

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

**CWP-7293-2015 (O&M)
Date of decision : 17.05.2018**

Ram Pal Verma

...Petitioner(s)

Versus

The State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

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

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

JITENDRA CHAUHAN, J.

The petitioner claims promotion to the post of Superintendent (Judicial) from the date he became eligible in July 2007.

It is the case of the petitioner that he joined the services as Clerk-cum-typist on ad hoc basis in the office of Financial Commissioner (Establishment), Civil Secretariat, Punjab on 12.10.1985. His services were regularized as such on 29.10.1986. In January, 1998, the petitioner having qualified Assistant Grade Examination, was promoted to the post of Senior Assistant. On 14.05.2007, the petitioner was given regular charge of the post of Senior Assistant (Judicial). As per notification dated 1/3.02.1984, issued on behalf of the President of India, whereby, qualifications/eligibility criteria was laid down for promotion to the post of Assistant (Judicial) and

Superintendent (Judicial), the petitioner became eligible for promotion to the post of Superintendent (Judicial) in July 2007. On the basis of notification (Annexure P-2), promotions for the post of Superintendent (Judicial) were made till the year 2008, but in the year 2009, the Department of Personnel raised objection that promotions should not be made on the basis of this order and the matter was kept pending till the formulation of new rules. Now, the rules named as "Financial Commissioner's Secretariat (Group A) Service Rules, 2016 (for short, '2016 Rules'), have been framed and the petitioner has been promoted as Superintendent (Judicial) on 20.07.2016.

Learned counsel contends that no reasons have been cited in the objection of the Department of Personnel for deviating from the earlier practice of making promotions to the post of Superintendent (Judicial) on the basis of notification (Annexure P-2). It is also argued that the qualifications laid down in the draft rules are the same as were/are laid down notification (Annexure P-2). He cites instructions dated 21.11.1995 (Annexure P-12) wherein, instruction dated 23.11.1990 have been referred, to contend that the promotions by way of DPC should not be delayed or postponed on the ground that recruitment rules for a post are being reviewed/amended. It provides that the vacancy shall be filled in accordance with the rules in force as on the date of vacancy, unless, the rules framed subsequently have been expressly given retrospective effect.

On the other hand, learned State counsel submits that the petitioner could not be promoted earlier owing to the objection of the

Department of Personnel. Soon after framing of the Rules, the petitioner stands promoted to the post of Superintendent (Judicial).

Heard.

It is admitted fact that notification (Annexure P-2) remained in subsistence till the framing of the 2016 Rules and on the basis thereof, promotions were being made to various posts including the post of Superintendent (Judicial). From the pleadings of the parties, it is also clear that four sanctioned posts of Superintendent (Judicial) were available in the year 2007 and 2008 and the petitioner was eligible to be considered for promotion to the post in question. However, the Departmental Promotion Committee resolved to keep the matter pending till the notifying of services rules governing the service conditions.

Hon'ble the Supreme Court in ***Y.V. Rangaiah Vs. J. Sreenivasa Rao, 1983 AIR (SC) 852***, has held as under:-

“9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos.3 to 15 would not have been deprived of their rights of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth

promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

Similar view has been taken by a Division Bench of this Court in ***Nitinkhanna Vs. Central Administrative Tribuna, Chandigarh Bench, Chandigarh, 2011(3) S.C.T. 373***, wherein, it has been laid down thus:-

*“10. A bare perusal of the aforementioned statement would reveal that 48 posts had fallen vacant due to promotion of Tax Assistants in pre-restructured grade to the post of Inspector. Two vacancies were found to have fallen vacant in the year 2001-2002 and one due to resignation of Shri Parvinder Singh, Tax Assistant. It is established beyond doubt that the vacancies prior to enforcement of new rules were in existence and they were accordingly filled up keeping in view the eligibility of the respondents. The principle of old vacancy old rule would apply as per law laid down by Hon'ble the Supreme Court in the case of ***Y.V. Rangaiya Vs. State of Andhra Pradesh, AIR 1983 SC 852....***”*

From the perusal of above case law, it becomes crystal clear that the respondents fell in error in denying promotions to the eligible employees only on the grounds that the rules were to be framed. The right

course would have been to continue with the existing procedure till the framing of the rules. The inaction of the respondents has made the petitioner to suffer a delay of almost a decade for his legitimate right of being promoted as Superintendent (Judicial). In ***Union of India Vs. Hemraj Singh Chauhan, 2010(4) SCC 290***, Hon'ble the Supreme Court has observed as under:-

“38. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matter of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.

*39. In **The Manager, Government Branch Press and Anr. v. D.B. Belliappa – (1979) 1 SCC 477**, a three judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomized under Articles 14 and 16 is “fairness founded on reason” (See para 24 page 486).*

40. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion has been defeated by the acts of the government and if not of the Central Government, certainly the unreasonable in-action on the part of the Government of State of U.P. Stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration.....”

In the present case, the reasons for delay in grant of promotion to the petitioner cannot be, in any manner, attributed to the petitioner. Earlier also, the promotions to the post in question were being done on the basis of notification, Annexure P-2, which remained in subsistence till the framing of 2016 Rules. However, the respondents wrongly denied the benefit to the petitioner on the pretext that the rules were being framed. The right course for the respondents had been to grant the promotion to the eligible candidates instead of postponing the same awaiting notification of the rules.

In ***Krishan Kumar Sharma Vs. State of Punjab, 2013(16) S.C.T. 890 (DB)(P&H)***, it has held as under:-

“9. In view of the aforesaid facts and circumstances, the prayer made by the appellants in their application, which has been declined by the learned Single Judge, appears to be justified and as such, the present appeal is accordingly allowed and the appellants are held entitled to the actual arrears for a period of 38 months preceding the date of filing of the writ petition.”

In this view of the matter, the instant petition is allowed. The petitioner is deemed to have been promoted from the date of arising of vacancy or the date on which the petitioner became eligible for such promotion, whichever is later. His pay and allowances shall be re-fixed

accordingly. The petitioners are held entitled to the actual arrears for the period of 38 months preceding the date of filing writ petition as noticed in *Krishan Kumar Sharma's case (Supra)*.

Allowed.

17.05.2018
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No