

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

CWP-23260-2013 (O&M)

Reserved on: 29.08.2018

Decided on : 24.01.2019

Anil Kumar

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. P.C. Arora, Advocate for the petitioner.

Ms. Harsimrat Rai, DAG, Punjab.

JITENDRA CHAUHAN, J.

Prayer in the instant writ petition is for quashing of the order dated 02.07.2013 (Annexure P-1) whereby, promotion to the post of Assistant Controller (Finance and Accounts) (ACFA), was denied to the petitioner despite the recommendations of the Departmental Promotion Committee (DPC).

The petitioner was appointed as an Auditor on 01.02.1988 in the respondent-department. After having qualified the State Accounts Service (SAS) Examination, he was promoted to the post of Section Officer on 28.08.2001. Ultimately, he retired from service on 30.06.2011 after attaining the age of superannuation. As per the provisions of Rule 8(b) of the Punjab State Accounts (Class II) Rules, 1984, he became eligible for promotion to the post of Assistant Accounts Officer (AAO)/Assistant

Controller (Finance and Accounts) (ACFA), in the year 2008. In the year 2010, posts of ACFA fell vacant and the petitioner being at Sr. No.144 in the seniority list of 2003 (Annexure P-5), was amongst the eligible candidates being at Sr. No.138 to 155, to be considered for promotion. As per the policy instructions, the meeting of the DPC for considering the case of the petitioner along with other incumbents eligible for promotion to the post of ACFA was to be convened in the month of April or May, 2011, but the same was not convened. As petitioner was due for retirement on superannuation on 30.06.2011, he prayed for holding the DPC before his impending retirement vide application dated 25.06.2011 (Annexure P-6). The meeting of the DPC was held on 29.06.2011, a day before his retirement. The grouse of the petitioner is that despite the fact that the petitioner's name was recommended for promotion for the post of ACFA by the DPC meeting held on 29.06.2011, the promotion orders which were issued subsequently on 28.07.2011 (Annexure P-8), did not reflect the name of the petitioner, though 16 other incumbents (all junior to the petitioner) were promoted ACFA.

In the above backdrop, the petitioner served a legal notice upon the respondents, however, when no action was taken, he approached this Court by filing CWP-3533-2013, which was disposed of by this Court with a direction to the respondents to consider the claim of the petitioner and to pass a speaking order on the representation made by the petitioner vide judgment dated 18.02.2013. In compliance thereof, respondents passed impugned order dated 02.07.2013. Hence, the instant petition.

Learned counsel contends that the claim of the petitioner has

been rejected on whimsical grounds. Despite there being clear recommendation of the DPC, the petitioner has been denied the rightful benefit of promotion only on the ground that the final result of the DPC was published on 28.07.2011, i.e. after the petitioner had already retired from service.

On the other hand, learned State counsel submits that promotional vigilance clearance certificate was required to be issued by the Vigilance Department, which, in fact, was received by respondents after 30.06.2011 i.e. the date on which the petitioner retired from service on attaining the age of superannuation.

Heard.

Admittedly, in the DPC meeting held on 29.06.2011, the name of the petitioner being eligible was considered and recommended for promotion to the post of Assistant Controller (Finance and Accounts) (ACFA). However, the result of the DPC meeting held on 29.06.2011 was published on 28.07.2011, after the retirement of the petitioner on 30.06.2011. It is also an admitted fact that no complaint or charge-sheet was pending against the petitioner on the date of his retirement. The promotion clearance certificate had been also granted to the petitioner which was received by the Department on 19.07.2011 i.e. prior to the publication of the result of the DPC. It is well settled issue that the vacancy will relate back to date of actuarial and should be offered to the claimants eligible on the said date. In ***Chaman Lal Lakhanpal Vs. Union Public Service Commission, CWP-14526-1998, decided on 23.11.1998,***

this Court had laid down as under:-

“8. We are unable to accept this contention. The respondent cannot be permitted to take advantage of its own wrong. It is the Commission's own case that the committee could not meet during the years 1994-95, 1995-96 and 1996-97 on account of the interim order of stay granted by the Tribunal in S.P. Gupta's case. After the stay was vacated on December 3, 1996, the Commissioner took no steps for the meeting of the committee immediately. If it had performed its duty and nominated a member for the Committee as constituted under the regulations, the petitioner's rights as guaranteed to him under the rules would not have been violated. By merely failing to nominate a member and not allowing the committee to meet, the Commission cannot be permitted to defeat the rights of the petitioner.

