

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

**CWP No.21025 of 2016 (O&M)
Date of Decision:17.12.2018**

Jashanjit Singh

... Petitioner

Vs.

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present : Mr. Gurminder Singh, Sr. Advocate with Mr. R.P.S. Bara, Advocate
for the petitioner.
Mr. P.C. Goyal, Advocate for the respondent-UI.

RAJIV SHARMA, J.

Petitioner has sought judicial review of order dated 2.6.2016 passed by the learned Central Administrative Tribunal, Chandigarh Bench (for short "the Tribunal) in Original Application No.060/01086/2015.

The brief facts necessary for adjudication of the present case are that selection process was commenced for filling up the post of Inspectors of Income Tax pursuant to the advertisement dated 14.10.2006. The petitioner participated in the selection process. Examination was held on 1.8.2007 and petitioner cleared the examination on the basis of which his suitability was adjudged by the duly constituted Selection Committee. Despite the fact that name of the petitioner figured in the merit list, he was not offered appointment. The petitioner was offered appointment after the culmination of litigation on 26.05.2011. He joined his duty on 5.1.2012. In the meanwhile, petitioner has also made representation on the basis of which his seniority was restored along with his batch-mates.

The case of the petitioner is that he was fully eligible for promotion to the post of Income Tax Officer for the year 2014-15 along with his batch-mates. The promotion to the post of Income Tax Officer is regulated under the notification issued on 21.12.2004. Minimum qualifying

service is three years as Inspectors of Income Tax in the pay scale of Rs.6500-10500. The note appended with Rule 11 to the notification dated 21.12.2004 reads as under:

“Note: Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered, provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years whichever is less and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying or eligibility service.”

He was promoted on 3.9.2015. Aggrieved by this, he filed an Original Application before the Tribunal. However, the same was rejected vide order dated 2.6.2016. Relevant portion of the judgment of the learned Tribunal in para-11 reads as under:

“11. We have carefully considered the matter. There can be no dispute with the legal proposition as laid down in the cases of Pilla Sitaram Patrudu (supra) and Rakesh Beniwal (supra). However, in the instant case, necessary benefit of seniority and length of service has already been granted to the applicant at par with his batch mates. He has been assigned the seniority as per his merit in CGLE, 2006. There is also no dispute regarding his eligibility on the basis of length of service. However, he had not completed probation period as on 1.1.2014 the cut-off date. Judgments in the cases of Pilla Sitaram Patrudu (supra) and Rakesh Beniwal (supra) do not help the applicant on this aspect in any manner. On the other hand, according to O.M. Dated 17.9.1998, eligibility has to be determined on 1st January.; Illustration has also been given in the said O.M. That for panel year 2000-2001 (financial year) which covers the period from 1.4.2000 to 31.3.2001 and for the panel year 2000 (calendar year) which covers the period from 1.1.200 to 31.12.2000, the crucial date for the purpose of eligibility would be January 1, 2000 irrespective of whether ACRs are written financial year-wise or calendar year-wise. In view of this clear stipulation in the aforesaid

O.M., in the instant case, cut-off date for determining eligibility for promotion for the panel year 2014-15 was rightly taken to be 1.1.2014. Admittedly, the applicant had not completed his probation period as on 1.1.2014. Consequently, he has rightly held ineligible for promotion to the post of ITO for the panel year 2014-15. Impugned order (Annexure A-1) is speaking and reasoned order justifying the action of the respondents in this regard on the aforesaid reasoning. There is thus no infirmity or illegality therein.”

The learned Tribunal has taken into consideration O.M. Dated 17.9.1998 and came to the conclusion that petitioner was not eligible for promotion in the year 2014. It is in these circumstances, present petition has been filed assailing order dated 2.6.2016.

The petitioner's name figured in the merit list which was published on 25.4.2009. However, he was issued appointment order on 26.12.2011.

The case of the petitioner is that he received the appointment order dated 26.12.2011 on 3.1.2012 and thereafter he has joined his service on 5.1.2012. The case of the petitioner for promotion has been rejected on the ground that he has not fulfilled the requisite criteria of service for promotion as on 1.1.2014. He received the letter of appointment on 3.1.2012 and he joined his duty on 5.1.2012. The petitioner was confirmed on 9.5.2014 and his seniority was also restored along with his batch-mates.

It is a fit case where principles of *lex-non-cogit-ad-impossibilia* would apply. The petitioner has done everything possible within his reach to join his duty pursuant to the order of appointment dated 26.12.2011. He received the letter on 3.1.2012 and joined the service on 5.1.2012. The Tribunal has failed to take into consideration that in fact appointment was delayed for non-receipt of letter dated 26.12.2011. The department itself in its own wisdom has clarified the earlier order dated 17.9.1998 on 28.5.2014.

Shortage of 4 days occurred for no fault of the petitioner and he was to be considered for promotion for the panel year 2014-15 along with his batch-mates.

Accordingly, petition is allowed and impugned orders dated 2.6.2016 and 24.6.2015 are quashed. The respondents are directed to consider the case of the petitioner for promotion w.e.f. 9.12.2014 within a period of 10 weeks from today.

(RAJIV SHARMA)
JUDGE

17.12.2018
rajeev

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**