

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.919 of 2014

DATE OF DECISION: SEPTEMBER 11, 2015

RAJEEV KHARBANDA

...PETITIONER

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

**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.RAJIV KATARIA, ADVOCATE FOR THE PETITIONER.
MR.INDRESH GOEL, ADVOCATE FOR RESPONDENTS NO.1 TO 4.
MR.ASEEM RAI, ADVOCATE FOR RESPONDENT NO.6.

M. JEYAPPAUL, J.

1. The writ petitioner who figured as 6th respondent in the Original Application filed by 6th respondent herein challenges the order passed by the Central Administrative Tribunal (for short 'Tribunal'), Chandigarh Bench setting aside the order dated 28.7.2010 promoting the writ petitioner to the post of Programme Executive (for short 'PEX').

2. The 6th respondent herein prayed before the Tribunal, Chandigarh Bench that she might be ordered to be placed in the promotional post and scale as Programme Executive (Incharge) in place of the writ petitioner alongwith all emoluments and benefits which were enjoyed by the writ petitioner. The 6th respondent also prayed for setting aside the impugned transfer order passed by the private respondents.

3. The 6th respondent herein was recruited directly to the post of Transmission Executive (for short 'TRES') in the year 1990. The writ

petitioner joined as a TRES on 6.12.1990 on compassionate grounds. The 6th respondent herein contended that on the basis of Rule 4.8 of the consolidated Instructions issued by the Government of India on "Seniority of Direct Recruits and Promotees" a person who was appointed by way of direct recruitment would be placed senior to the person who was appointed on compassionate grounds in the same order. In the year 2005, the 6th respondent was senior to the writ petitioner as per the seniority list of TRES issued as on 1.1.2004, inasmuch as the 6th respondent was shown at S.No.379 and the writ petitioner was shown as S.No.391.

4. However, vide order dated 25.2.2005, 300 persons including the writ petitioner were promoted to the post of PEX on *ad hoc* basis ignoring the prior right of 6th respondent. The fact remains that the writ petitioner alongwith others was reverted to the post of TRES on 24.2.2006. The final seniority list was issued by the official respondents as on 1.1.2008, wherein the name of the 6th respondent has been shown at S.No.604 and that of the writ petitioner at S.No.673. Again, a final seniority list was issued on 1.1.2010 in which the name of 6th respondent was shown at S.No.386, while the name of the writ petitioner was shown at 455. The writ petitioner who was reverted, based on the representation made by the 6th respondent, never challenged the order of reversal passed as against him.

5. C.Sreekumar and others filed O.A. No.108 of 2008 before the Tribunal, Ernakulam Bench challenging the order of their reversal. The said O.A. was decided on 29.7.2009 directing the official respondents to take earnest efforts to make regular appointments by convening the DPC. Till then, it was ordered that the applicants be permitted to continue as PEX.

The officials respondents extended the benefit of the above decision to the writ petitioner, despite the fact that the writ petitioner was not one of the applicants in O.A. No.108 of 2008 before Tribunal, Ernakulam Bench. The grievance of the 6th respondent was that she should have been promoted to the post of PEX as she was senior to the writ petitioner.

6. The official respondents contended that only pursuant to the decision of the Tribunal, Ernakulam Bench, the writ petitioner was again promoted with the benefit of pay and allowances. The writ petitioner contended that his order of termination was not challenged by the 6th respondent. The benefit of order passed by the Tribunal, Ernakulam Bench in the case of C.Sreekumar (*supra*) was rightly extended, it was contended.

7. In the present writ petition, we are not concerned with the prayer of the 6th respondent seeking to set aside the impugned transfer orders passed by the official respondents and the direction issued by learned Tribunal to give fresh look into the issue of transfer as the same was not under challenge before this Court. It is only the order passed by the Tribunal setting aside the order of promotion granted to the writ petitioner on 28.7.2010 which is under serious challenge.

8. It is an admitted fact that as per the seniority list of TREX prepared by the official respondents as on 1.1.2004, the 6th respondent figured at S.No.379, while the writ petitioner figured as S.No.391. But unfortunately, by virtue of the order dated 25.2.2005, the writ petitioner who was far junior was promoted to the post of PEX ignoring the candidature of 6th respondent. Even in the final seniority list prepared by the official respondents on 1.1.2008 and subsequently on 1.1.2010, the 6th

respondent was shown as senior to the writ petitioner. Therefore, it is an admitted position that 6th respondent is far senior to the writ petitioner.

9. It appears that the official respondents without properly fixing the seniority and convening DPC had been making *ad hoc* promotions ignoring the seniority of the employees. Such a casual approach against the principles of law had driven the employees to seek remedy before the Court. Had the official respondents properly finalized the seniority list and made promotions convening the DPC in accordance with the seniority, the employees would not have come to the Court seeking relief.

10. In the instant case, only on the representation made by the 6th respondent herein, the writ petitioner, who was found to be junior to the 6th respondent was reverted. The reversal of the writ petitioner attained finality as he had not chosen to challenge his reversion at the instance of the 6th respondent. But unfortunately, the official respondents taking umbrage under the directions issued by the Tribunal, Ernakulam Bench, in C.Sreekumar and others (O.A. No.108 of 2008), the writ petitioner was again promoted by virtue of the order passed by the official respondents on 28.7.2010.

11. As already pointed out by us, the order of reversion passed as against the writ petitioner by the official respondents had attained finality as he had not chosen to put to challenge the above order of reversion. In C.Sreekumar and others, the applicants therein challenged the order of reversion passed as against them. The official respondents took up a plea before the Tribunal, Ernakulam Bench that they had already circulated the last draft eligibility list for promotion as PEX after rectifying all

discrepancies. Under such circumstances, a direction was issued to finalize the seniority list and convene the DPC to make regular promotion. At the same time, learned Ernakulam Bench also directed that *ad hoc* promotees shall be permitted to continue. Such a direction issued by the Tribunal, Ernakulam Bench cannot be lawfully extended to the case of the writ petitioner as he had been reverted only on the basis of the representation made by 6th respondent that he being her junior should not have been promoted. Therefore, we do not find any error in the decision taken by the Tribunal that the benefit of the direction issued by the Tribunal, Ernakulam Bench in C.Sreekumar and others should not have been extended by the official respondents to the writ petitioner. Consequently, the Tribunal has rightly set aside the order dated 28.7.2010 giving again promotion to the writ petitioner.

12. The official respondents placed on record the proceedings of regular promotion granted, not only to the writ petitioner and the 6th respondent, but also to other eligible persons, to the post of PEX on the basis of the direction given by the Tribunal, Ernakulam Bench and the Tribunal, Chandigarh Bench after finalizing all the seniority list and convening the DPC.

13. Learned counsel appearing for the writ petitioner vehemently submits that 6th respondent had chosen to challenge only the promotion of the writ petitioner. In fact, a large number of employees who were junior to 6th respondent had also been promoted. But there was no challenge made as regards the promotions made to the other juniors of the 6th respondent, it

was submitted.

14. We find that the writ petitioner had not set up a plea through his written statement that O.A. filed by 6th respondent before the Tribunal was not maintainable as other juniors to the 6th respondent were not made a party. If such a plea had been set up by the writ petitioner in his written statement, the 6th respondent would have had an opportunity to implead them as a party. Secondly, the promotion given to the writ petitioner was challenged by 6th respondent on two grounds. The first ground was that the writ petitioner was far junior to her. The second ground was that the writ petitioner was reverted based on her representation. As he was not an applicant before the Tribunal, Ernakulam Bench, the benefits of the direction given by the said Bench cannot be extended.

15. In our considered view, even in the absence of the other juniors to 6th respondent, the claim made by 6th respondent could be settled. Further, there was no order passed by the Tribunal directing the official respondents to promote 6th respondent in place of the writ petitioner. Therefore, in our considered view, the directions issued by the Tribunal to consider the plea of the 6th respondent for promotion alongwith others, after finalization of the seniority list and convening the DPC does not, in any way, affect the other juniors to the 6th respondent. For all these reasons, we find that the claim of 6th respondent cannot be rejected on the ground that she had not chosen to implead the other juniors to her in the O.A. filed by her before the Tribunal.

16. It was contended by learned counsel appearing for the writ

petitioner that a consequential order has been passed by the official respondents under Annexure P-10 to fix the pay of the writ petitioner as TREX w.e.f. 25.2.2006.

17. Firstly, the Tribunal has not given any direction to the official respondents to fix the pay of the writ petitioner as TREX w.e.f. 25.2.2006. Secondly, if such an order affects the rights of the writ petitioner, he is at liberty to challenge the same as it may give rise to a different cause of action.

18. In view of the above, we find that there is no merit in the writ petition and therefore, the same stands dismissed.

(M. JEYAPPAUL)
JUDGE

September 11, 2015
Gulati

(DARSHAN SINGH)
JUDGE