

CWP-11246-2016 (O&M)

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

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CWP-11246-2016 (O&M)
Date of Decision: 14.09.2023

Satpal Singh

...Petitioner

Versus

Hindustan Insecticide Limited and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Aman Priye Jain, Advocate for the petitioner
Mr. Vipin Mahajan, Advocate for the respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Articles 226/227 of the Constitution of India, is seeking setting order of dated 05.08.2014 (Annexure P-28) and order dated 16.03.2016 (Annexure P-33) whereby petitioner has been denied promotion to the post of Quality Control Officer ('QCO'). The petitioner is further seeking setting aside of memorandum dated 29.10.2012 (Annexure P-20) whereby petitioner was granted punishment of Censure.

2. Mr. Vipin Mahajan, learned counsel for the respondents, at the outset, pointed out that petitioner has filed common petition with respect to two independent causes.

3. Faced with this, learned counsel for the petitioner seeks permission to withdraw his prayer with respect to setting aside of

memorandum dated 29.10.2012 (Annexure P-20) with liberty to avail independent remedy as permissible by law.

The petition with respect to challenge to memorandum dated 29.10.2012 is dismissed as withdrawn with liberty aforesaid.

4. Respondent No.1 is a Central Government Public Sector Undertaking. The petitioner on 03.09.1990 was appointed as an Analyst which is lowest technical post in the respondent-organization. As per Rules and Regulations of the respondent, an employee, on completion of 6 years' regular service, is entitled to higher pay scale irrespective of availability of the higher post. The Stagnation Benefit Scheme (for short 'SBS') has been introduced to get rid of stagnation. The petitioner in 1996 completed 6 years, thus, he was extended benefit of first stagnation. There was another employee, namely A.K. Sinha, who was appointed as Analyst on 06.07.1990. A.K. Sinha was not extended benefit of stagnation in 1996 because he could not complete 6 years' regular service. A.K. Sinha completed regular service of 6 years in 1997, accordingly, he was extended benefit of SBS in 1997. The petitioner in 2002 completed next 6 years, thus, he was extended benefit of second SBS. It is apt to notice that petitioner was granted higher pay scale on account of stagnation, however, he was not promoted on the post of Senior Analyst. A.K. Sinha was promoted as Senior Analyst in 2003 whereas petitioner came to be promoted to the said post in 2008. The petitioner, at this stage, did not raise objection. A.K. Sinha came to be

further promoted to the post of Statistical Quality Control Supervisor ('SQCS') on 03.02.2010. The respondent on 26.09.2011 advertised one post of QCO. The post was to be filled through open competition. The petitioner was not considered for the post of QCO because he was not working on the post of SQCS.

5. The petitioner preferred CWP-6287-2014 before this Court seeking direction to respondents to grant him promotion from the post of Senior Analyst to QCO. This Court vide order dated 01.04.2014 disposed of the said petition with liberty to the petitioner to move representation before respondent No.3 therein, within two weeks for the relief sought and respondent No.3 therein, was directed to decide representation of the petitioner expeditiously and preferably within 3 months from the receipt of representation. The relevant extracts of the said order read as:

“Petitioner has filed this petition seeking a direction to the respondents for grant of promotion from the post of Senior Analyst to Quality Control Officer.

Learned counsel for the petitioner has submitted that with regard to relief in question, petitioner has been approaching the authorities but no action has been taken on his representations so far.

A perusal of Annexure P-24 reveals that petitioner had moved a representation qua various grievances including the relief sought by the petitioner in the present petition.

Accordingly, without adverting to the merits of the case, this petition is disposed of with a direction that in case petitioner moves a representation, qua the relief sought by him, before respondent No. 3 within two weeks from the receipt of the certified copy of this order, the same will be disposed of by respondent No. 3, expeditiously, in accordance with law, preferably within three months from the receipt of the copy of the representation.”

6. The petitioner filed representation dated 14.04.2014 before Rattan Lal, Deputy Personnel Manager (I/C). It is apt to mention here that Rattan Lal on the said date was not holding post of Deputy Personnel Manager (I/C). He was man of finance and working in the Finance Division. The petitioner vide letter dated 21.04.2014 requested Deputy Personnel Manager (I/C) to comply with the order of this Court. At that point of time, the post of Deputy Personnel Manager (I/C) was lying vacant and Unit Head marked the petitioner's representation to Rattan Lal who passed order dated 06.06.2014 whereby he promoted petitioner as QCO with effect from 25.12.2011. Rattan Lal in his order noticed that he was assigned additional temporary charge of Deputy Personnel Manager (I/C) for a short span i.e. 01.04.2012 to 15.07.2013 in addition to his original department of Finance and Accounts. He prayed to this Court that he has honoured the assignment and he may not be called for any statutory compliance for any discrepancy or anomaly or

any other grievance relating to personnel department. The relevant extracts of order dated 06.06.2014 read as:

