

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.11722 of 2014
Date of decision:30.08.2017

Mahender Singh Meena

... Petitioner

Vs.

Union of India and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Dinesh Kumar, Advocate
for the petitioner.

Mr. P.C.Goyal, Advocate
for the respondent-UI.

AMIT RAWAL J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the applicant/petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the impugned order dated 16.01.2014 (Annexure P-4) passed by the Central Administrative Tribunal Chandigarh Bench (for short “the Tribunal”) in O.A. No.145-CH-2014 titled as Mahender Singh (M.S.Meena) vs. Union of India, whereby, his claim seeking following relief(s) has been rejected:-

i) Call for the records of the case and after perusal of the same quash the impugned communication dated 30.11.2011, Annexure A/17 vide which the just and legitimate claim of the applicant for promotion to the post of Superintendent Group-B from the due date has been illegally and arbitrarily rejected on wholly unattainable grounds.

ii) *And also to quash the impugned order Annexure-A/1 dated 30.06.2011 vide which promotion already granted vide order dated 30.06.2010, Annexure -A/8 has been illegally and arbitrarily withdrawn without affording any opportunity of hearing.*

iii) *Further to hold the action of the respondent department in holding separate DPCs and bifurcating the vacancies and, consequently, shortening the zone of consideration/extended zone of consideration in order to deprive the employees belong to ST categories of their right of consideration for the promotion to the post of Superintendent Group-B as wholly illegal, unlawful, arbitrary and in violation of the government instructions issued from time to time and further to hold the action of the respondent department in treating the regular vacancies as adhoc is totally arbitrary and discriminatory manner and the approach adopted by the respondent department be held to be wholly erroneous in law.*

iv) *With a further prayer to direct the respondents to restore the promotion of the applicant as Superintendent Group-B on regular basis w.e.f.30.06.2010 as accorded vide order dated 30.06.2010, Annexure-A/8 with all consequential benefits.*

v) *pass any appropriate order or direction which this Hon'ble Tribunal may deem fit in the peculiar facts and circumstances of the case;*

vi) *Cost of the application may also be awarded in favour of the applicant.”*

2. Mr. Dinesh Kumar, learned counsel for the petitioner, during the course of arguments, made a statement that he confines his prayer only for setting aside the impugned order dated 30.06.2011 (Annexure A-11), whereby, petitioner has been promoted as Superintendent Group B, on

regular basis w.e.f. 30.06.2011 instead of 30.06.2010 (Annexure A-8), without following the principles of natural justice.

3. Succinctly, the case set up by the petitioner before the Tribunal was that in the year 1989, he was appointed as UDC and on 24.11.1994, he was promoted as Inspector. The next promotional avenue was to the post of Superintendent Group-B. The petitioner became eligible for promotion to the post of Superintendent Group-B on completion of 08 years of service in the feeder cadre governed by Superintendents of Central Excise Recruitment Rules, 1989.

4. The applicant alongwith Ramji Lal filed OA No.503-CH-2006 for considering his case for promotion to the post of Superintendent by creating a separate zone of Inspectors of S.T. Category. Vide order dated 22.11.2007, the said Original Application was allowed in terms of a decision of Principal Bench, New Delhi, in O.A. No.688 of 2005 (Gopal Meena and another vs. Union of India and others). Vide order dated 23.03.2007, the petitioner was promoted as Superintendent Group-B on adhoc basis.

5. Thereafter, the department issued order dated 30.09.2010 promoting 08 officials as Superintendent Group-B, in which the name of the petitioner and Ramji Lal Meena did not figure. Vide another order dated 30.06.2010 (Annexure A-8), the petitioner alongwith other persons was promoted as Superintendent Group-B. However, this promotion order was withdrawn, vide order dated 30.06.2011 (Annexure A-11) which compelled the petitioner to assail the same before the Tribunal. The Tribunal has

committed illegality and perversity in not noticing the aforesaid aspect despite the settled law referred to in Original Application.

6. Lastly, it was submitted that the rationality drawn by the Tribunal owing to the pendency of some matter before the Calcutta Court pertaining to March, 2010 which had no relevancy with the promotion of the petitioner.

7. Per contra, learned counsel appearing on behalf of the respondents did not controvert the facts narrated above, but submitted that owing to the pendency of the matter in the Calcutta Court, the order dated 30.06.2010 (Annexure A-8) was not given effect to. It was in this background that fresh order came to be passed on 30.06.2011 (Annexure A-11) promoting the petitioner as Superintendent Group-B w.e.f. 30.06.2011. He, thus, urged that the order under challenge does not warrant any interference.

8. We have heard learned counsel for the parties and appraised the paper book.

9. The facts narrated above are not in dispute. The Tribunal has failed to appreciate that the petitioner was initially promoted as Superintendent Grade-B w.e.f. 30.06.2010 vide the order of even date on regular basis. The said order had been withdrawn taking the promotion of the petitioner w.e.f. 30.06.2011. The order withdrawing the promotion of the petitioner from 30.06.2010 is neither a speaking order nor has been passed after affording opportunity of hearing. The action of the respondents in promoting the petitioner w.e.f.30.06.2011 instead of 30.06.2010 as

Superintendent Grade-B without giving any opportunity of hearing to the petitioner is legally unsustainable. Equally, the order of the Tribunal upholding order dated 30.06.2011 is also not tenable.

10. Resultantly, the order dated 16.1.2014 of the Tribunal to the extent of non-compliance of principles of natural justice is hereby set aside and the order dated 30.6.2011 (Annexure A-11) promoting the petitioner as Superintendent Group B with effect from the said date is also quashed. Liberty is granted to the respondents to pass a fresh order in accordance with law after affording opportunity of hearing to the petitioner by passing a speaking order. Needless to say anything observed hereinbefore shall not be taken to be an expression of opinion on the merits of the controversy.

11. Writ petition stands disposed of.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

August 30, 2017

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No