

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CWP No.8622 of 2004**

DATE OF DECISION: FEBRUARY 1, 2016

RAM KRISHNA SHARMA ...PETITIONER

VERSUS

CAT & OTHERS ...RESPONDENTS

2. **CWP No.14974 of 2009**

SPORTS AUTHORITY OF INDIA ...PETITIONER

VERSUS

CAT & ANOTHER ...RESPONDENTS

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

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

PRESENT: MR. SATISH GOEL, ADVOCATE
FOR THE PETITIONER IN CWP No.8622 of 2004.
& FOR RESPONDENT NO.2 IN CWP NO.14974 of 2009.

MR. P.C.GOEL, ADVOCATE
FOR RESPONDENTS NO.2 & 3 IN CWP No.8622 of 2004.
& FOR PETITIONER IN CWP NO.14974 of 2009.

M. JEYAPPAUL, J.

1. The writ petitioner in CWP No.8622 of 2004 figures as respondent No.2 in CWP No.14974 of 2009. He filed O.A. No.504-PB of 2003 praying for quashing Annexure A-6 and to promote him w.e.f. 20.11.1987, the date on which his juniors were promoted as Coach Grade-II and also to refix his salary and release arrears of pay with interest.

2. The Central Administrative Tribunal, Chandigarh Bench (for

short 'Tribunal') upheld the impugned order dated 25.1.2003 finding that the order dated 21.8.2000 issued by the Director General was not in conformity with the Rules of DPC/review DPC. At any rate, the Sports Authority of India was given liberty to reconsider the case of the writ petitioner for giving him notional benefit of promotion from the date prior to 2.6.1992, within three months. Aggrieved by the above order passed by the Tribunal in O.A. No.504-PB of 2003, Ram Krishna Sharma, the applicant thereunder, has preferred the writ petition in CWP No.8622 of 2009.

3. The very same applicant filed O.A. No.913-PB of 2004 against the Sports Authority of India praying for a direction to the respondents to recast the entire seniority list and also to promote him after convening a review DPC as directed by the Tribunal. In the said application, the Tribunal held that the applicant who was given promotion from 1987 notionally was entitled to seniority with reference to his promotion in 1987. Therefore, the Department was directed to reexamine the seniority position of Ram Krishna Sharma and redraw the correct seniority list as per rules and policy after affording opportunity to the persons affected by it within four months from the date of receipt of its order. Aggrieved by the above order passed by the Tribunal, the Sports Authority of India has preferred CWP No.14974 of 2009.

4. The writ petitioner in CWP N0.8622 of 2004 was initially appointed as Coach Grade-III-B (Boxing) in the erstwhile society for National Institute of Physical Education and Sports ('SNIPES' for short) on 24.12.1979. He was promoted as Coach Grade-III-A on 16.7.1983. Based

on a resolution passed by the Government of India on 1.4.1984, the Sports Authority of India (for short 'SAI') was created. The SNIPES was amalgamated with SAI under the common name of Sports Authority of India w.e.f. 1.5.1987. A special Scheme called National Sports Talent Contest (NSTC) was formulated and approved by the Governing Body of SAI. Accordingly, existing Coaches were called for sponsorship by National Institute of Sports (short short 'NIS'), Patiala for appointment as Coaches-Grade II in the scale of ₹700-1100/-. Coaches Grade-III-A sponsored by NIS, Patiala were interviewed by Selection Board on 19th and 20th August, 1987 and 6th and 7th November, 1987. Those found suitable were appointed under the NSTC Scheme as Coach Grade-II. During the period from 1st April to November, 1987, the writ petitioner was undergoing training at GDR at Government expenses. He was not sponsored by NIS, Patiala to participate in the interview for selection conducted under NSTC Scheme. He returned from GDR and made representations to the respondents. The then Director General, SAI vide order dated 21.8.2000 promoted him notionally from Coach Grade-III-A to Coach Grade-II in the pay scale of ₹700-1100/- retrospectively w.e.f. 20.11.1987. He was granted notional pay fixation. The respondent Organization considered the above order as discriminatory and unwarranted. A show cause notice dated 16.1.2002 was issued to the writ petitioner. The impugned order dated 25.1.2003 (Annexure A-16) was passed by the respondent-Authority. By the said order, retrospective notional promotion given to the writ petitioner was withdrawn. It is contended by the writ petitioner that his juniors were

selected/promoted during his absence. He was not at all sponsored by NIS, Patiala and therefore, he could not participate in the selection process.

5. The respondent-Authorities contended that about 90 Coaches were appointed in 1986 under NSTC Scheme. The Coaches who were amalgamated with SAI staff from NIS, Patiala were considered for promotion in accordance with the Recruitment Rules and were given promotion on completion of the eligibility period on 2.6.1992. The writ petitioner did not apply for appointment under NSTC Scheme. The writ petitioner had no right to claim appointment to Coach Grade-III under NSTC without completing the eligibility period and without undergoing the due process of selection, it was contended by the Authorities.

