

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

**CWP No.17144 of 2016
Date of decision: 24.08.2016**

Rajni Rani

.....Petitioner

Vs.

Central Administrative Tribunal, Chandigarh Bench and others

.....Respondents

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

Present: Mr. Anil Kumar Sharma, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. The petitioner through the present petition prays for quashing the order dated 26.2.2016, Annexure P.4 passed by the Central Administrative Tribunal, Chandigarh Bench (CAT) whereby the original application filed by her for claiming out of turn promotion has been dismissed. Further direction has been sought to the respondents to grant out of turn promotion to the petitioner under sports quota from the due date with all consequential benefits.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner initially

joined the respondent department at Ludhiana in Ferozepur Division under sports quota in Group D category as Safai worker w.e.f 4.6.2003. The respondent department in order to uplift the spirit of the sports persons, introduced policy regarding recruitment of sports persons in Group C and Group D posts through talent scouting as well as providing incentives in the shape of additional increments and out of turn promotion to sports persons of the Railway Board vide policy dated 21.9.1998. The said policy was revised from time to time vide orders dated 19.6.2000, 20.6.2006 and 30.3.2007 and subsequently, respondent department issued notification RBE No.189 of 2010 dated 31.12.2010 in supersession of earlier notifications wherein sports persons working with the respondent department were entitled for out of turn promotion/incentive increments after specific achievements in the international and national games. The petitioner was appointed with the respondent department under sports quota. She had won various awards/medals in different events at National level. For the recruitment of sports persons against sports quota, the Ministry of Railways had issued instructions dated 19.6.2000 and in the said instructions there was specific provision for promotion from Group D to C employees. As per Clause 4.2.1 (iii) of the instructions dated 19.6.2000, the petitioner had fulfilled the norms for recruitment in group C category and further more as per clause 4.2.2(e) of the instructions, it had been provided that for the purpose of recruitment, only senior national and junior national will be taken into consideration. As per Clause 9.6 of the instructions, the petitioner had fulfilled the norms as provided in clause 9.6.1(a) and 9.6.1(b) as she had participated in the 52nd Northern Railway Athletic meet February 2005 with bronze medal winning performance, 44th Senior National Inter State in July 2004 with gold medal winning performance and represented Indian

Railways in open National in Mumbai in September 2004 and secured 4th position. Therefore, she was eligible to be promoted to Group C category as per the clause 9.6.1 of the instructions dated 19.6.2000. In spite of representation dated nil Annexure A.8 given by the petitioner, the General Manager of Railway Administration did not grant benefit of out of turn promotion to the petitioner. Aggrieved thereby, the petitioner approached the CAT by filing an application which was disposed of with a direction to the respondents to consider her case in terms of *Gurpiar Singh vs. Union of India* which was decided by the Tribunal on identical issue. In pursuance to the aforesaid direction, the respondent department passed speaking order dated 4.2.2013, Annexure A.1 whereby claim of the petitioner was rejected on the ground that National Inter State Senior Athletic championship was not recognized even for recruitment and incentive purpose till 30.12.2012 and this aspect had been clarified to all the Zonal Railways/Production unit vide letter dated 7.4.2010, Annexure A.2 and accordingly, the case of the petitioner for out of turn promotion was rejected. Again the petitioner filed application before the Tribunal for quashing the order dated 4.2.2013. The respondent department filed detailed reply and defended the order dated 4.2.2013 whereby the case of the petitioner was not maintainable. The petitioner also filed rejoinder to the written statement. Vide order dated 26.2.2016, Annexure P.4, the Tribunal dismissed the application filed by the petitioner on the ground that the instructions dated 19.6.2000, Annexure A.7 were superseded by the instructions dated 31.12.2010, Annexure A.6 and as per Clause 9.2.3 of the latest instructions, claim of the petitioner could not be considered. Hence the instant writ petition by the petitioner.

