

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.11958 of 2016 (O&M)

Date of Decision: August 09, 2017

Inder Raj

...Petitioner

Versus

Union of India & others

...Respondents

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

Present: Mr.Rohit Sharma, Advocate,
for the petitioner.

Mr.K.K.Chahal, Advocate,
for respondent Nos.1 & 5.

Mr.D.R.Sharma, Advocate,
for respondent Nos.2 to 4.

AMIT RAWAL, J.

CM No.14757 of 2016

1. Prayer in the application is for deleting the names of respondent Nos.1 and 5 from the array of parties. The application is supported by an affidavit.

2. For the reasons mentioned in the application, the same is allowed. Names of respondent Nos.1 and 5 are ordered to be deleted.

CWP No.11958 of 2016

3. Petitioner, having failed to get the relief in Original Application No.060/01034/2014 seeking promotion to the grade of DGM (JAG) Finance on adhoc basis with effect from the date of DPC, i.e., 30.4.2013 on actual

basis and w.e.f. 1.1.2012 on notional basis, has approached this Court under Articles 226/227 of the Constitution of India by challenging the order dated 28.3.2016 (Annexure P-1).

4. Mr.Rohit Sharma, learned counsel appearing on behalf of the petitioner submitted that the petitioner belongs to the Scheduled Caste Community and was appointed on promotion as Chief Accounts Officer w.e.f. 24.9.1997. The next promotional post was Deputy General Manager (Finance). The eligibility condition as per the Bharat Sanchar Nigam Limited MS Recruitment Rules, 2009 (for short “Rules”), is four years regular service in STS grade. The petitioner though had retired on 30.4.2013, but according to the rules, had become eligible for promotional post on 30.6.2011. The department issued circular dated 14.8.2012 (Annexure A-5) approving the proposal for conducting DPC for promotion of eligible officers from STS regular grade to the grade of JAG (DGM) on adhoc basis by following the due process of Corporate Promotion Committee (CPC), but the aforementioned letter was superseded by another letter dated 15.2.2013 (Annexure A-6) providing a provision of ACR/APAR for the period from 2006-07 to 2011-12. The necessary information was required to be furnished on or before 25.2.2013.

5. It was further argued that the CPC was held on 18.4.2013 and then on 30.4.2013 (Annexure A-7) approving the cases of eligible/fit persons for promotion to the post, who were working on the date of DPC including the petitioner, who was in service on 30.4.2013. Vide letter dated 3.5.2013 (Annexure A-1), respondents issued promotion/posting orders to JAG level of Telecom Finance, on adhoc basis, but not from the date of DPC. In this regard, petitioner submitted representation dated 28.5.2013

(Annexure A-8) stating therein that he, on completion of four years service as CAO on 1.1.2012, was eligible for promotion in the DPC held on 30.4.2013 as the promotion order dated 3.5.2013 (Annexure A-1) was issued three days after his retirement. The petitioner had claimed promotion w.e.f. 1.1.2012 on notional basis and on actual basis w.e.f. 30.4.2013.

6. Learned counsel further contended that vide order dated 25.6.2013 (Annexure A-2), respondents rejected the representation of the petitioner on the ground that the promotion orders issued were prospective and no junior to the petitioner was ever promoted. The petitioner submitted another detailed representation dated 12.7.2013 (Annexure A-10) to respondent No.1 for promotion from due date on the premise that he could not be punished by the department for delay in conducting DPC. The respondents, vide order dated 12.8.2013 (Annexure A-3), again rejected the case of the petitioner on the ground that it could not be given effect with retrospective date. According to the learned counsel for the petitioner, further representations dated 2.9.2013, 7.10.2013 and 9.10.2013 (Annexures A-10, A-11 and A-12) were again given to the respondents. Thereafter, representation dated 12.2.2014 (Annexure A-20) followed by a reminder dated 10.3.2014 (Annexure A-21) bringing into notice certain guidelines were also filed, but, vide order dated 30.5.2014 (Annexure A-4), the claim of the petitioner was rejected. Various instructions/guidelines on DPC were issued and circulated providing for timely convening of the DPCs. In other words, the DPC was required to meet at regular intervals to draw up the panels to be utilised for the promotion for every year, i.e., action was to be initiated well in advance without waiting for the occurrence of the vacancy.

Even DoPT also issued a Model Calendar for convening of DPCs in the

year 1998, i.e., vide letter dated 8.9.1998.

7. It was next urged that the Central Administrative Tribunal, Chandigarh Bench (for short “CAT”) has erroneously dismissed the Original Application being barred by limitation on the premise that the promotion order, Annexure A-1, was issued on 3.5.2013, which is not the correct approach as cause of action was to be reckoned from the order dated 30.5.2014 (Annexure A-4) when subsequent representations submitted in the year 2013 were rejected. The finding of the CAT that no junior to the petitioner has been promoted before his superannuation is of no consideration, which could form the basis for not granting the benefit as sought for.

8. It was also argued that the department had erroneously convened the meeting and issued promotion order dated 3.5.2013. The CAT had failed to appreciate the fact that the employees cannot be made to suffer on the basis of administrative lapses for not conducting the proceedings in time. The CAT also failed to consider that the State cannot deny equality to any person before the law or the equal protection of the laws. The action of the respondents in rejecting the claim of the petitioner was without any logic or reason, illegal, arbitrary and discriminatory, thus, violative of Articles 14 and 16 of the Constitution of India.

9. The order of the CAT was also assailed on the ground that it has failed to consider sequence of events showing that it is on account of the administrative lapse that the DPC firstly met on 18.4.2013 and then on 30.4.2013, despite the fact that vacancies were available and the petitioner was also eligible for promotion since 2012. Concluding his submissions, it was prayed for setting-aside the order under challenge.

10. Mr.D.R.Sharma, learned counsel appearing on behalf of respondent Nos.2 to 4, in support of submissions, drew the attention of this Court to the stand taken in the written statement that the applicant did not have any independent right for promotion. No junior person had ever been given undue benefit. It totally depended on the need of the department to fill up the vacancies. A proposal was mooted to fill up the post of DGM (F) by conducting CPC as per the letter dated 14.8.2012, which did not mature due to the administrative reasons. There is no provision in the rules, whereby the petitioner can implore upon the department to hold DPC on yearly basis and, thus, urged this Court for upholding the order of the CAT by dismissing the writ petition.

11. In rebuttal, Mr.Rohit Sharma referred to the order dated 27.5.2013 (Annexure A-23) rendered in Civil Writ Petition No.11713 of 2013 (Government of India and others Versus K.K.Bhola and another), whereby the Division Bench of this Court deprecated the action of the department in not conducting the DPC from time to time, particularly in the department of Income Tax for the purpose of promotion in the rank of Assistant Commissioner despite eligibility of the candidate.

12. We have heard the learned counsel for the parties, appraised the paper book and are of the view that there is no merit and force in the submissions of Mr.Rohit Sharma.

13. We proceed to examine various contentions raised by learned counsel for the parties. Referring to the judgment in **K.K.Bhola's case (supra)**, on which heavy reliance had been placed, that was a case where the rules provided for convening of the meeting on yearly basis, whereas the petitioner has not been able to refer to any such rule in the present case.

Thus, the aforesaid pronouncement does come to the rescue/aid of the petitioner. It was uncontroverted that the petitioner retired on 30.4.2013 and no person, junior to him, was promoted.

14. Adverting to the issue of limitation, it may be noticed that the first representation of the petitioner dated 28.5.2013 (Annexure A-8) seeking promotion was rejected vide order dated 25.6.2013 (Annexure A-2). Thereafter, the petitioner kept filing representations without any justification. The representation filed on 12.7.2013 (Annexure A-10), was rejected vide order dated 12.8.2013 (Annexure A-3). The successive representations were thereafter submitted on 2.9.2013, 7.10.2013, 9.10.2013, 12.2.2014 and 10.3.2014 (Annexures A-11, A-12, A-13, A-20 and A-21) respectively, whereas the present Original Application was filed on 17.11.2014. Further, the promotion order Annexure A-1 was issued on 3.5.2013.

15. It is reiterated that the representation dated 28.5.2013 (Annexure A-8), as indicated above, was rejected on 25.6.2013 (Annexure A-2). The moving of successive representations and rejection thereof will not extend the period of limitation of one year from the date of initial cause of action. In other words, the cause of action, if any, accrued to the petitioner when his first representation was rejected. The respondents had claimed that the promotions in the department of Bharat Sanchar Nigam Limited were not done on yearly basis. It was done as and when competent authority decided to make promotions. In the present case, the promotional order was to operate prospectively and not retrospectively. Thus, it is concluded that it did not take away any right of the petitioner.

16. Viewed from another angle, even according to the petitioner, he

had become eligible in June, 2011. No explanation has been furnished in not seeking any direction or making representation for convening of the DPC. It was only after the superannuation, claim was submitted after knowing that two DPCs on 18.4.2013 and 30.4.2013 were convened resulting into issuance of promotional order Annexure A-1 dated 3.5.2013. The petitioner cannot stake any right or claim seeking promotion from the date of DPC proceedings. DPC proceedings were conducted on 30.4.2013 and approved by the competent authority on 3.5.2013 and on the same day, the promotion order was issued. It became effective from that date unless any other date was stipulated therein.

17. In view of what has been noticed above, the findings rendered by the CAT, while dismissing the Original Application, do not call for any interference and cannot be said to be suffering from any illegality or perversity. Resultantly, the writ petition is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**August 09, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No