“It will be pertinent to mention here that basically I am the man of Finance stream w.e.f. my joining the company i.e. 30.03.1982 till now I had been given the additional temporary charge of DPM/IC for a little span from 01.04.2012 to 15.07.2013 in addition to my original deptt. of Finance and Accounts as Dy. Finance Manager. Henceforth, I am no more in the Personnel Department as I relinquished the same on 15.07.2013 as mentioned above and I have resumed my original work of Finance & Accounts in the Unit w.e.f. 16.07.2013.

I pray to the Hon’ble High Court of Punjab and Haryana, at Chandigarh that as per the directives I have honored the assignment as required, I may not be called/asked for any statutory compliance for any discrepancy or anomaly, or any other grievance related to Personnel Department in future.”

7. The copy of the aforesaid order dated 06.06.2014 was forwarded to CMD. It was realized by management that petitioner has been wrongly promoted and his promotion is *ab initio void*. The CMD directed Unit Head to pass an appropriate order with respect to promotion of the petitioner. The Unit Head after considering the representation of the petitioner passed order dated 05.08.2014 whereby

he concluded that petitioner is not entitled to promotion on the post of QCO because petitioner was never appointed on the post of SQCS. The petitioner was promoted as Senior Analyst in 2008 whereas A.K. Sinha was promoted in 2003 and petitioner has never challenged promotion of A.K. Sinha. The petitioner was reverted to his original position i.e. Senior Analyst. The petitioner preferred an appeal before CMD which came to be dismissed vide order dated 16.03.2016. It is apt to notice here that respondent initiated proceedings against Rattan Lal for passing order beyond his jurisdiction. The respondent imposed penalty upon Rattan Lal by way of stopping his one increment.

8. Learned counsel for the petitioner *inter alia* contends that Rattan Lal passed order in view of direction issued by Unit Head. The petitioner moved an application before Rattan Lal as well as Deputy Personnel Manager for the redressal of his grievance. The post of Deputy Personnel Manager was lying vacant and Unit Head marked his application to Rattan Lal who was holding charge of Deputy Manager (Finance). Rattan Lal in view of order of Unit Head passed order. The order passed by Rattan Lal could not be recalled by Unit Head because Rattan Lal had exercised power conferred upon Unit Head. Unit Head delegated his power to Rattan Lal i.e. a Subordinate Officer and an order passed by a Subordinate Officer exercising power of Senior Officer cannot be recalled by Senior Officer because it amounts to review by the same authority.

The petitioner was granted benefit of stagnation in 1996 whereas A.K. Sinha was granted benefit of stagnation in 1997, thus, petitioner was senior to A.K. Sinha for the purpose of promotion to the next post. Though petitioner did not challenge promotion of A.K. Sinha to the post of Senior Analyst in 2003 and accepted own promotion in 2008 yet he has right to claim his promotion to the post of SQCS and QCO prior to promotion of A.K. Sinha. The petitioner while granting benefit of second stagnation was considered to be promoted on the managerial post, thus, he was entitled to promotion as QCO. The respondent wrongly did not call petitioner for interview and appointed another person.

9. *Per contra*, learned counsel for the respondent submits that promotion of the petitioner by Rattan Lal was *per se* void. An order which is *void ab initio* can be set aside at any stage. The petitioner represented before this Court that Deputy Personnel Manager is competent authority to promote him and this Court directed Deputy Personnel Manager to pass order with respect to representation of the petitioner seeking promotion. The order was not passed in the presence of respondent. The post of Deputy Personnel Manager was lying vacant and this Court had directed to pass order in accordance with law. 'In accordance with law' means the officer passing order must be competent and person claiming benefit must be entitled in law to that benefit.

Neither the officer passing order was competent nor petitioner was

eligible to benefit of promotion. The petitioner was indubitably granted benefit of stagnation prior to A.K. Sinha, however, he was junior to him which is evident from the fact that A.K. Sinha was promoted in 2003 whereas petitioner was promoted in 2008 on the post of Senior Analyst. The petitioner did not challenge promotion of A.K. Sinha on the post of Senior Analyst. A.K. Sinha was further promoted on the post of SQCS and petitioner did not challenge his promotion. The petitioner was promoted on the post of Senior Analyst, however, he was never promoted on the post of SQCS, thus, there was no question to promote him to the post of QCO. The petitioner in the advertisement of 2011 was not considered because he was not working on the post of SQCS. The petitioner neither assailed advertisement nor at that stage appointment of another candidate. The petitioner at this stage is estopped from claiming his appointment on the post of QCO. The principle of estoppels as well as acquiescence is applicable against the petitioner.

