is accordingly disposed of.

MOOL CHAND GARG, J.

MAY 31, 2010

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ANIL KUMAR, J.