

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118

CWP No.2897 of 2021
Date of decision: 10.02.2021

Raj Kumar Nanda

...Petitioner

Versus

State of Punjab and another

...Respondents

(Through video conferencing)

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. Ramesh Sharma, Advocate for the petitioner.

Ms. Sunint Kaur, AAG, Punjab.

Harsimran Singh Sethi, J. (Oral)

The present writ petition has been filed by the petitioner seeking promotion to the post of District Revenue Officer with effect from the date, the person junior to him was promoted. The claim of the petitioner has been declined by the respondents vide impugned order dated 04.11.2020 (Annexure P/10). The said order is under challenge before this Court in the present writ petition.

The factual matrix of the case is that the petitioner was charge-sheeted in the year 2008 in respect of certain allegations and on the basis of the said charge sheet, he was dismissed from service on 07.05.2012. The said order of dismissal was challenged by the petitioner by way of filing of CWP No.11011 of 2012. When the petitioner was out of service, an employee namely, Smt. Paramjit Kaur Sandhu was promoted as District

Revenue Officer vide order dated 03.02.2011 but, the said order was never executed as Smt. Paramjit Kaur Sandhu was on leave. Before the promotion order of Smt. Paramjit Kaur Sandhu dated 03.02.2011 could be implemented, same was cancelled on 18.06.2013. It was only on 16.10.2014, the said Smt Paramjit Kaur Sandhu was again promoted prospectively as District Revenue Officer in pursuance to which order, she actually joined the promoted post. The writ petition being CWP No.11011 of 2012 filed by the petitioner came to be decided by this Court on 11.11.2013 and the order dismissing the petitioner from the service was held to be bad and a direction was issued to the respondent-State to reinstate the petitioner in service with all consequential benefits. The said order was complied with and the petitioner was given all the benefits, for which, he was entitled for, till the date he attained the age of superannuation i.e. 30.06.2012.

After a period of approximately seven years of allowing the said writ petition by this Court, the petitioner again approached this Court by way of filing CWP No.675 of 2020 with a prayer that a direction be issued to the respondents to promote him to the post of District Revenue Officer w.e.f. 03.02.2011, when his junior, Smt. Paramjit Kaur Sandhu was promoted to the said post. The said writ petition was withdrawn by the petitioner with liberty to approach the respondent-department by filing an appropriate representation by raising the said grievance. A representation was submitted by the petitioner on 17.01.2020 claiming promotion to the post of District Revenue Officer from the date, his junior Smt. Paramjit Kaur Sandhu was promoted i.e. on 03.02.2011. The respondent-department vide impugned order dated 04.11.2020 (Annexure P/10) has rejected the

claim of the petitioner on the ground that order dated 03.02.2011 promoting Smt. Paramjit Kaur Sandhu as District Revenue Officer was cancelled by the department on 18.06.2013 before the same could be implemented and it was only on 16.10.2014, she was again promoted prospectively as District Revenue Officer but, by the said date, the petitioner had already superannuated and, therefore, no person junior to the petitioner worked as District Revenue Officer during the service career of the petitioner.

Learned counsel for the petitioner argues that though, order dated 03.02.2011 promoting Smt. Paramjit Kaur Sandhu as District Revenue Officer was cancelled on 18.06.2013 before its implementation but, as the said order was cancelled on the ground of non-joining of Smt. Paramjit Kaur Sandhu, the benefit of promotion to the post of District Revenue Officer from the said date cannot be denied to the petitioner.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present case, it is an admitted fact that no person junior to the petitioner worked as District Revenue Officer during the service career of the petitioner. Though, Smt Paramjit Kaur Sandhu was given promotion as District Revenue Officer vide order dated 03.02.2011 but, it is a matter of fact that the said order was never given effect to, till the same was cancelled on 18.06.2013. That being so, once no junior person has actually worked on promoted post of District Revenue Officer during the service career of the petitioner, hence, the claim of the petitioner that he is entitled for promotion from the date when the person junior to him was promoted is not sustainable. Merely, issuance of an order of promotion in favour of the person junior to the petitioner, will not give him right to claim

the benefit of promotion unless and until the order promoting the junior has been implemented and brought into operation. In the present case, the order dated 03.02.2011, promoting the person junior to the petitioner namely, Smt. Paramjit Kaur Sandhu as District Revenue Officer was never brought into operation till the same was cancelled on 18.06.2013. Under these circumstances, it cannot be said that any person junior to the petitioner worked on higher post during the service career of the petitioner, which came to an end on his superannuation on 30.06.2012 so as to give a right to the petitioner to claim promotion to the post of District Revenue Officer w.e.f. 03.02.2011.

Learned counsel for the petitioner further argues that order dated 03.02.2011 promoting the person junior to the petitioner namely, Smt Paramjit Kaur Sandhu as District Revenue Officer makes it clear that there was a vacancy in the cadre of District Revenue Officer and, therefore, the petitioner was entitled for the benefit of promotion against the said vacancy even otherwise also.

It is the settled principle of law that mere existence of a post for promotion does not give a right to an employee in the feeder cadre to claim promotion. Promotion cannot be claimed as a matter of right and only the consideration of the same can be asked for and it is the discretion of an employer to fill the post as and when wished and no direction can be issued by this Court to the employer to fill the same.

