

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 13284 of 2016

Date of Decision: 12.7.2016

Daleep Singh

....Petitioner.

Versus

The Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others

...Respondents.

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

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. S.S. Hira, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the orders dated 12.4.2016 (Annexure P-1) passed by respondent No.1 and dated 27/29.1.2016 (Annexure A-17) vide which his Original Application No. 060/00283/2016 for promotion to the post of MCM had been dismissed. Further, a writ of mandamus has been sought directing the respondents to promote the petitioner for higher grade post of MCM from the due date, i.e. 1.3.2011 and grant all consequential benefits.

2. Briefly stated, the few facts necessary for adjudicating the

instant petition as narrated therein may be noticed. The petitioner joined as a Khalasi on 29.7.1974. He was promoted on 1.2.1980 as a Sarang (Technician Grade III), as Technician Grade II on 27.5.1995 and then as Technician Grade I on 19.4.2008. As per Railway Board Standing Order dated 4.8.1989 (Annexure A-1), the petitioner was entitled to promotion to the higher grade post of MCM w.e.f. 1.3.2011 on completion of 12 years of service in the hierarchy including two years service as Technician Grade-I on the vacation of the said post due to retirement of Kulwant Singh (Sarang) on 28.2.2011. Accordingly, the petitioner sent a representation dated 16.5.2011 (Annexure A-2) to respondent No.2 for promotion to the post of MCM w.e.f. 31.3.2011, but to no effect. Thereafter, the petitioner retired from service on 31.8.2011 from the post of Technician Grade I. Again the petitioner made a representation dated 23.5.2012 (Annexure A-3) for consideration of his case to the higher grade post of MCM. Even the earlier representation, Annexure A-2, moved by the petitioner was not considered on the ground that the selection committee had not been conducted during 1.3.2011 to 31.8.2011. The petitioner got information under the Right to Information Act, 2005 (in short "the 2005 Act") that selection for the post of MCM Grade I was conducted by the respondents from 23.5.2011 to 28.5.2011 and Kulwant Singh, Technician Grade I and Nanhe Lal, Technician Grade I had been selected vide test dated 28.2.2011 (Annexure A-4). The petitioner sought information under the 2005 Act vide application dated 5.10.2011 (Annexure A-5) which was provided by respondent No.5 vide letter dated 13.1.2012 (Annexure A-6) that the post of MCM was a selection post for which suitability test were conducted as per rules but due to non-availability of selection committee sometimes it could

not be conducted as per schedule. Thereafter, again petitioner moved an application dated 3.2.2012 (Annexure A-7) to respondent No.3 under the 2005 Act for information as to why he was not called for the selection for the post of MCM, even though he had requested to appear in the trade test conducted on 25.2.2011 to 28.2.2011. In the said application, the petitioner also sought information regarding suppression of PS No. 9940 whether there was a ban/restriction on the anticipation. The reply of the said application dated 3.2.2011 (Annexure A-7) was provided by the respondents vide letter dated 31.12.2012 (Annexure A-8) that for promotion to the employees working in Skilled Grade I, who had completed ten years of continuous service in the same or allied in Skilled Grades I, II and III inclusive of a period of at least 3 years service in Skilled Grade I. The said information was contradictory to the letter dated 22.3.2010 (Annexure A-9) issued by the Government of India, Ministry of Railway (Railway Board) whereby it was decided that “since the post of MCM (re-designated as Senior Technician) is no longer personal to Technician Grade I, but a part of the regular hierarchy in the artisan cadre, therefore, normal residency period of two years for promotion as Senior Technician shall apply. Accordingly, the staff who had put in a minimum two years of service as Technician Grade I, may be considered for promotion as Senior Technician, provided he meet other stipulated criteria.” The petitioner further sought information vide application dated 19.2.2013 (Annexure A-10) in reference to the letter, Annexure A-8, that if there was no supersession to PS No. 9940 then what was the obstruction in conducting suitability in advance as prescribed in orders by the committee/ABE/Br/JRC/I and who was responsible for the said domination for deprived of deserved staff from their due promotion.