10. I have heard the arguments of learned counsels for both the sides and perused the record with their able assistance.

11. From the pleadings and arguments of both sides, following questions arise for the consideration of this Court:

- i. Whether the impugned order dated 05.08.2014 recalling order dated 06.06.2014 passed by Deputy Finance Manager amounts to review of own order?

- ii. Whether the petitioner was entitled to promotion from the post of Senior Analyst to Statistical Quality Control Supervisor w.e.f. 02.02.2010 and Quality Control Officer w.e.f. 25.12.2011?

12. The conceded position emerging from the record is that the petitioner joined respondent on 03.09.1990 as Analyst and A.K. Sinha another employee joined as Analyst on 06.07.1990. The petitioner was extended benefit of SBS in 1996 whereas A.K. Sinha was extended benefit of SBS in 1997. A.K. Sinha was promoted as Senior Analyst in 2003 whereas petitioner came to be promoted to the said post in 2008. A.K. Sinha came to be further promoted to the post of Statistical Control Supervisor w.e.f. 03.02.2010. The petitioner did not challenge promotion of A.K. Sinha either in 2003 or in 2010. The petitioner was extended benefit of second SBS, however, he was not promoted to the post of SQCS. The petitioner, first time, came before this Court in 2014 seeking direction to respondents to grant him promotion from the post of Senior Analyst to QCO. The said writ petition was disposed of vide order dated 01.04.2014 and in terms of said order, the petitioner made representation to Deputy Personnel Manager (I/C). The post of Deputy Personnel Manager, in the year 2014 was lying vacant. Rattan Lal was posted on the post of Deputy Manager (Finance & Accounts). He held charge of Deputy Personnel Manager for a short span i.e. from 01.04.2012 to 15.07.2013. Rattan Lal was not holding additional charge of Deputy

Personnel Manager during 2014. Unit Head marked representation of the petitioner to Rattan Lal who passed order dated 06.06.2014 whereby petitioner was promoted from the post of Senior Analyst to SQCS w.e.f. 02.02.2010 i.e. prior to the date of promotion of A.K. Sinha to the post of SQCS. The petitioner was further promoted to the post of QCO w.e.f. 25.12.2011.

13. The questions, as framed above for consideration, are adverted with as under:

Question No. (i) Whether the impugned order dated 05.08.2014 recalling order dated 06.06.2014 passed by Deputy Finance Manager amounts to review of own order?

The petitioner is claiming that Unit Head marked petitioner's representation to Deputy Finance Manager, namely Rattan Lal, thus Rattan Lal was competent to pass order with respect to promotion of the petitioner though he was not holding charge of Deputy Personnel Manager. The act of Unit Head amounts to delegation of his power to Deputy Finance Manager, thus, impugned order recalling order dated 06.06.2014 passed by Deputy Finance Manager amounts to review of own order.

There is substance in the contention of the petitioner that once an authority opts to delegate its power to its subordinate, the said subordinate exercises power conferred upon delegating authority and

order passed by subordinate officer is an order of authority/officer who has delegated his/her power. Hon'ble Supreme Court in ***Radha Krishan Industries Versus State of H.P.; (2021) 6 SCC 771*** has adverted with this question. In the said case, Commissioner of State Taxes and Excise, Himachal Pradesh delegated his power vested by Section 83 of H.P.GST Act, 2017 to Joint Commissioner of State Taxes and Excise. An order came to be passed by the Joint Commissioner of State Taxes under Section 83 of HPGST Act. The Hon'ble Supreme Court held that order passed by the Joint Commissioner amounts to order passed by Commissioner because Joint Commissioner has exercised power delegated by Commissioner. Thus, for the purpose of filing appeal, the order passed by the Joint Commissioner would be treated as order passed by the Commissioner. The relevant extracts of the judgment read as under:-

“62 From the above definition, it is evident that the expression ‘adjudicating authority’ does not include among other authorities, the Commissioner. In the present case, the narration of facts indicates that on 21 October 2020, the Commissioner had in exercise of his powers under Section 5(3) made a delegation inter alia to the Joint Commissioner of State Taxes and Excise in respect of the powers vested under Section 83(1). The Joint Commissioner, in other words, was exercising the powers which are vested in the Commissioner under Section 83(1) to order a provisional attachment in pursuance of the delegation exercised on 21 October 2020. This being the position, clearly the order

passed by the Joint Commissioner as a delegate of the Commissioner was not subject to an appeal under Section 107(1) and the only remedy that was available was in the form of the invocation of the writ jurisdiction under Article 226 of the Constitution. The High Court was, therefore, clearly in error in declining to entertain the writ proceedings.”

