IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8283 of 2008
Date of decision: 27.8.2015

Sukhdev Kumar Sharma **.....Petitioner(s)**

Versus

Union of India & ors. **.....Respondent(s)**

CORAM:- HON'BLE MR.JUSTICE M. JEYAPAUL
HON'BLE MR.JUSTICE DARSHAN SINGH

1. **Whether reporters of local newspapers may be allowed to see judgment? Yes**
2. **To be referred to reporters or not? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

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Present: Mr. Puneet Jindal, Sr. Advocate with Mr. Siddhant Kant, Advocate for the petitioner(s).

Mr. P.C. Goyal, Advocate for the respondents.

DARSHAN SINGH, J.

1. The present civil writ petition has been filed under Article 226/227 of the Constitution of India for issuance of appropriate writ/order/direction especially in the nature of certiorari quashing the order dated 9.7.2007 as well as the order dated 28.11.2007 passed by respondent No.6 The Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter called 'the Tribunal') whereby the Original Application and the application for review respectively moved by the petitioner have been dismissed. The petitioner has also

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prayed for issuance of suitable directions to allow the original application filed by the petitioner in toto with a direction to respondents No.1 to 5 to release the arrears of salary on the deemed date of promotion to the petitioner and pensionary benefits accruing thereof as he had retired on 30.6.2005.

2. The petitioner was initially appointed by direct recruitment as Inspector on 12.9.1975. Thereafter, he was promoted as Superintendent “Group-B” on 31.7.1991 on the basis of seniority-cum-fitness. The next channel of promotion from the post of Superintendent “Group-B” is to the post of Assistant Commissioner which is a “Group-A” post. This post is also known as Grade-VI (Junior Time Scale) Assistant Commissioner of Custom and Central Excise. The service conditions are governed by “Indian Customs and Central Excise Service (Group-A) Rules, 1987”. The petitioner continued to serve as Superintendent Group-B since the date of promotion. That on implementation of 5th Central Pay Commission certain officers were promoted in the pay scale of ₹ 8000-275-13500. The petitioner was also granted the said scale w.e.f. 12.9.1999. Such pay scale was only granted to those officers who were found suitable and fit for promotion. That from the pay scale of ₹ 8000-13500, the next promotional post is of the Assistant Commissioner Grade-V (Senior Time Scale in the pay scale of ₹ 10325-15200). For getting promotion to Grade-V one must have completed 4 years' service in Grade-IV post as per Rule 19. The petitioner had became entitled for grant of Senior Time Scale on completion of 4 years' regular service i.e in the September, 2003. When the said scale was

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not granted to the petitioner, he moved the representation. Finding no response, he filed OA No.1073 HR/2004 before the learned Tribunal. The said OA was dismissed by the Tribunal vide impugned order dated 9.7.2007. The misc. application moved by the petitioner which treated as review application was also dismissed vide impugned order dated 28.11.2007. Hence, this petition.

3. The present writ petition has been contested by respondents No.1 to 5 on the plea that Departmental Promotion Committee (DPC) for promotion to the grade of Assistant Commissioner (Junior Time Scale) could not be held in time due to long drawn litigation which remained pending before different Forums. It has been further pleaded that the officers (Superintendents of Central Excise) were promoted to the grade of Assistant Commissioner to the General Category upto Serial No.2479 in the seniority on the basis of recommendations of the DPC held on 26-28th November, 2002. The petitioner fell at Serial No.2920. There were many seniors to petitioner in the general category who were due for promotion but could not be promoted due to non-availability of the vacancies. It was further pleaded that no junior to the petitioner in the general category was promoted to the grade of Assistant Commissioner. It is further pleaded that the petitioner has been granted the financial upgradation in the scale of ₹ 8000-13500/- under ACP Scheme and was not promoted to the grade of Assistant Commissioner i.e. under the Indian Revenue Service (Customs & Central Excise) Group 'A'. Hence, the question of granting the Senior Time Scale after completion of 4 years of

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service in the pay scale of ₹ 8000-13500 does not arise.

