

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.19228 of 2003

Date of Decision:20.09.2016

Brig. K.S. Khatri

... Petitioner

Vs.

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. A.S. Narang, Advocate for the petitioner.

Mr. J.S. Lalli, Advocate for the respondents.

P.B. BAJANTHRI J.

In the instant writ petition, the petitioner has questioned the order dated Nil.4.2003 (Annexure P-10).

The petitioner while working as Deputy Director his name was recommended for the purpose of promotion to the cadre of Senior Administrative Grade/Additional Surveyor General in Survey of India, Department of Science and Technology in the month of May 2001 due to occurrence of vacancy on 30.6.2001 due to retirement of Shri A.M. Chaturvedi. Between May 2001 to 31.1.2002, the UPSC could not constitute DPC proceedings for the purpose of filling up of post of Senior Administrative Grade/Additional Surveyor General in Survey of India (Group "A") in the pay scale of Rs.18400-500-32400 in the department of Science and Technology. On 31.1.2002 admittedly name of the petitioner was cleared for promotion to the cadre of Senior Administrative Grade/Additional Surveyor General in Survey of India among others. The same could not be given effect insofar as the petitioner is concerned for the reasons that he attained the age of superannuation and retired on 31.1.2002.

To that extent, a speaking order has been issued by the respondent vide Annexure P-10 dated Nil April 2003 which is under challenge in the present petition.

Learned counsel for the petitioner submitted that even if the petitioner has retired from service on 31.1.2002 the date on which the DPC cleared his name for promotion to the cadre of Senior Administrative Grade/Additional Surveyor General in Survey of India, he is entitled to be promoted to the cadre for the purpose of granting status and pay scale attached to the post. In support of the same, learned counsel for the petitioner has relied on Office Memorandum dated 12.10.1998. Extract of OM is reproduced as under:

“Subject: Procedure to be followed by the Department Promotion Committee (DPCs) in regard to retired employees.

The undersigned is directed to invite reference to the Department of Personnel and Training (DOP&T) Office Memorandum No.22011/5/86-ESst.(D) dated April 10, 1989 containing the consolidated instructions on DPCs. The provisions made in paragraph 6.4.1. of the aforesaid Office Memorandum lay down the following procedure for preparation of year wise panel (s) where for reasons beyond-control, DPC (s) could not be held for the year (s) even through vacancies arose during the year (s).

2. Doubts have been expressed in this regard as to the consideration of employees who have since retired but would also have been considered for promotion if the DPC (s) for the relevant year (s) had been held in time.

3. The matter has been examined in consultation with the Ministry of Law (Department of Legal Affairs). It may be pointed out in this regard that there is no specific bar in the aforesaid Office memorandum dated April 10, 1989 or any other related instructions of the Department of Personnel and Training for consideration of retired employees, while preparing year-wise panel (s), who were within the zone of consideration in the relevant year (s). According to legal opinion also it would not be in order if eligible employees,

who were within the zone of consideration for the relevant year (s) but are not actually in service when the DPC is being held are not considered while preparing year-wise zone of consideration/panel and, consequently, their juniors are considered (in their places) who would not have been in the zone of consideration if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant year(s). Names of the retired officials may also be included in the panel (s). Such retired officials would, however, have no right for netunl promotion. The DPC (s), may, if need be, prepare extended panel (s) following the principles prescribed in the Department of Personnel and Training Office Memorandum No.22011/8/87-ESst.(D) dated April 9, 1996.”

From the perusal of the Office Memorandum, it is evident that even those who are due for retirement and those have been retired their names would be considered for the purpose of promotion. Hence, Impugned order Annexure P-10 is liable to be set aside. Learned counsel for the petitioner further submitted that as per the consolidated instructions of the Government of India dated 10.4.1989 as amended by Office Memorandum dated 27.3.1997 in which frequency of meeting for the purpose of DPC has been stated as follows:

“FREQUENCY OF MEETING

Frequency at which DPC should meet

3.1 The DPCs should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, Integrity Certificates, Seniority List, etc., for placing before the DPC. DPCs could be convened every year if necessary on a fixed date e.g., 1st April or May. The Ministries/Departments should lay down a time schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers

responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that Recruitment Rules for a post are being reviewed/amended. A vacancy shall be filled in accordance with the Recruitment Rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to Recruitment Rules normally have only prospective application, the existing vacancies should be filled as per the Recruitment Rules in force.