In the case in hand, the petitioner made a representation to Deputy Personnel Manager and said representation was made pursuant to order passed by this Court in CWP No.6287 of 2014. This Court granted liberty to the petitioner to file representation before Deputy Personnel Manager and said officer was directed to decide representation of the petitioner in a time bound manner. This Court while disposing of CWP No.6287 of 2014 specifically directed that Deputy Personnel Manager would pass order in accordance with law. The post of Deputy Personnel Manager was lying vacant during the period in question. Deputy Finance Manager i.e. Rattan Lal was not holding additional charge of Deputy Personnel Manager. Unit Head marked application of the petitioner to Deputy Finance Manager.

The respondent in reply has contended that power of appointment and disciplinary action vested in Unit Head. The petitioner is not disputing said fact, however, is claiming that Deputy Finance Manager while passing order dated 06.06.2014 exercised power of Unit Head. The petitioner has not pointed out any rule, regulation or

instruction of respondent which empowers Unit Head to delegate his power to any other officer.

From the perusal of representation dated 21.04.2014 of the petitioner and marking over said letter by Unit Head, it comes out that Unit Head had simply marked the letter to Deputy Finance Manager, however, he has not delegated his power to decide representation with respect to claim of the petitioner. The Deputy Finance Manager was not supposed to pass order of promotion. He himself in his order dated 06.04.2014 has jotted down that he is not holding charge of Deputy Personnel Manager and he had held charge of Deputy Personnel Manager for a short span i.e. 01.04.2012 to 15.06.2013.

In the absence of any rule, regulation or instruction authorizing Deputy Personnel Manager to pass an order of promotion, it was unjustified on the part of Deputy Finance Manager to pass order of promotion. There is no specific provision empowering Unit Head to delegate his power to subordinate officer, thus, it is difficult to conclude that mere marking of a letter by Unit Head to Deputy Finance Manager amounts to delegation of his power. It is apt to notice here that respondent initiated disciplinary proceedings against Rattan Lal and penalty was imposed upon him. He has not challenged penalty order.

In view of aforesaid facts and findings, the contention of the petitioner that act of Unit Head amounts to delegation of his powers is

unsustainable and cannot be countenanced. The contention of the petitioner is misconceived, thus, deserves to be rejected. This Court is of the opinion that there was no delegation of power by Unit Head to Deputy Finance Manager, therefore, it is wrong to plead that act of Unit Head amounts to review of his own order.

Question No. (ii) Whether the petitioner was entitled to promotion from the post of Senior Analyst to Statistical Quality Control Supervisor w.e.f. 02.02.2010 and Quality Control Officer w.e.f. 25.12.2011?

The petitioner concededly joined respondent company on 03.09.1990 and A.K. Sinha joined on 06.07.1990. The petitioner indubitably was extended benefit of SBS in 1996 and A.K. Sinha was granted benefit of SBS in 1997. It is well known fact that benefit of SBS is extended to get rid of stagnation arising on account of lack of promotion. The benefit of stagnation was granted on regular service of 6 years. A.K. Sinha joined respondent company prior to joining of petitioner, however, he could not complete regular service of 6 years in 1996, thus, he was granted benefit of first stagnation in 1997. It is true that benefit of stagnation is granted on account of lack of avenues of promotion but extension of benefit of SBS does not amount to promotion. In other words, benefit of stagnation cannot be treated at par with promotion. A.K. Sinha was indubitably promoted in 2003 whereas petitioner was promoted after a quite long time i.e. in 2008. The

petitioner neither in 2003 nor in 2008 claimed his promotion prior to date of promotion of A.K. Sinha who was granted second promotion i.e. promotion from the post of Senior Assistant to SQCS on 03.02.2010. The petitioner neither assailed promotion of A.K. Sinha to the post of SQCS nor lodged his claim for the said post. The petitioner was never considered senior to A.K. Sinha. The petitioner till 2014 did not challenge two promotions granted to A.K. Sinha prior to his one promotion. The claim of the petitioner to the post of SQCS prior to the date of promotion of A.K. Sinha was totally unsustainable. This Court had directed Deputy Personnel Manager to decide petitioner's claim because it was petitioner who deposed that Deputy Personnel Manager is competent to do so. It is further apt to notice that Court had asked to pass order in accordance with law which means order should be passed by a competent officer and as per law. The Deputy Manager was never competent to pass order and petitioner at this stage is claiming that Deputy Finance Manager exercised power of Unit Head because of delegation of power by Unit Head. Order of Deputy Finance Manager was beyond jurisdiction and invalid, thus, Unit Head was competent to correct illegality and error committed by his subordinate.

