

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

CWP-2733-2023

Date of decision : 25.05.2023

Jatinder Kumar

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Petitioner in person.

Ms. Shivani Sharma, Dy. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

Petitioner herein prays for issuance of a writ in the nature of certiorari seeking quashing of order dated 17th of August, 2020 passed by respondent No.1 rejecting the claim of the petitioner for giving him notional promotion to the post of Superintendent Grade-I w.e.f. 30th of May, 2019 i.e. the date when he was recommended for promotion by the Departmental Promotion Committee.

2. So far as right of the petitioner to the promotional post is concerned the same is not in dispute. The controversy involved is very short in nature. Admittedly, the Departmental Promotion Committee on 30th of May, 2019 recommended the promotion of the petitioner to the post of Superintendent Grade-I. However he was ordered to be promoted only on 5th of December, 2019. Petitioner claims that the date of promotion shall relate back to the date of recommendation whereas the stand of the State is

that keeping in view the fact that the authority was to apply its mind to the recommendations of DPC which are merely an advisory in nature, the delay is not such that the petitioner be allowed to cry foul.

3. I have heard counsel for the parties and have gone through records of the case.

4. The issue w.r.t. the promotion on the recommendations made by Departmental Promotion Committee is concerned, the same has been governed by guidelines framed by State. Part V thereof reads with processing and implementation of the recommendations of Departmental Promotion Committee and the same reads as under :-

16.1. Processing of recommendations of D.P.C.-

The recommendations of the DPC are advisory in nature and should be duly approved by the appointing authority. Before the recommendations are so approved the appointing authority shall consult all concerned as indicated below, without undue delay.

16.2. Consultation with U.P.S.C.- The recommendations of the DPC whether it included a Member of the UPSC or not should be referred to the Commission for approval, if-

- (i) Consultation with the Commission is mandatory under Article 320(3) of the Constitution, read with UPSC (Exemption from Consultation) Regulations, 1958. However, a reference may be made to the Regulations, as and when necessary.
- (ii) The Member of the Commission who presides over the DPC specifically desires that the Commission should be consulted.

16.3. Approval of ACC.- Where the posts fall within

the purview of the Appointments Committee of the Cabinet, the approval of ACC should also be obtained.

16.4.1. Procedure to be followed when the Appointing Authority does not agree with Recommendations of DPC.- There may be certain occasions when the appointing authority may find it necessary to disagree with the recommendations of the DPC. The procedure to be followed in such cases is indicated below.

16.4.2. Where UPSC is associated with the DPC the recommendations of the DPC should be treated as recommendations of UPSC. If it is so considered necessary by the appointing authority to vary or disagree with the recommendations of the DPC the prescribed procedure for over-ruling the recommendations of UPSC (not incorporated in these guidelines) should be followed.

16.4.3. The recommendations of the DPC on which UPSC is not represented should be dealt with as under :-

- (a) Where the appointing authority, being lower than the President of India, does not agree with the recommendations of the DPC, such appointing authority should indicate the reasons for disagreeing and refer the entire matter to the DPC for reconsideration of its earlier recommendations. In case the DPC reiterates its earlier recommendations, giving also reasons in support thereof, the appointing authority may accept the recommendations, if the reasons adduced by the DPC are convincing; if that authority does not accept the recommendations of the DPC it shall submit the papers to the next higher authority with its own recommendations. The decision of the next higher authority shall be final.
- (b) Where the appointing authority is the President of India, the recommendations of the DPC should be

submitted to the Minister in Charge of the Department concerned for acceptance or otherwise of the recommendations. In case the circumstances do necessitate, the Minister may refer the matter again to the DPC for reconsideration of its earlier recommendations. If the DPC reiterates its earlier recommendations giving also reasons in support thereof, the matter should be place before the Minister for his decision. The decision taken by the Minister either to accept or to vary the recommendations of the DPC shall be final.

16.5.1. Appointing Authority to take decision within 3 months. - In cases excepting those which require the approval of the Appointments Committee of the Cabinet the appointing authority should take a decision either to accept or disagree with the recommendations of the DPC within a time-limit of three months (from the date of the DPC meeting of the date of communication of the UPSC's approval to the panel, where such approval is required). Where the appointing authority proposes to disagree with the recommendations, the relevant papers should be submitted by the appointing authority to the next higher authority with its own recommendations by the expiry of the period of three months. In those cases in which the UPSC is associated with the DPC and the appointing authority proposes to disagree with the recommendations of the DPC, the case should be forwarded to the Establishment Officer in the Department of Personnel and Training for placing the matter before the Appointments Committee of the Cabinet as soon as possible and, in any case, not later than three months from the date on which the validity of the panel commenced.

16.5.2. In cases where the panel prepared by the DPC requires the approval of the A.C.C., proposals therefor alongwith the recommendations of the Minister-in-Charge

should be sent to the Establishment Officer before expiry of the same time limit of three months.