Very often, action for holding DPC meeting is initiated after a vacancy has arisen. This results in undue delay in the filling up of the vacancy causing dissatisfaction among those who are eligible for promotion. It may be ensured that regular meetings of DPC are held every year for each category of posts so that an approved select panel is available in advance for making promotions against vacancies arising over a year.”

Since DPC could not constitute between June 2001 to 30/1/2002 for administrative reasons, petitioner cannot deprive promotion. Thus, learned counsel for the petitioner submitted that in view of the above facts and circumstances, the petitioner is entitled to promotion to the post of Senior Administrative Grade/Additional Surveyor General in Survey of India from the date of occurrence of the vacancy. In the present case, the vacancy of Senior Administrative Grade/Additional Surveyor General in Survey of India occurred on 30.6.2001 the date on which Sh. A.M. Chaturvedi retired while holding the post of Additional Surveyor General. The petitioner's claim is required to be considered against the said vacancy. That apart one more vacancy occurred in the month of September, 2001. Therefore before retirement of petitioner two vacancies were available.

Per contra, learned counsel for the respondent submitted that even though the DPC has cleared the name of the petitioner on 31.1.2002.

However, the recommendation of the DPC could not be given effect insofar

as petitioner is concerned for the reasons that he had attained the age of superannuation and retired from service on 31.1.2002 the date on which DPC cleared name of the petitioner. This has been admitted in para-17 of the written statement.

Learned counsel for the respondents furnished copy of the DPC proceedings. The same has been opened and perused and it is returned after sealing the same.

Heard learned counsel for the parties.

Short question for consideration is whether the petitioner is entitled to be promoted to the post of Senior Administrative Grade/Additional Surveyor General in Survey of India on the recommendation of the DPC on 31.1.2002 the date on which the petitioner retired from service?

Having regard to the Office Memorandum dated 12.10.1998 subject matter is of the procedure to be followed by the DPC (DPCs in regard to the retired employees) since the Office Memorandum provides for consideration of even retired employees. Therefore, the date on which the petitioner's name was recommended i.e. in the month of May 2001 the date on which the DPC cleared his name, he was very much in service. Therefore, the respondent cannot contend that the petitioner retired on 31.1.2002 the date on which DPC had recommended his name and he is not entitled to promotion to the post of Senior Administrative Grade/Additional Surveyor General in Survey of India is incorrect and it is also contrary to the Office Memorandum dated 12.10.1998 read with consolidated instructions of the Government of India dated 10.4.1989 in particularly para 3.1 relates to frequency of meeting. In the present case, the petitioner name was

recommended for promotion in the month of May 2001. UPSC held DPC on 31.1.2002 even though two vacancies of Senior Administrative Grade/Additional Surveyor General in Survey of India occurred on 30.6.2001 and 1.9.2001 for those vacancies the petitioner's name could have been considered and promoted prior to retirement of the petitioner. However, the delay in holding DPC due to administrative reasons could not be hurdle for promoting the petitioner retrospectively from the date of occurrence of the vacancy or in the alternative promoting him from the date when DPC cleared his name on 31.1.2002 the date on which petitioner was very much in service. Supreme Court held that right to promotion is fundamental right in the case of Ajit Singh and others (II) v. State of Punjab and others; (1999) 7 SCC 209. Para 22 of the said judgment reads as under:

“22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the “State shall not deny to any person equality before the law or the equal protection of the laws”. Article 16(1) issues a positive command that

“there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.”

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense “equality of opportunity” in matters of employment and appointment to any office under the State. The word “employment” being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be “considered” for promotion. Equal opportunity here means the right to be

“considered” for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be “considered” for promotion, which is the personal right.

“Promotion” based on equal opportunity and “seniority” attached to such promotion are facets of fundamental right under Article 16 (1).”

In view of these facts and circumstances, Annexure P-10 dated Nil April 2003 and communication dated 26.2.2003 (Annexure P-9) are set aside. The respondents are directed to implement the recommendation of the DPC held on 31.1.2002 to promote the petitioner to the post of Senior Administrative Grade/Additional Surveyor General in Survey of India, Department of Science and Technology from the date of occurrence of vacancy i.e. 30.6.2001. If there is any impracticable to promote the petitioner from 30.6.2001 then the petitioner name could be considered for promotion w.e.f. 31.1.2002 the date on which the DPC cleared the name of the petitioner. Let the needful be done within a period of four months from today. The respondents are further directed to grant consequential monetary benefits.

Petition stands allowed.

20.09.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No