14. The respondent advertised one post of Quality Control Officer. The post was to be filled through open competition. Persons working in the PSU were also entitled to apply. In the advertisement dated 26.09.2011 whereby applications were invited for the post of

QCO, it was pre-condition for the candidates already working in Public Sector Undertakings that they should possess minimum two years working experience in one step below grade for the respective position.

The relevant extracts of the advertisement read as under:

“Qualification and experience required for the post of Quality Control Officer:

Post Graduate Degree with specialization in Organic Chemistry or Degree in Chemical Engineering with two years experience in a Chemical Factory in a technical capacity out of which about one year should have been in Analytical Quality Control Work. In the case of persons working in Central Govt./ Semi Govt./ Public Sector Undertaking who are required to submit their application through proper channel or should produce NOC at the time of interview and should have minimum 2 years working experience in one step below grade in the respective position.”

From the perusal of above noted eligibility condition, it is evident that an applicant already working with a Public Sector Undertaking, was supposed to have two years working experience in one step below grade in the respective position. The petitioner on 26.09.2011 was working on the post of Senior Analyst whereas SQCS was one step below the post of QCO. The petitioner was not considered for the said post because he was not posted at that point of time on the post of SQCS.

The petitioner was not called in the interview and he did not assail action of the respondent before a competent court. He opted to remain silent from 2011 to 2014. For the first time, he approached this Court in 2014 by way of filing writ petition. The limited prayer of the petitioner was to direct Deputy Personnel Manager to consider his representation seeking promotion. The petitioner did not challenge action of respondent not calling the petitioner for interview, pursuant to aforesaid advertisement for the post of QCO.

In view of principle of construction *res judicata*, the petitioner is further excluded to lodge claim on the post of QCO. The petitioner is estopped from assailing advertisement of 2011 and lodging his claim for the post of QCO because his act and conduct amounted to acquiescence. The petitioner admittedly in 2011 was not holding post of SQCS and post of QCO is higher/promotional post of SQCS. The petitioner was not called for the interview and another candidate was selected.

The Deputy Finance Manager, as noticed above, acting beyond his jurisdiction granted promotion from the post of Senior Analyst to SQCS w.e.f. 02.02.2010 i.e. prior to date of promotion to A.K. Sinha on the said post. By said order, Deputy Finance Manager further granted promotion to the post of QCO w.e.f. 25.12.2011. The respondent invited applications for the post of QCO by advertisement dated 26.09.2011. In view of advertisement, a complete process which

included interview was followed at the time of filling up of post and one candidate was selected. The Deputy Finance Manager following procedure unknown to law ordered to promote the petitioner to the post of QCO pursuant to advertisement though petitioner was not even called for the interview. A post which was to be filled after following due procedure came to be filled by DFM, following procedure unknown to law. The petitioner was not eligible to participate and respondent did not consider petitioner for the post of QCO advertised on 26.09.2011. The petitioner at that stage did not assail action of the respondent, thus, in view of principle of estoppel, acquiescence and *res judicata*, he cannot be promoted.

In the wake of aforesaid facts and findings, this Court is of the considered opinion that Deputy Finance Manager wrongly by order dated 06.06.2014 promoted the petitioner to the post of QCO with effect from 25.12.2011.

15. In view of above discussion and findings, the aforesaid questions are answered as below:

- i. There was no delegation of power by Unit Head to Deputy Finance Manager, thus, act of Unit Head in passing order dated 05.08.2014 does not amount to review of his own order.

ii. The petitioner was not entitled to promotion on the post of SQCS prior to the date of promotion of A.K. Sinha. The petitioner was not permitted to participate in the selection process of Quality Control Officer because he did not fulfill eligibility criteria and he further remained silent from 2011 to 2014, thus, he was wrongly promoted by Deputy Finance Manager to the post of Quality Control Officer w.e.f. 25.12.2011.

16. The petition being bereft of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

14.09.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>