17.1 Implementation of the recommendations of DPC-Vigilance Clearance.- A clearance from the Vigilance Section of the Office/Department should also be obtained before making actual promotion or confirmation of officer approved by DPC to ensure that no disciplinary proceedings are pending against the officer concerned.

17.2. Order in which promotions to be made.- Promotion of whatever duration should as far as possible be made in the order in which the names of the officers appear in the panel. Exception to this rule may be necessary where a large number of vacancies are to be filled, within a comparatively short period or it is convenient and desirable to make postings with due regard to the location and experience of the officer concerned or where short term vacancies have to be filled on local and *ad-hoc* basis.

17.3 Where eligible by direct recruitment and promotion- If a person's name is included in the panel for promotion to the higher post (to which appointment can be made by promotion as well as by direct recruitment) and also in the panel for direct recruitment to the said higher post, he should be appointed as a direct recruit or as a promotee, having regard to the fact whether his turn for appointment comes earlier from the direct recruitment list or from the promotion list, as the case may be.

17.4.1 Promotion of officers on deputation.- If the panel contains the name of a person who has gone on deputation or on foreign service in the public interest including a person who has gone on study leave, provision should be made for his regaining the temporarily lost seniority in the higher grade on his return to the cadre. Therefore, such an officer need to be reconsidered by a fresh

DPC, if any, subsequently held, while he continues to be on deputation/foreign service/study leave so long as any officer junior to him in the panel is not required to be so considered by a fresh DPC irrespective of the fact whether he might or might not have got the benefit of *pro-forma* promotion under the NBR. The same treatment will be given to an officer included in the panel who could have been promoted within the currency of the panel but for his being away on deputation.

17.4.2. In case the officer is serving on an ex-cadre post on his own volition by applying in response to an advertisement, he should be required to revert to his parent cadre immediately when due for promotion, failing which his name shall be removed from the panel. On his reverting to the parent cadre after a period of two years he will have no claim for promotion to the higher grade on the basis of that panel. He should be considered in the normal course along with other eligible officers when the next panel is prepared and he should be promoted to the higher grade according to his position in the fresh panel. His seniority, in that event, shall be determined on the basis of the position assigned to him in the fresh panel with reference to which he is promoted to the higher grade., (If the panel contains the name of an officer on study leave, he should be promoted to the higher post on return from the study leave. He should also be given seniority according to his position in the panel and not on the basis of the date of promotion).

17.5 EB cases.- The recommendations of the DPC in the case of Government servants for crossing the EB have to be considered by the authority competent to pass an order under FR 25. Where a Government servant who has been held up at the EB stage on the due date on account of unfitness to cross the EB is allowed to cross the EB at a later date, as a result of subsequent review of his case by the DPC,

the increment next above the EB shall be allowed to him from the date of such order to cross EB. Where it is proposed to fix his pay at a higher stage taking into account the length of service from the due date for crossing the EB, the case should be referred to the next higher authority for a decision. Instructions regarding overruling of recommendation of DPC for promotion/confirmation would apply in this case also.

17.6.1. Sealed cover cases-Action after completion of disciplinary/criminal prosecution.- If the proceedings of a DPC for promotion contain findings in a sealed cover, on the conclusion of the disciplinary case/criminal prosecution, the sealed cover or covers shall be opened. In case, the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted nationally with reference to the date of promotion of his junior but he will not be allowed any arrears of pay for the period proceeding the date of actual promotion.

17.6.2. If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the finding of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

17.7.1. Six monthly Review of sealed cover cases.- It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the

proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. The appointing authorities concerned should review comprehensively the case of a Government servant whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first DPC which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review, should, *inter alia* cover the following aspects:-

- (i) The progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion.
- (ii) Scrutiny of the material/evidence collected in the investigations to take a decision as to whether there is a *prima facie* case for initiating disciplinary action or sanctioning prosecution against the officer.

If, as result of the review, the appointing authority comes to a conclusion in respect of cases covered by item (ii) above that there is not case for taking action against the Government servant concerned, the sealed cover may be opened and he may be given his due promotion with reference to the position assigned to him by the DPC.

17.7.2. Sealed cover procedure for confirmation.-

The procedure outlined in the preceding paras should also be followed in considering the claim for confirmation of an officer under suspension etc.

17.8.1. Procedure for *ad-hoc* promotion.- In spite of the six monthly review referred to in para 17.7.1. above, there may be some cases where the disciplinary case/criminal prosecution against the Government servant are not

concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant provided he is not under suspension, to consider the desirability of giving him *ad-hoc* promotion keeping in view the following aspects:-

- (a) Whether the promotion of the officer will be against public interest ;
- (b) Whether the charges are grave enough to warrant continued denial of promotion;
- (c) Whether there is no likelihood of the case coming to a conclusion in the near future;
- (d) Whether the delay in finalisation of proceeding, departmental or in court of law, is not directly or indirectly attributable to the Government servant concerned; and
- (e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after *ad-hoc* promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

17.8.2. In case the appointing authority comes to a conclusion that it would not be against the public interest to allow *ad-hoc* promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two year period to decide whether the officer is suitable for promotion on *ad-hoc* basis. Where the Government servant is considered for *ad-hoc*

promotion, the D.P.C. should make its assessment on the basis of totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

17.8.3. After a decision is taken to promote a Government Servant on an *ad-hoc* basis, an order of promotion may be issued making it clear in the order itself that:-

- (i) the promotion is being made on purely *ad-hoc* basis and the *ad-hoc* promotion will not confer any right for regular promotion; and
- (ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel at any time the *ad-hoc* promotion and revert the Government servant to the post from which he was promoted.

17.8.4. If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the *ad-hoc* promotion already made may be confirmed and the promotion treated as a regular one from the date of the *ad hoc* promotion with all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of this *ad-hoc* promotion with reference to his placement in the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in para 17.6.1.above.

17.8.5. If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him

departmentally or if the Government servant is not fully exonerated in the departmental proceedings, the *ad-hoc* promotion granted to him should be brought to an end.

17.9 Sealed cover procedure applicable to officers coming under cloud before promotion :- A Government servant , who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 11.1 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this part will be applicable in his case also.

Date from which promotions are to be treated as regular

17.10. The general principle is that promotion of officers included in the panel would be regular from the date of validity of the panel or the date of their actual promotion whichever is later.

17.11. In cases where the recommendations for promotion are made by the DPC presided over by a Member of the UPSC and such recommendations do not require to be approved by the Commission, the date of Commission's letter forwarding fair copies of the minutes duly signed by the Chairman of the DPC or the date of the actual promotion of the officers, whichever is later, should be reckoned as date of regular promotion of the officer. In cases where the Commission's approval is also required the date of UPSC's letter communicating its approval or the date of actual promotion of the officer whichever is later will be the relevant date. In all other cases, the date on which promotion will be effective will be the date on which the officer was

actually promoted or the date of the meeting of the DPC whichever is later. Where the meeting of the DPC extends over more than one day the last date on which the DPC met shall be recorded as the date of meeting of the DPC.

Appointments to post falling within the purview of ACC can, however, be treated as regular only from the date of approval of ACC or actual promotion whichever is later except in particular cases where the ACC approves appointments from some other date.

17.12. Refusal of promotion. - when a Government employee does not want to accept a promotion which is offered to him he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises, during the period of the validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of a one year from the date of refusal of first promotion or till a next vacancy arises whichever is later. On the eventual promotion to the higher grade, such Government servant will lose seniority vis-à-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above mention policy will not apply where *ad-hoc* promotions against short term vacancies are refused.

17.13.1. Validity of panel.- The panel for promotion drawn up by DPC for 'selection' posts would normally be valid for one year. It should cease to be in force on the expiry of a period of one year and six months or when a fresh panel

is prepared, whichever is earlier.

17.13.2. The date of commencement of the validity of panel will be the date on which the DPC meets. In case the DPC meets on more than one day, the last day of the meeting would be the date of commencement of the validity of the panel. In case the panel requires, partially or wholly, the approval of the Commission, the date of validity of panel requires, be the date (of Commission's letter) communicating their approval to the panel. It is important to ensure that the Commission's approval to the panel is obtained, where necessary, with the least possible delay.

17.14 Review of Panel.- The 'Select list' should be periodically reviewed. The names of those officers who have already been promoted (otherwise than on a local or purely temporary basis) and continue to officiate should be removed from the list and rest of the names, if they are still within the consideration zone, alongwith others who may now be included in the field the subsequent period."

5. Clause 16.5.1 serves as a guideline in the present case and the same prescribes the period of three months to give effect to the recommendations made by the DPC. Without doubt Clause 17.10 and Clause 17.11 deal with the date from which the promotions are to be treated as regular and lay down that as a general principle promotion of officers included in the panel would be regular from the date of validity of the panel or the date of their actual promotion whichever is later but the said principle is under assumption that the recommendations made by the DPC will be effectuated within the reasonable period which has been specified to be three months. Thus, once the authority has taken beyond

three months to give effect to the recommendations made by the DPC the Court can look into the facts and circumstances of the case to ascertain the cause of the delay. The guidelines when read as a whole leaves no doubt that the same prescribe to the principle that the issues related to promotion must be dealt with without delay. That being the essence of the guidelines the authority ought to have been alive to the situation and taken a conscious decision within a period of three months. In the present case there is nothing on record which can lead to inference that any delay cause is attributable to the employee.

6. In view of the above appointing authority ought to have taken final call within three months from the date of recommendation i.e. 30th of May, 2019.
7. Resultantly, the writ petition is allowed in part. The claim of the petitioner to the promotional post is allowed w.e.f. 1st of September, 2019.
8. Necessary relief be granted to the petitioner within a period of four weeks from the date of receipt of certified copy of this order.

May 25, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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