

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

CWP-5148-2020 (O&M)

Date of decision: 13.01.2023

Vijay Kumar Bansal

....Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.D.S.Rawat, Advocate for the petitioner
Mr.Inderpreet Singh Kang, AAG, Punjab

ANIL KSHETARPAL, J (Oral)

1. The petitioner prays for issuance of a writ in the nature of Mandamus to consider him for promotion at the post of Sub Divisional Officer (PR) from the date on which the regular quota posts became available. Though, the petitioner, after attaining the age of superannuation, had retired from the employment on 30th April 2019, however, he claims that he has been wrongly deprived of the promotion on account of his retirement.

2. It is not in dispute that the proposal for his promotion to the post of Sub Divisional Officer (PR) was mooted in the period when the petitioner was in regular service. The departmental promotion committee, after considering the files of various eligible candidates, recommended the petitioner's case for promotion on 26th April 2019, which was approved by the competent authority on 12th June 2019. However, the petitioner was not promoted as he had by then retired.

3. While filing the reply, the respondents have claimed that since the petitioner had already retired before the order promoting him

could be issued, therefore, the petitioner has no surviving case.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

5. The learned counsel representing the petitioner submits that the petitioner cannot be denied promotion merely on account of delay in grant of the approval of the competent authority. He submits that once the respondents had taken a decision to promote the eligible employees and the petitioner was found eligible and suitable for promotion, the denial thereof merely on account of petitioner's superannuation is not justified. In support of his submission, he relies upon **Major General H.M.Singh, VSM versus Union of India and another 2014 (1) SCC (Labour & Service) 649**. The relevant discussion is in para 28 to 30 of the aforesaid judgment, which read as under:-

“28. The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition that the respondents were desirous of filling the vacancy of Lieutenant-General, when it became available on 1-1-2007. The factual position depicted in the counter-affidavit reveals that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the seniormost serving Major-General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws, extended by

Article 14 of the Constitution of India. We are of the view that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential Order dated 29-2-2008, and thereafter, by a further Presidential Order dated 30-5-2008. The above orders clearly depict that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant-General (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet, stands affirmed). The action of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant-General would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary.

29. *We are therefore of the view, firstly, that the order allowing extension in service of the appellant for a period of three months, dated 29-2-2008, and the order allowing further extension in service by one month to the appellant, dated 30-5-2008, so as to enable his claim to be considered for onward promotion to the rank of Lieutenant-General, cannot be held to be in violation of the statutory provisions. Rule 16-A of the Army Rules, postulates extension in service, if the exigencies of service so require. The said parameter must have been duly taken into consideration when the Presidential Orders dated 29-2-2008 and 30-5-2008 were passed. The respondents have neither revoked, nor sought revocation of the above orders. Therefore, it does not lie in the mouth of the respondents to question the veracity of the above orders. The above orders were passed to ensure due consideration of the appellant's claim for promotion to the rank of Lieutenant-General. Without rejecting the above claim on merits, the appellant was deprived of promotion to the rank of Lieutenant-General.*

30. *Besides the above, we are also of the considered*

view, that consideration of the promotional claim of the seniormost eligible officer, would also fall in the parameters of the rule providing for extension, if the exigencies of service so require. It would be a sad day if the armed forces decline to give effect to the legitimate expectations of the highest ranked armed forces personnel. Specially when blame for delay in such consideration rests squarely on the shoulders of the authorities themselves. This would lead to individual resentment, bitterness, displeasure and indignation. This could also undoubtedly lead to outrage at the highest level of the armed forces. Surely, extension of service, for the purpose granted to the appellant, would most definitely fall within the realm of Rule 16-A of the Army Rules, unless of course, individual resentment, bitterness, displeasure and indignation, of army personnel at the highest level is of no concern to the authorities. Or alternatively, the authorities would like to risk outrage at the highest level, rather than doing justice to a deserving officer. Reliance on Rule 16-A, to deprive the appellant of promotion, to our mind, is just a lame excuse. Accordingly, extension in service granted to the appellant, for all intents and purposes, in our considered view, will be deemed to satisfy the parameters of exigency of service, stipulated in Rule 16-A of the Army Rules.”

6. Learned counsel representing the State of Punjab has failed to draw the attention of the Court to any contrary view.

7. Keeping in view the aforesaid facts, the writ of Mandamus is issued to the respondents to notionally promote the petitioner as Sub Divisional Officer and grant him all the consequential benefits, within a period of one month from today.

8. The writ petition stands allowed.

9. All the pending miscellaneous applications, if any, are also disposed of.

13.01.2023

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Whether speaking/reasoned :

Whether reportable :

Yes/No

Yes/No

(ANIL KSHETARPAL)
JUDGE