The said information was provided by the respondents to the petitioner vide letter dated 12.4.2013 (Annexure A-11) to the effect that there was no supersession to PS No. 9940 as he had not completed the eligibility for promotion to the post of MCM as per Railway Board Letters dated 14.2.1986 and dated 22.2.2005. The petitioner again moved an application dated 10.5.2013 (Annexure A-12) under the 2005 Act seeking information regarding the appearance of the employees before the last selection committee dated 25.2.2011 for selection to the post of MCM and their academic/technical qualification etc. In pursuance thereto, the respondents provided the information vide letter dated 2.6.2013 (Annexure A-13) that Shri Kulwant Singh (Sarang) Grade I and Shri Nanhey Lal (Rivetter) Grade I and they being eligible in seniority and passing suitability test, were posted at Pathankot under SST/Br/M/PTK. The petitioner sent his case for promotion to the post of MCM through Employees Union Agenda dated 16/17.10.2014 (Annexure A-14) which was discussed and it was decided that the post of MCM was lying vacant since 1.3.2011 and the benefit thereof be given to the petitioner who retired on 30.8.2011. Accordingly, the petitioner served a legal notice dated 31.7.2015 (Annexure A-15) upon respondents No.2 to 4 for due promotion to the post of MCM w.e.f. 1.3.2011 along with all consequential benefits, but no action was taken thereon. Thereafter, the petitioner filed OA No. 060/00942/2015 before the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") who vide order dated 14.10.2015 (Annexure A-16) disposed of the said OA with a direction to the respondents to decide the legal notice of the petitioner in accordance with law. Respondent No.5 vide order dated 27/29.1.2016 (Annexure A-17) rejected the claim of the petitioner for

promotion to the post of MCM on the ground that the Railway Board Circular dated 22.3.2010 (Annexure A-9) was not available in the Northern Railway Bridge Workshop, Jalandhar Cantt. where he worked. Feeling aggrieved against the order, Annexure A-17, the petitioner filed OA No. 060/00283/2016 before the Tribunal. The Tribunal vide order dated 12.4.2016 (Annexure P-1) dismissed the said OA. However, in the trade test dated 24.5.2013 (Annexure P-2), Balkar Chand and Ram Gaya etc. were promoted to the post of MCM. Hence, the present writ petition.

3. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition.

4. The petitioner joined the respondent-department on 29.7.1974 as Khalasi and got his promotions from time to time. He was promoted as Technician Grade I on 19.4.2008. As per Railway Board Circular dated 22.3.2010 (Annexure A-9), the post of MCM (re-designated as Senior Technician) was no longer personal to the Technician Grade I but a part of the regular hierarchy in the artisan cadre and the staff with a minimum two years service as Technician Grade I was to be considered for promotion as Senior Technician provided they meet other stipulated criteria. Moreover, the petitioner had not passed the trade test for the post of MCM and had also not challenged the promotion of Shri Kulwant Singh as MCM. Even he served the legal notice to the respondents on 31.7.2015, i.e. almost four years after his retirement from service. The Tribunal had noticed that an employee cannot have any right to promotion but his right is only to be considered for promotion. Even though the vacancy of MCM came up w.e.f. 1.3.2011 after the retirement of Shri Kulwant Singh but no promotions were effected during the period prior to the retirement of the

petitioner. The Tribunal rejected the claim of the petitioner by holding that since the department did not fill the vacancy of MCM prior to the retirement of the petitioner and no junior to the petitioner was promoted as MCM before his retirement, therefore, he had no claim to be promoted as MCM during his period of service. The relevant findings recorded by the Tribunal read thus:-

“3. Having heard learned counsel for the applicant at length, we observe that in the order dated 27.01.2016 rejecting the case of the applicant for promotion (Annexure A-17), it has been stated that as per Railway Board Circular dated 22.03.2010, the post of MCM (re-designated as Senior Technician) is no longer personal to the Technician Grade I but a part of the regular hierarchy in the artisan cadre and the staff with a minimum number of 2 years service as Technician Grade I may be considered for promotion as Senior Technician provided they meet other stipulated criteria. It is also mentioned that the applicant had not even passed the trade test for the post of MCM and had also not challenged the promotion of Kulwant Singh as MCM. The legal notice was served on behalf of the applicant upon the respondents on 31.07.2015 i.e. almost four years after the applicant had retired from service.

4. An employee cannot have any right to promotion but his right is only to be considered for promotion. Even though the vacancy of MCM (Senior Technician

Grade I) came up w.e.f. 01.03.2011 but no promotions were effected during the period prior to the retirement of the applicant. Learned counsel has not cited the case of any employee junior to the applicant in service, who was promoted prior to the date of retirement of the applicant. It is well settled that a post to be filled by promotion that falls vacant need not be filled immediately. The decision to fill the same rests with the administrative authorities. The respondents' department did not fill the vacancy of MCM prior to the retirement of the applicant and since no junior to the applicant was promoted as MCM before his retirement, the applicant can have no claim to be promoted as MCM during his period of service.”

5. No illegality or perversity could be pointed out by the learned counsel for the petitioner in the aforesaid findings recorded by the Tribunal which may warrant interference by this Court. Further, referring to the judgment reported in **Ramesh Chand Dubey v. Union of India and others 2011(4) RSJ 40** relied upon by the learned counsel for the petitioner, suffice it to notice that the said pronouncement being based on its own facts does not advance the case of the petitioner. Accordingly, finding no merit in the instant writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

July 12, 2016
gbs

(RAMENDRA JAIN)
JUDGE