A Division Bench of this Court while deciding CWP No.4339 of 1992 titled as **Nandpal Singh vs. State of Haryana** on 13.01.1993 held that the promotion cannot be claim as a matter of right, even if, there is a vacancy in the promotion cadre as, it is the prerogative of the employer to

fill the post or not. The only right with the employee is, right to be considered for promotion as and when employer intends to fill up the promotional post. Relevant paragraph of the judgment is as under:-

“It is not disputed by counsel for the petitioner that the private respondents were senior to the petitioner even at the time they were promoted. The point now stressed is that some of these respondents have acquired the minimum educational qualification of M.A. in Geography much after the petitioner acquired it. Be that as it may, since such respondents have acquired it. Be that as it may, since such respondents have acquired educational qualifications for the post for which they were promoted long time back, it would not be appropriate to upset their promotion. The last one promoted was respondent No.4 on February 1, 1991, whose promotion is also being challenged. It has not been shown that on February 1, 1991 respondent No.4 was not possessing the requisite qualification, otherwise, it is stated that he was senior to the petitioner. Case of the petitioner is that since the petitioner was also eligible for promotion, as he was possessing the minimum educational qualifications, his name should have been considered along with others on February 1, 1991, who when respondent No.4 was promoted. This contention cannot be accepted. 'The criteria for promotion' as stated in the written statement filed by the official respondent is 'seniority-cum-merit'. If a person senior to the petitioner was possessing the requisite educational qualifications, there was no reason to deny promotion to him. The rule that all eligible persons should be considered at the time of promotion, is applicable only when selection at the time of promotion is applicable only when selection is to be made on merit and not on the basis of seniority. But this is not the case in hand.

When the principle of 'seniority-cum-merit' is to be applied, it is to be seen as to whether senior most person is available and if he possesses the requisite qualifications and there is nothing against him to promote him, in such circumstances, promotion cannot be denied to him. Other persons, who are juniors, cannot claim consideration of their names as against the said person. Learned counsel for the petitioner referred to the decision in **Deva Ram Bajaj v. State of Punjab 1992 (1) RSJ 572**. In that case the question for consideration was with regard to the persons whose names were to be considered at the relevant time of promotion to the post of Assistant. The relevant time was when such post became available or persons became eligible. If eligible person was available he was to be considered. The criteria for promotion whether 'seniority-cum-merit' or 'merit-cum-seniority' was not under consideration in that case. Thus, ratio of the decision aforesaid cannot be applied to the case in hand. In this context further contention of learned counsel for the petitioner is that in the year 1980, when posts were available and only the petitioner was eligible, the case of promotion should have been considered and thus the petitioner should be deemed to have been promoted. This contention cannot be accepted. There cannot be deemed promotion. Promotion in the service cannot be claimed as a matter of right. The only right which a person in service is entitled to claim is right to be considered for promotion. Even if a promotional post falls vacant, it is the prerogative of the state to fill the post or not. It is only when the state decides to fill such a post that the names of the persons eligible would be considered for promotion."

The same question of law came up for consideration before the

Division Bench of this Court in CWP No.17079-CAT of 2013 titled as

Union Territory, Chandigarh Administration and others vs. Tarlochan Singh and others decided on 05.03.2014. The Division Bench of this Court reiterated the same view that the employer has a right to initiate the process of filling up the promotional posts as and when the employer deems it fit and employee has no right to claim promotion from a particular date or seek direction that the vacancy in the promotional cadre should be filled. Relevant paragraph of the judgment is as under:-

“In view of the various judgments referred to above, we find that a person is not entitled to seek promotion from the day vacancies arises. It is for the employer to initiate the process of promotion and to fill up the posts, keeping in view its requirements. The employee has no right to claim promotion from a particular date or for a direction that the vacancy in the promotional post should be filled up. However, if the decision of the employer is to fill up the promotional post is actuated by the considerations other than administrative, such action or inaction can be subjected to the judicial review, but there cannot be any direction to grant promotion from the date the vacancy arises. However, in case, an Officer is given Current Duty Charge or promoted on adhoc basis, he shall be entitled to the pay of the promoted post as has been held in *Arindam Chattopadhyay’s case* (supra) and *State of Haryana Vs. P.K. Grover* (1983) 4 SCC 291.”

A Division Bench of this Court once again while deciding CWP No.8283 of 2008 titled as **Sukhdev Kumar Sharma vs. Union of India and others** decided on 27.08.2015 held that the claim for promotion is not a right and the promotions are to be made at the discretion of the employer as and when the employer feels the requirement of the same.

Relevant paragraph of the judgment is as under:-

“Even if the plea raised by the learned counsel for the petitioner is accepted that the vacancies were available, the petitioner cannot claim promotion as a matter of right. It is for the employer to decide as to whether the promotions are required to be made keeping in view the requirements. The employee has no right to claim promotion from a particular date or to seek a direction to the employer that the vacancy in the promotional post should be filled up. The action or inaction of the employer can only be subjected to the judicial review if the same is actuated by some extraneous considerations or mala fide considerations other than the administrative. To support this view, reference can be made to case **Union Territory, Chandigarh Administration and others versus Tarlochan Singh and others 2014 (3) SCT 330 (DB)**. In the instant case, there is no material on file to establish that inaction on the part of the respondents was due to any mala fide or extraneous reasons. It has been fairly conceded at Bar by the learned counsel for the petitioner that no junior to the petitioner was promoted to the post of Assistant Commissioner during his service tenure.”

Keeping in view the above, mere existence of a vacant post in the cadre of District Revenue Officer is no ground to claim promotion from a particular date and, hence, the argument raised on behalf of the petitioner that he is entitled for promotion to the post of District Revenue Officer as the post was in existence before the petitioner attained the age of superannuation on 30.06.2012 cannot be accepted and is accordingly, rejected.

Keeping in view the above, no infirmity can be found in the

impugned order dated 04.11.2020 (Annexure P/10) and, therefore, the present writ petition is dismissed.

February 10, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

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