3. We have heard learned counsel for the petitioner.
4. Admittedly, the respondents rejected the claim of the petitioner

for out of turn promotion on the ground that the sports event in which she had participated was not a recognized one. It was pleaded by the respondents before the Tribunal that the instructions dated 19.6.2000, Annexure A.7 had been superseded by the latest instructions dated 31.12.2010, Annexure A.6. Since the case of the petitioner was of the year 2013, as per Clause 9.2.3 of the latest instructions, her case did not find merit which provided that the last recognized sports achievement should be within current or immediate preceding two financial years at the time of considering such case which was not her case. It was further pleaded that since National Inter State athletics championship was not a recognized event for recruitment and incentive, her case had been rightly rejected for out of turn promotion. Even challenge to the clarification dated 7.4.2010 of the policy dated 30.3.2007 stood superseded by policy dated 30.10.2010. The Tribunal after considering the matter upheld the action taken by the respondents with the observation that all the earlier instructions had been superseded by issuance of fresh instructions dated 31.12.2010 under which case of the petitioner could not be considered. The relevant part of the order of the Tribunal reads thus:-

“2. Shri Jagdeep Jaswal, learned counsel for the applicant submitted that case of the applicant was considered for grant of out of turn promotion in terms of the order of this court in earlier round of litigation. While considering her claim, the respondents have relied upon the instructions dated 31.12.2010 whereas the instructions which were prevailing at that time are dated 19.6.2000 which are applicable to her case, therefore, action of the respondents be declared illegal and also be set aside.

3. Shri Yogesh Putney, learned counsel for the respondents argued that by issuance of instruction dated 31.12.2010 (Annexure A.6) all the earlier instructions on the subject have been superseded. He further argued that since the case of the

applicant is of the year 2013 year, therefore, as per clause 9.2.3 of the above latest instruction, her case did not find merit which provides that the last recognized sports achievement should be within current or immediate preceding two financial years, at the time of considering such case which was not her case. Since, National Inter State Athletics Championships was not a recognized event for recruitment and incentive, therefore, her case has rightly been rejected for out of turn promotion as clarified by Railway Board vide letter dated 7.4.2010. Even challenge is to a clarification dated 7.4.2010 of the policy dated 30.3.2007 stand superseded by policy dated 30.10.2010, thus, the present O.A. deserves to be dismissed.

3. We have given our thoughtful consideration to the entire matter and have perused the pleadings on record.

4. We are in agreement with the submission made at the hands of the respondents for the reason that all earlier instructions have been superseded by issuance of fresh instructions dated 31.12.2010 under which the applicant cannot be considered. This is so held in case of ***K.M.Bindra vs. Union of India and others***, 1973 (1) SLR 928 that subsequent instruction can alter the earlier instructions. Moreover, though the applicant has taken a plea to get parity with ***Mandeep Singh's*** case (O.A.No.612/PB/2008 decided on 16.8.2010) but she herself averred in the O.A. that she cannot seek parity with Mandeep Singh because his sports event has been recognized by the Railway Board. In view of the above, we see no reason to interfere with the impugned order and accordingly, O.A is dismissed being devoid of merit.”

5. Learned counsel for the petitioner has not been able to show that the findings recorded by the Tribunal are illegal or erroneous warranting interference by this Court in writ jurisdiction under Articles 226/227 of the Constitution of India. In ***Union of India vs. Glaxo India Limited and another***, (2011 (6) SCC 668, relied upon by the learned counsel for the petitioner, the matter related to Essential Commodities Act, 1955 wherein it

was observed that the fresh notification issued would not relate back to the date of notification fixing the prices of bulk drugs issued earlier. The factual matrix herein being different, the said decision is not applicable to the present case. Thus, the petitioner cannot derive any benefit from that judgment.

6. In view of the above, we do not find any ground to interfere with the impugned order dated 26.2.2016, Annexure Annexure P.4 passed by the Tribunal. Consequently, the petition is dismissed.

(Ajay Kumar Mittal)
Judge

August 24, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes