

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17374-CAT of 2005

DATE OF DECISION: JANUARY 11, 2016

UNION OF INDIA & OTHERS

...PETITIONERS

VERSUS

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH & OTHERS

...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/No

PRESENT: MR. PARMINDER SINGH KANWAR, ADVOCATE
FOR THE PETITIONERS.

MR. D.R.SHARMA, ADVOCATE
FOR THE RESPONDENTS NO.2 TO 37.

M. JEYAPPAUL, J.

1. Respondents No.2 to 37 were serving as Compositors Grade II/Grade I. The Ministry of Finance under O.M. No.10(1)-E-III/88 dated 13.9.1991, introduced *in situ* promotion scheme to ensure at least one promotion in service category of each Group 'C' & 'D' employees. The relevant portion of the Scheme reads as follows:-

“Employees who have not been promoted on regular post even after one year of reaching the maximum of the scale of such posts are entitled to be promoted in situ Scheme.”

2. There is no dispute to the factual situation that the private respondents reached the maximum of the scale of the post as on 1.2.1995.

As per the above *in situ* promotion scheme, the private respondents got

stagnated even after one year on reaching the maximum of the scale of such post. Therefore, the Department thought it fit to grant *in situ* promotion to the private respondents w.e.f. 1.2.1996, the date when one year period expired on reaching the maximum of the scale.

3. Learned counsel appearing for the writ petitioners made two submissions before this Court. The first submission was that the implementation of 5th Pay Commission took effect from 1.1.1996. Inasmuch as the pay scale of the private respondents had been substantially increased in terms of the option exercised by them, they had to wait for one year from 1.1.1996 to get *in situ* promotion. The second submission was that the clarification issued vide O.M. dated 23.4.1999 by the Government of India (DOP&T) on the subject of option for fixation of pay on promotion referred to by the Tribunal in paragraph 10 of its judgement applied to *in situ* promotees.

4. Resisting the above submission made by learned counsel appearing for the writ petitioners, learned counsel appearing for the private respondents vehemently submitted that right from 1.2.1995, the private respondents had started drawing the maximum of the scale of the post they were holding. Refixation of pay on the higher side in terms of 5th Pay Commission w.e.f. 1.1.1996 had not altered the situation inasmuch as even after the implementation of the 5th Pay Commission right from 1.1.1996, the private respondents had started drawing the maximum of the scale of the post. Therefore, the reduction of pay of the private respondents by postponing the date of *in situ* promotion from 1.2.1996 to 1.2.1997 is

patently wrong, it was further submitted.

5. As far the first issue that was raked-up before this Court by learned counsel appearing for the writ petitioners, we find that the Tribunal had not granted any relief to the private respondents. In other words, the Tribunal had not held that even after the implementation of the Pay Commission Report w.e.f. 1.1.1996, the private respondents were entitled to *in situ* promotion as per the scheme floated by the writ petitioners w.e.f. 1.2.1996. The private respondents had also not filed any writ petition aggrieved by the order passed by the Tribunal declining to entertain the plea that they were entitled to *in situ* promotion right from 1.2.1996 despite the implementation of 5th Pay Commission Report right from 1.1.1996. Therefore, in our considered view, the question of testing such a decision taken by the Tribunal which was not put to challenge by the aggrieved party does not arise for consideration.

6. The second issue raised by learned counsel appearing for the writ petitioners hinges on the clarification issued vide O.M. dated 23.4.1999 by the Government of India (DOP&T) on the option to be exercised for fixation of pay on promotion which reads as follows:-

“3. The question as to whether the Govt. servants promoted Ist January 1995 should be given another opportunity to give fresh option to get their pay fixed in the promoted post in view of the introduction of revised pay scales with effect from 1st January, 1996 has also been considered and it has been decided that the employees promoted after 1.1.1995 but before

1st January, 1996 and whose date of increment in the lower posts falls on or after 1st January, 1996 may be allowed another option to get their pay fixed in the promoted post under FR-22(a)(i) either from the date of promotion or from the date of next increments in the lower post falling on or after 1st January, 1996.

4. Option in the terms of para 3 shall be exercised within a period of three months in case of officers who have been promoted on or after 1st January, 1996 till the issue of these orders. In case of promotion after the date of issue of these orders, option shall be given within one month of the date of promotion. Option once exercised shall be final.”

7. On a careful reading of the above clarification issued by the Government of India, we find that the above clarification would also apply to *in situ* promotees who had been promoted after 1.1.1996. An *in situ* promotion scheme under O.M.No.10(1)(E)-III dated 13.9.1991 was introduced by the Government of India just to ensure at least one promotion in the entire service career of Group 'C' & 'D' employees. Therefore, in our considered view, *in situ* promotion is also a promotion contemplated in the above clarification issued vide O.M. dated 23.4.1999 by the Government of India. We do not find any merit in the submissions made by learned counsel appearing for the writ petitioners that the above clarification issued by the Government of India would not apply to *in situ* promotees. On a scrutiny of the impugned order passed by the Tribunal, we find that there is a specific

reference that learned counsel appearing for the writ petitioners herein, fairly conceded that they had not given an opportunity to the private respondents herein to exercise their option in terms of the above clarification issued by the Government of India which contemplates giving of option to the promotees who had been promoted on or after 1.1.1996.

8. In view of the above, we do not find any error in the direction issued by the Tribunal to the writ petitioners herein to give an opportunity to the private respondents herein to exercise their options in terms of paragraphs 3 and 4 of the O.M. dated 23.4.1999 and refix their pay in accordance with rules and instructions.

9. A direction is issued to the writ petitioners to seek a fresh and final option from the private respondents within a period of 3 months from the date of this judgement. Recovery effected from the private respondents shall be refunded to them.

10. Accordingly the writ petition is dismissed.

(M. JEYAPPAUL)
JUDGE

January 11, 2016
Gulati

(RAJ MOHAN SINGH)
JUDGE