4. Initiating the arguments, Sh. Puneet Jindal, learned Senior Advocate for the petitioner contended that the petitioner was entitled to the Senior Time Scale of ₹ 10325-15200 w.e.f. 12.9.2003. He was also entitled for promotion to the post of Assistant Commissioner from the due date. He contended that as per the information sought by the petitioner under the Right to Information Act more than 200 vacancies were available. The seniority number of the petitioner fell within 200 but the DPC was not convened intentionally and deliberately. He contended that as per the memo dated 10.4.1989 issued by the Department of Personnel, the DPC should be convened at regular annual intervals every year to fill up the vacancies by promotion but these instructions have been violated by the respondents in this case. He contended that the petitioner has served as Superintendent for about 14 years but the promotion was denied to him due to in action of the respondents. The petitioner was granted the pay scale of ₹ 8000-275-13500 w.e.f. 12.9.1999 which was the scale for the post of Assistant Commissioner. Thus, after completion of 4 years of regular service, he was entitled to the Senior Time Scale of the said post. Thus, he pleaded that the petitioner is entitled for promotion to the post of Assistant Commissioner as well as the Senior Time Scale w.e.f. 12.9.2003. This claim of the petitioner has been wrongly declined by the learned Tribunal.

5. On the other hand, learned counsel for the respondents contended that the DPC could not be held due to various litigations.

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Finally, the DPC was convened in November, 2002 and eligible officers were promoted as per their seniority. The petitioner did not fall in the zone of consideration. Hence, he cannot claim the promotion to the grade of Assistant Commissioner. He further contended that no junior to the petitioner has been promoted by the respondents. He is also not entitled for the Senior Time Scale as he was never promoted to the post of Assistant Commissioner.

6. We have duly considered the aforesaid contentions but we do not find any substance in the contentions raised by the learned counsel for the petitioner.

7. This fact is not disputed that initially the petitioner was appointed as an Inspector (Group 'C') on 12.9.1975. He was promoted as Superintendent (Group 'B') on 31.7.1991 and was working as such till the date of his retirement i.e. 30.6.2005. While working on the post of Superintendent, the petitioner was granted financial upgradation in the pay scale of ₹ 8000-13500 under the ACP Scheme but the same cannot be considered in any manner his promotion in the time scale of the Assistant Commissioner.

8. The main grievance of the petitioner is that the DPC was not held for promotion to the post of Assistant Commissioner in time. Learned counsel for the petitioner has also referred to the instructions issued by the Department of Personnel vide Memorandum dated 10.4.1989 that the DPC should be held every year to fill up the existing and anticipated vacancies well in advance but in the reply filed by the respondents, it has been well explained that the DPC for promotion to the grade of Assistant Commissioner

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(Junior Time Scale) could not be held in time due to long drawn litigation against the quota among the feeder cadre which was settled in November, 1996 by the Hon'ble Apex Court. Thereafter, a DPC was held reviewing all the ad hoc promotions made from 1980 to 1996-97. Thereafter, the cadre of Superintendent of Customs filed another application in the learned Tribunal, Mumbai for revision of their quota. Thus, the DPC could not be held due to stay order of the learned Tribunal. Only after dismissal of the petition by the learned Central Administrative Tribunal and the Hon'ble High Court of Mumbai, the DPC was convened during November 2002, to be more specific, on 26/28 November, 2002. The petitioner was falling at Serial No.2920 in the seniority list. The eligible officers as per their seniority in the All India Seniority List of Superintendent of Central Excise were promoted. The petitioner ranked much below in the said seniority list and was no where in the zone of consideration for promotion to the post of Assistant Commissioner. Thus, the delay in holding the DPC has been satisfactory explained by the respondents and also the reasons due to which the petitioner could not be promoted to the rank of Assistant Commissioner and we do not find any fault therewith.

9. Even if the plea raised by the learned counsel for the petitioner is accepted that the vacancies were available, the petitioner cannot claim promotion as a matter of right. It is for the employer to decide as to whether the promotions are required to be made keeping in view the requirements. The employee has no right to claim promotion from a particular date or to seek a direction to the

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employer that the vacancy in the promotional post should be filled up. The action or inaction of the employer can only be subjected to the judicial review if the same is actuated by some extraneous considerations or mala fide considerations other than the administrative. To support this view, reference can be made to case **Union Territory, Chandigarh Administration and others versus Tarlochan Singh and others 2014 (3) SCT 330 (DB**). In the instant case, there is no material on file to establish that in action on the part of the respondents was due to any mala fide or extraneous reasons. It has been fairly conceded at Bar by the learned counsel for the petitioner that no junior to the petitioner was promoted to the post of Assistant Commissioner during his service tenure.

10. Thus, keeping in view our aforesaid discussion, we do not find any legal infirmity in the impugned orders dated 9.7.2007 and 28.11.2007 passed by the learned Tribunal. Therefore, no direction can be given to the respondents to grant promotion to the petitioner to the post of Assistant Commissioner and Senior Time Scale w.e.f. 12.9.2003.

11. Resultantly, the present writ petition is without any merit and the same is hereby dismissed.

(M. JEYAPAUL)
JUDGE

August 27, 2015 **(DARSHAN SINGH)**
ps **JUDGE**

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