

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

102+230

CWP No.25559-2014 (O&M)

Date of decision: 09.08.2016

Som Dutt Sharma

.... Petitioner

Versus

Union of India and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. R.D.Bawa, Advocate for the petitioner.

Proxy counsel for Mr. Abhinav Gupta, Advocate
for respondents No.1 and 2.

P.B. Bajanthri, J. (Oral)

CM No. 9243 of 2016

This is an application for placing on record reply of respondent
No. 1 and 2. Heard. Allowed, as prayed for subject to all just exceptions.

Reply is taken on record.

CM stands disposed of.

Main case.

In the instant writ petition, the petitioner has prayed for
quashing letter dated 25.08.2014 and letter dated 24.09.2014 vide
Annexures P8 and P10 respectively by which the petitioner's claim for
promotion to the cadre of Assistant Administrative Officer has been
declined.

2. On 19.03.2008 to fill up 26 posts of Assistant Administrative

Officer, DPC was held. Petitioner's name was cleared by the DPC. His name is at Sr. No. 4. For the purpose of filing up the post of Assistant Administrative Officer source cadres are Office Superintendent and Superintendent (Non-Technical). As soon as DPC is over, two employees were promoted to the post of Assistant Administrative Officer from the source cadre of Store Superintendent. One Shri Sita Ram and the petitioner are at Sr. No. 3 and 4 in the DPC proceedings (through Store Superintendent). On 31.05.2008 one Sh. S.C. Chakraborty was holding the post of Assistant Administrative Officer and who had been promoted from the post of Store Superintendent retired on 31.05.2008. Further on 29.06.2008 one Sh. N. Rajagopal, Assistant Administrative Officer who was promoted from the source cadre of Store Superintendent was further promoted to the post of Assistant Administrative Officer to Administrative Officer on 29.06.2008 and he retired on 30.06.2008. In view of the above development, Shri Sita Ram is entitled to promotion to the vacancy occurred due to retirement of Sh. S.C. Chakraborty on 31.05.2008 and the petitioner is entitled to be promoted to the post of Assistant Administrative Officer on account of Shri N. Rajagopal's promotion to the post of Administrative Officer. The respondents have denied promotion to the petitioner only on the score that petitioner retired on 30.06.2008 and the vacancy of Assistant Administrative Officer from the source cadre of Store Superintendent (Promotion of Sh.N.Rajagopal) occurred only on 29.06.2008. There was hardly one day left therefore, petitioner was not promoted and he is not entitled for promotion.

3. Learned counsel for the petitioner submitted that as on the date of occurrence of 4th vacancy on account of Sh. N. Rajagopal promotion to

the post of Administrative Officer, petitioner is entitled to occupy the vacancy cleared on 29.06.2008 the date on which petitioner was very much in service. Further he has pointed out that Sh. N.Rajagopal could have retired from service while he was holding the post of Assistant Administrative Officer on 30.06.2008. On the other hand, just before one day of his retirement, he had been promoted to the post of Administrative Officer when the respondents can promote a person for one day namely Sh.N. Rajagopal why not the petitioner on 29.06.2008 i.e. just one day before his retirement. The contention of the respondent is highly arbitrary. Therefore, the impugned communication dated 25.08.2014 and 24.09.2014 vide Annexure P8 and P10 are liable to be set aside.

4. Per contra, learned counsel for the respondents submitted that petitioner cannot be promoted to the post of Assistant Administrative Officer for the reasons that there was only one day in between vacancy and the date of retirement. An extract of written statement is reproduced herein:-

“That the contents of Para No.20 of the writ petition is wrong and denied. No right of the petitioner has been violated nor petitioner has suffered any irreparable loss. The post of Assistant Administrative Officer fell vacant only on 29.06.2008 and petitioner retired from service on 30.06.2008 and there was only one day in between the vacancy that arose and retirement of the petitioner. Therefore the time period was too short for petitioner to be promoted to the post of Assistant Administrative Officer.”

5. It was further contended that petitioner's claim relating to the post of Assistant Administrative Officer relates back to 2008. The petition has been filed in the year 2014 therefore, there is a delay in claiming the benefit of promotion. For the purpose of claiming any promotion employee must approach court within a reasonable period. In the present case there is a delay of 6 years. Therefore, petitioner is not entitled for the relief sought in the present petition.

6. Heard learned counsel for the parties.

7. The respondents as on 19.03.2008 intends to fill up the post of Assistant Administrative Officer to the extent of 26 posts and 2 posts were filled up from the Store Superintendent source cadre. Therefore, within a period of 3 months' i.e. as on 29.06.2008 two more vacancies have accrued. In fairness the respondents should have considered name of the petitioner for promotion on 29.06.2008 the date on which Sh.N. Rajagopal, Assistant Administrative Officer who was promoted to the post of Administrative Officer on 29.06.2008 and who has attained the age of superannuation and retired from service on the very next day i.e., on 30.06.2008. The respondents have discriminated in giving promotion orders as is evident from the case of Sh. N.Rajagopal. In so far as Sh. N.Rajagopal promotion is concerned time limit of one day is not hurdle. On the other hand, for the purpose of petitioner's promotion one day was hurdle. Having regard to the conduct of the respondents while effecting promotion to the cadre of Assistant Administrative Officer despite vacancy accrued on 31.05.2008 and 29.06.2008 for which Sh. Sita Ram and petitioner could have been accommodated against vacancies accrued. Hence, the petitioner is entitled for promotion to the cadre of Assistant Administrative Officer from

29.06.2008. In so far as delay is concerned, it is to be noted that the petitioner was pursuing the matter before the respondents. The respondents have declined to promote him only on 25.08.2014 and 24.09.2014. Therefore, the delay is attributable to the respondents-Department. That apart discrimination in granting promotion is on the face of the record. Hence delay may not be a hurdle.

8. In view of these facts and circumstances, Annexures P8 dated 25.08.2014 and P10 dated 24.09.2014 are set aside. The respondents are directed to consider name of the petitioner for promotion to the cadre of Assistant Administrative Officer with effect from 29.06.2008 with all consequential benefits including monetary benefits like pay fixation and re-fixation of pension, arrears etc. The above exercise shall be completed within a period of 3 months from today.

9. CWP is allowed.

09.08.2016
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons Yes/No

Whether Reportable: Yes/No