9. It was then urged that the petitioner has since retired from service. Even this cannot be a ground for refusing to consider his claim. The right to be considered had accrued in the year 1994-95. The respondents had failed to consider his claim. They had not discharged their duty as enjoined upon them by law. The wrong done to the petitioner can only be remedied by one method viz. Directing the respondents to do the needful on the hypothesis that he was in service at the relevant time. If the petitioner is found suitable for inclusion in the select list and if his turn for appointment comes against an available post in the promotion quota, he will be deemed to have been promoted with effect from the due date. Consequential reliefs shall ensue in accordance

with the rules.”

Similar view has been taken by Hon'ble the Supreme Court in ***MP Singh Bargoti Vs. State of Madhya Pradesh and another, 2015 AIR (SC) 556***, by holding thus:-

“We have carefully considered the rival contentions, the relevant facts and the prevailing rules governing promotion at the relevant time. There is no dispute that despite directions passed since 15.06.1993 by the Tribunal and lastly reiterated in the case of the appellant on 11.03.1998, a Combined Gradation List was not prepared at the appropriate time and ultimately when it was prepared to show compliance with the order of the Tribunal, it was never acted upon because the subsequent directions of the Tribunal for amendment of rules was preferred by the State and the claim of the appellant was never considered by the Departmental Promotion Committee till he was in service or even thereafter when person like Mr. V.N. Dubey who was junior to the appellant in the Combined Gradation List was considered allegedly on the basis of another subsequent gradation list and promoted with effect from a date when the appellant was still in service.

In the aforesaid circumstances, in our considered view, the Tribunal and the High Court erred in law as well as on facts in denying relief to the appellant. The position would have been different if appellant's junior had been promoted from a date subsequent to his superannuation.

Then appellant would have suffered only on account of passage of time or innocuous delay but in the present facts he has suffered hostile and arbitrary discrimination vis-à-vis a junior. The order under appeal is therefore set aside. Since the appellant was in service only till 31.03.1998, he is held entitled to notional promotion to the post of Deputy Superintendent of Police w.e.f. 29.05.1997 till 31.03.1998. He will be deemed to have superannuated on that post and shall be given all the post retirement benefits by recalculating the same on the premise that he held the post of Deputy Superintendent of Police from 29.05.1997 till his superannuation on 31.03.1998. The revised pensionary benefits as well as arrears on that account should be made available to the appellant at the earliest and in any case within three months from the date of this order. The appellant is held entitled to a consolidated cost of Rs.50,000/- which should also be paid along with other benefits within the time indicated above. The appeal is allowed to the aforesaid extent.”

This Court in ***Nirmal Singh Vs. State of Punjab and others***, ***CWP-23430-2013, decided on 07.10.2016***, has held as under:-

“In the present case also, the case of the petitioner was considered for promotion by taking into consideration his service record. The vacancy was also there but the petitioner could not be promoted due to imposition of election code of conduct. Meanwhile, the petitioner retired and

benefit of promotion was declined only on the ground that he had already retired. The petitioner could not be made to suffer because of imposition of election code of conduct as his promotion was already approved but order of promotion could not be implemented, which cannot be a ground to refuse the claim of the petitioner. Had there not been election code of conduct, he could have been promoted prior to date of his retirement.

In view of the facts as well as law position explained above, the present petition is allowed and the petitioner is held entitled for deemed promotion along with all consequential benefits as per law. The respondents are directed to consider the case of the petitioner against the vacancy on which he was promoted by giving benefit of deemed promotion. The needful to be done within a period of three months from the date of receipt of copy of the order. The petitioner is also held entitled for refixation of his pensionary benefits on the basis of deemed promotion.”

A perusal of the above would reveal that in the matter of promotion, delay attributable to the Department cannot be made a ground to deny the benefit to the claimant. Furthermore, the technicalities cannot be used to defeat the ends of justice. The case of the petitioner was considered and recommended for promotion prior to his retirement. Therefore, the delay in finalizing and publishing the proceedings DPC meeting cannot be held to be a valid ground to deny the benefit claimed by the petitioner.

In view of the above, the instant petition is allowed and the petitioner is held entitled for deemed promotion to the post of ACFA w.e.f. the date of his retirement i.e. 30.06.2011. The petitioner shall be deemed to have been retired from service as ACFA and therefore, is also held entitled for re-fixation of his pensionary benefits and arrears thereof, accordingly. The necessary exercise be carried out within three months from the date of receipt of a certified copy of this judgment.

Allowed in the above terms.

24.01.2019

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**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No