6. The Tribunal held that the writ petitioner had not completed the eligibility period of 8 years service in Grade-III-A as on 20.11.1997. Therefore, the notional promotion granted to him by the order of the Director General dated 21.8.2000 was patently wrong. Further, it was held that promotion to Coach Grade-II was by selection on merit. Unless the writ petitioner was considered by the DPC or review DPC for notional promotion w.e.f. 20.11.1987, the writ petitioner cannot claim promotion even notionally from 20.11.1987.

7. Learned counsel appearing for the writ petitioner Ram Krishna Sharma submitted that 8 years service was required only as per the new Recruitment Rules, 1992. There was no such Rule in vogue at the time when selection to fill up Coach-Grade-II was conducted in the year 1987. It is his further submission that even his juniors had been sponsored by NIS,

Patiala and were selected by Selection Board. Inasmuch as the respondent-Authority failed to sponsor him when he was in foreign country undergoing scholarship training and his juniors were sponsored and promoted to Coach Grade-II, he is entitled to promotion with effect from the date when his juniors were promoted as such.

8. *Per contra*, learned counsel appearing for the respondent-Authority vehemently submitted that a direct recruitment was held to fill up Coaches Grade-II post in terms of NSTC Scheme. Therefore, the writ petitioner cannot claim right of promotion to the post of Coach Grade-II when he had not appeared for the selection for direct recruitment. It was further contended that 8 years service as Coach Grade-II-A was *sine qua non* for promotion to the post of Coach Grade-II. Inasmuch as the writ petitioner had not completed 8 years of service as Coach Grade-III A, he cannot lawfully claim promotion even notionally w.e.f. 1987. Further, it was contended that if the seniority which was already fixed is revisited as per the directions of the Tribunal, the same would upset the status quo position paving way for multiple litigations.

9. It is an admitted position that writ petitioner Ram Krishna Sharma was sent to GDR at government expenses to undergo scholarship training from 1st April to November, 1987. It is also an admitted position that Coaches Grade-III-A had been sponsored by NIS, Patiala to attend the interview before the Selection Board, on 19th and 20th August, 1997 and 6th and 7th November, 1987. During this period, the writ petitioner had been in foreign country undergoing scholarship training at Government expenses.

There is no dispute to the fact that NIS, Patiala failed to sponsor him to attend interview conducted by the Selection Board in terms of NSTC Scheme. In fact, his juniors had been sponsored by NIS, Patiala to attend the above interview. They had been selected by the Selection Board.

10. In our considered view, there had been a discrimination practised against the writ petitioner by the Department by not sponsoring him for attending interview for selection. It is totally unfair on the part of the Department to sponsor his juniors neglecting his seniority. Had he been sponsored, he would have been selected by the Selection Board. The entire selection had taken place behind the back of the writ petitioner. There is nothing on record to show that the writ petitioner was put on notice about his right to attend the interview by the NIS, Patiala.

11. Admittedly, there was no Rule governing the selection to the post of Coach Grade-II way-back in the year 1987. Only in the year 1992, a Recruitment Rule had been formulated by SAI under which Coach Grade-III is required to put in 8 years of service to get promotion to Coach Grade-II post. The above Rule which came into force in 1992 is not applicable to the writ petitioner who was completely bypassed for promotion/selection in 1987.

12. Further, we find that NSTC Scheme was formulated to select the existing Coaches Grade-III-A to Coach Grade-II based on selection. Of course, it has the trapping of direct recruitment, but the existing Coach will have to be sponsored by the Department concerned. In the instant case, the writ petitioner was not sponsored by NIS, Patiala. Therefore, the

Department cannot take a valid plea that the writ petitioner has no vested right to claim promotion when direct recruitment was made in NSTC Scheme to fill up the post of Coach Grade-II.

13. It was effectively and convincingly submitted by learned counsel appearing for Sports Authority of India that if the seniority list maintained from 1987 is revisited just to accommodate the writ petitioner who had already been retired from service, the status quo will be upset and the Courts will be flooded with litigations.

14. We are of the considered view that refixation of seniority of all the employees right from 1987 in order to accommodate the writ petitioner who was retired from service would definitely upset the settled position. But, at the same time, the interest of the writ petitioner will have to be protected.

15. In view of the above, the order dated 21.8.2000 passed by the Director General, Sports Authority of India is upheld and the order Annexure A-16 passed by the Vice Chairman, Sports Authority of India is set aside. It is held that the writ petitioner Ram Krishna Sharma is entitled to the service benefits in terms of the order passed by the Director General, Sports Authority of India on 21.8.2000. Resultantly, the impugned order passed by learned Tribunal in O.A. No.506-PB of 2003 stands set aside and the writ petition in CWP No.8622 of 2004 is accordingly allowed.

16. Inasmuch as we have upheld the order passed dated 21.8.2000 by the Director General, Sports Authority of India and set aside the order dated 25.1.2003 passed by the Vice Chairman, Sports Authority of India

with a direction to give service benefits in accordance with the order dated 21.8.2000 in the connected CWP No.8622 of 2004, it is directed that respondent No.2 Ram Krishna Sharma be placed just above his junior in the seniority list without revisiting and disturbing the settled seniority position of other employees. CWP No.14974 of 2009 stands disposed of accordingly.

(M. JEYAPPAUL)
JUDGE

February 1, 2016
Gulati

(RAJ MOHAN SINGH)
JUDGE