

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16769-CAT of 2005 (O&M)

DATE OF DECISION: AUGUST 12, 2015

PRITPAL SINGH & ANOTHER

...PETITIONERS

VERSUS

THE CENTRAL ADMINISTRATIVE TRIBUNAL, ...RESPONDENTS
CHANDIGARH BENCH, CHANDIGARH & ORS.

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. SATISH GOEL, ADVOCATE FOR THE PETITIONERS.
MR. P.C.GOYAL, ADVOCATE FOR RESPONDENTS NO.2 TO 4.
MR. MANU BHANDARI, ADVOCATE FOR RESPONDENT NO.5.

M. JEYAPPAUL, J.

1. The writ petitioners who figured as respondents No.6 and 9 respectively in the Original Application filed by Pawan Kumar Mattu before the Central Administrative Tribunal (for short 'CAT'), Chandigarh Bench have prayed for a writ of Certiorari for quashing the order dated 19.1.2005 and review order dated 7.9.2005 of the Central Administrative Tribunal, Chandigarh Bench.

2. Pawan Kumar Mattu, respondent No.5 herein, sought for quashing the promotion granted in the guise of the review Departmental Promotion Committee (for short 'DPC'). He has also prayed for a direction to consider him for promotion by fresh DPC.

3. On 24.1.1992, a DPC was held and as a consequence, 13 persons were promoted to the post of Assistant Director. It is not in dispute

that as per Rules, an Assistant with 8 years of regular service and an Office Superintendent with 5 years service are eligible for promotion to the post of Assistant Director. It is an admitted fact that none of the employees promoted to the post of Assistant Director as per DPC on 24.1.1992 was a party to the present case.

4. One Mr. S.K.Mehta filed original application before the CAT, Jodhpur Bench, questioning the promotion of one Mr. R.S.Rathore. To resolve the dispute qua *inter se* seniority, a review DPC was held on 6.2.1995 for only one post and Mr. S.K.Mehta was promoted to the post of Assistant Director. Mr. R.S.Rathore, filed original application before the CAT, Jodhpur Bench which declared Mr.R.S.Rathore senior to Mr.S.K.Mehta for the post of Assistant Director.

5. To review the DPC held in 1992 and 1995, a DPC was held on 10.8.2001. It considered promotion of 12 persons to the post of Assistant Director. It is not out of place to mention here that none of them was in service or holding the post of an Office Superintendent when 1992 DPC was conducted on 24.1.1992. In the review DPC, 9 Office Superintendents and 2 persons from the category of Senior PA/PS were considered. 12 persons were ordered to be promoted as per the order appended as Annexure P-28.

6. Respondent No.5 herein pleaded that none of the persons promoted had qualifying service for consideration of their promotion to the post of Assistant Director. It is further contended by respondent No.5 herein that 2001 DPC can, in no manner, be called a review DPC as none of the persons promoted in 1992 was considered again. It is virtually a fresh DPC in which respondent No.5 has a right of being considered, particularly

because he belongs to Scheduled Caste category. Therefore, he has prayed for a direction to the official respondents to consider his candidature and promote him from the date he became eligible for promotion as Assistant Director against the reserved category post by convening a review DPC with all consequential benefits.

7. The CAT, Jodhpur Bench, vide order dated 13.8.2001 in O.A. No.495 of 1995 directed the official respondents to convene a review DPC for the post of office Superintendent and Assistant Director and consider the candidature of all the three persons, namely, R.S.Rathore, R.R.Bharti and S.K.Mehta for promotion to the post of office Superintendent and Assistant Director respectively, as per the seniority fixed in terms of directions issued by it.

8. As per the relevant Instructions issued by the official respondents, the review DPC may be held with the approval of the appointing Authority to rectify unintentional mistakes e.g.:

- a) where eligible officers were not considered; or
- b) where ineligible officers were considered by mistake; or
- c) where the seniority has been revised with retrospective effect resulting in a variable of the seniority list placed before the DPC; or
- d) where some procedural irregularity was committed by a DPC; or
- e) where adverse remarks in the ACRs were turned down after the DPC had considered the case.

But the proceedings of review DPC for the post of Assistant Director held as

per Annexure P-7 would go to establish that 12 employees whose candidature for promotion was not at all under consideration by the original DPC were considered by review DPC against the above direction of the CAT, Jodhpur Bench and the relevant Instructions issued by the official respondents as regards constituting the review DPC.

9. As per Recruitment Rules for the post of Executive Cadre Group 'A' found appended in Annexure P-31, only Office Superintendent and equivalent with at least 5 years of service in the scale of ₹1640-2900 failing which Superintendents with 2 years of service and 8 years combined service as Superintendent and Assistant or equivalent in grades are eligible for promotion to the post of Assistant Director.

10. Learned counsel appearing for the writ petitioners drawing our attention to the combined seniority list of feeder cadre for the post of Assistant Director as on 1.1.1992 found appended as Annexure P-1 submitted that sufficient years of shortfall in service had been exempted for the writ petitioners.

11. On a perusal of the above document, we find that writ petitioner Pritpal Singh joined the service as an Assistant only on 1.5.1986. Of course, 2 years 7 months' exemption towards shortfall was given to him. The other writ petitioner, namely, Anil Kumar joined as Assistant only on 9.4.1987. He has been given 3 years 7 months' exemption to make up the shortfall in service. Despite such exemption given towards shortfall of service, the petitioners have not completed the required 5 years of service as on the date of original DPC which was constituted on 24.1.1992.

12. The learned counsel appearing for respondent No.5, in the light

of the above, has rightly contended that the writ petitioners who had not even completed 5 years of required service for promotion to the post of Assistant Director as on the date when original DPC was constituted were considered for promotion in the review DPC.

12. We are of the considered view that review DPC has considered the candidates who were not even eligible for promotion at the time when the original DPC was constituted. Further, the review DPC has gone beyond its jurisdiction throwing to winds the Instructions issued by the official respondents and the specific direction issued by CAT, Jodhpur Bench to consider only three candidates for promotion in the review DPC. Respondent No.5 herein has put in required service for promotion. Seniority list of the Office Superintendents also has not been finalized by the official respondents. Therefore, the learned CAT, Chandigarh Bench has rightly passed the impugned order taking into account the lapse on the part of the official respondents in not finalizing the seniority list of Office Superintendents and the promotions illegally given to private respondents No.4 to 7 in the Original Application filed before it. There is no merit in the writ petition and the same stands dismissed.

(M. JEYAPPAUL)
JUDGE

August 12, 2015
Gulati

(DARSHAN SINGH)
JUDGE