

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-20984-2016

Reserved on : 10.12.2018

Date of decision : 17.12.2018

J.K.Prashar

... Petitioner

Versus

Director General, Council of Scientific and Industrial Research and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

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

Mr.I.S.Sidhu, Advocate
for respondent no.1.

RAJIV SHARMA, J.

Respondents no.2 & 3 were served but there is no representation on their behalf.

2. This petition lays down challenge to the order dated 21.01.2016 passed by the Central Administrative Tribunal, Chandigarh, in Original Application no.1256/HP/2011.

3. The brief facts necessary for the adjudication of the petition are that the petitioner was promoted to the post of Private Secretary on 15.01.1998. The post of Private Secretary is in feeder category for promotion to the post of Under Secretary/Administrative Secretary. The promotion to the post of Under Secretary/ Administrative Secretary is governed under the following rules:-

i) *Vacancies in this grade occurring in a year be*

filled in the ratio of 2:1 from amongst Section Officers (Gen.) and Sr. Personal Asstts. (now re-designated as Private Secretaries). In the event of non-availability of suitable officers for filling up vacancies earmarked for a Cadre, such unfilled vacancies will not be filled up from officers of another Cadre; and

ii) 25% of the Private Secretaries who have completed minimum six years of approved service as Sr. Personal Asstts. (now re-designated as Private Secretaries) be made to work as Section Officer (Gen.) for a period of one year before they are considered for promotion to the post of Under Secretary/Administrative Officer.

Note: Governing Body also approved appointments/selections made so far as Sr. Personal Asstts., now re-designated as Private Secretaries to the post of Under Secretary/Administrative Officer (Gr.I) in the scale of Rs.3000-4500.”

4. It is evident from plain language of the Rules that candidate must have completed six years of service as Private Secretary and made to work as Section Officer for a period of one year.

5. The petitioner was appointed as Section Officer vide order dated 15.03.2004. This position is admitted by the respondents in the counter.

6. The Joint Secretary (Administrative) had sent a letter to the Director, Institute of Himalayan Bioresource Technology, Palampur, to

certify whether the Private Secretary falling within zone of the consideration had gained experience which qualifies him as equivalent of one year SO(G) experience. Thereafter the Department of Promotion Committee met on 05.03.2011. Respondents no.2 and 3 were considered and promoted to the post of Under Secretary/ Administrative Secretary. Respondents no.2 and 3 were never appointed as Section Officers. However they have been promoted on the basis of certificate issued to them on 01.03.2011 immediately preceding the date of DPC, i.e. 05.03.2011.

7. The recruitment and promotion rules are required to be followed in letter and spirit. Respondents no.2 and 3 have been considered in violation of statutory rules. The certificates issued to respondents no.2 and 3 vide Annexures R-5 and R-6 cannot be termed as appointment letters for the post of Section Officer. Merely drafting of correspondence, notings, file works etc. will not constitute that they were working as Section Officers. Only those Private Secretaries who had put in 6 years of regular service and worked as Section Officer (General) were eligible for promotion. It was selection post. Merit alone was criteria for the promotion to the post in question. The DPC could not recommend the names of respondents no.2 and 3 vide Annexure A1, dated 05.03.2011.

8. The office memorandum dated 08.03.2011 made on the basis of recommendation made by DPC dated 05.03.2011 is also illegal.

9. The learned Tribunal has erred in law as well as on facts while dismissing the original application preferred by the petitioner. It transpired during the course of hearing that one of respondents, i.e. respondent no.2 has retired from the service during the pendency of this petition.

Respondent no.3 is still working on the higher post.

10. Accordingly, the writ petition is allowed, impugned order dated 21.01.2016 is set aside. Respondent no.1 is directed to promote the petitioner to the post of Under Secretary/ Administrative Secretary from the date when his juniors were promoted, i.e. 08.03.2011. The promotion of respondents no.2 and 3 is set aside.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

December 17, 2018.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No