

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-2300-2014

Date of Decision: May 23, 2017

Union of India and others

.....Petitioners

Versus

Central Administrative Tribunal, Chandigarh and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE HARI PAL VERMA

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.P.C.Goyal, Advocate
for the petitioners.

Mr.V.K.Sharma, Advocate
for respondent No.2.

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SURYA KANT, J.

Union of India and its Central Excise Commissionerate are aggrieved by the order dated 19.09.2013 passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal') whereby the claim of respondent No.2 for the grant of first ACP w.e.f. 09.08.1999 has been accepted.

[2] The facts may be briefly noticed:-

[3] The second respondent joined Beas Construction Board as Clerk on 01.09.1973. He was declared surplus on 31.12.1984 and was re-deployed as a Clerk under the Central Excise and Customs in March 1985.

He approached the Tribunal seeking a direction to grant him senior scale in the clerical cadre w.e.f. 01.01.1978 and his Original Application was allowed. Thereafter it appears that respondent No. 2 filed numerous Original Applications seeking one or the other relief and it may not be necessary to refer to the outcome of those proceedings. Suffice to mention that the second respondent filed OA No.159-PB-2011 to set aside the order dated 28.04.2010 vide which he was granted second ACP w.e.f. 09.08.1999 instead of two ACPs . He, thus, sought a direction to grant first ACP w.e.f. 09.08.1999 and second ACP on completion of 24 years of service in the grade of Assistant Commissioner.

[4] The petitioner-authorities contested the claim of respondent No.2 and by referring to the previous history of litigation, a stand was taken that “the applicant was promoted as Superintendent w.e.f. 23.09.2002 vide order dated 13.04.2010”. The petitioners took a further stand that respondent No.2 was granted selection grade/senior scale which shall be “counted as a promotion for the purposes of ACP Scheme”.

[5] In this backdrop the question which fell for consideration of the Tribunal was whether respondent No.2 was granted any promotion during his service career on the basis of which the benefit of ACP could be denied?

[6] The Tribunal has answered the question in the following terms:-

“11. Having carefully perused the material on record and weighed the arguments advanced by the learned counsel for the parties, we observe that the applicant has been involving in prolonged litigation regarding his entitlement to particular scales of pay as on 01.01.1978 and 01.01.1986 consequent to his redeployment from BCB to the respondent department and

the placements in the different pay scales had been allowed to him as a result of the decisions in the O.As under reference. Keeping in view the scale of pay allowed to the applicant, deployment has been given to him as per the corresponding designations and this is how he has been designated as Inspector since 01.01.1986. During the period of his service with BCB as well as respondent department, up to 1999 the applicant had not got any “promotion” and therefore under the guidelines of the ACP Scheme he would be entitled to 2nd upgradation. Therefore, his claim for two ACPs as granted to one Sh.Ashok Prashar, who was similarly situated to him, w.e.f. 09.08.1999 as per order dated 22.05.2009, appears to be justified.”

[7] The above-stated order is under challenge in the instant writ petition. Since the petitioners have taken a categorical stand that respondent No.2 was granted promotion prior to 09.08.1999 and consequently he was not entitled to the grant first ACP until completion of ten years from the date of such promotion, we granted liberty to the petitioners to place on record the order of promotion. In compliance thereto, the petitioners have placed on record some orders including dated 13.04.2010 whereby the second respondent was redeployed as Inspector retrospectively w.e.f. 01.01.1996. This order, in our considered view, is not an order granting promotion to the second respondent before 09.08.1999. The only other order of promotion placed on record is dated 13.04.2010 whereby respondent No.2 was promoted as Superintendent Grade B w.e.f. 23.09.2002, i.e. promotion granted to him after 09.08.1999. No other order has been placed on record.

[8] In this view of the matter, the eligibility of respondent No.2 to claim first ACP w.e.f. 09.08.1999 is unassailable.

[9] For the reasons aforementioned, we do not find any merit in this petition, which is dismissed.

(SURYA KANT)
JUDGE

May 23, 2017
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(HARI PAL VERMA)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |