

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

Reserved on 24.05.2023

CWP No.11798 of 2016(O&M)

Date of Decision: 01.06.2023

Chaman Lal

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Dharmender Singh Rawat, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, D.A.G., Haryana.

Mr. Ravi Sharma, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature mandamus, directing the respondent No.1 to grant 1st ACP scale w.e.f. 01.04.2014 (on account of completing 8 years of regular

satisfactory service on the post of Deputy District Attorney) and to promote the petitioner as District Attorney w.e.f. 01.07.2014 with all consequential benefits including interest on the arrears of ACP, salary of promotional post, revised pension, gratuity, leave encashment etc.

[2]. Learned counsel for the petitioner submitted that the name of the petitioner was duly recommended by the Departmental Promotion Committee for the promotion to the post of District Attorney w.e.f. 01.07.2014. It was only on account of delay on the part of the respondent No.1 that the petitioner could not be promoted till his retirement and his accrued legal right for promotion on the post of District Attorney w.e.f. 01.07.2014 has been illegally snatched. The petitioner was granted benefit of first ACP w.e.f. 01.04.2014. Thereafter, clear vacancies of District Attorney came into existence on 30.06.2014. Even DPC was conducted for anticipated vacancies on 25.02.2014, in which candidature of the petitioner was recommended on three occasions for promotion to the post of District Attorney, but necessary approval could not be granted owing to delay on the part of the Department.

[3]. The petitioner was appointed as Assistant District Attorney on 18.03.1991. Thereafter, he was promoted to the post of Deputy District Attorney on 17.12.2004. As per Haryana State Prosecution Legal Service (Group A) Rules, 1979, the

post of District Attorney can be filled up by way of promotion amongst Deputy District Attorney having three years of experience on the post of Deputy District Attorney. The petitioner had already completed three years of regular satisfactory service on the post of Deputy District Attorney on 24.12.2007 and was entitled to be promoted to the post of District Attorney. Thereafter, the Government of Haryana framed ACP Rules 2008. As per Rule 8 of ACP Rules, 2008, an employee could only be granted ACP scale if due to lack of vacancy in the promotional post in the hierarchy, he could not be promoted despite being eligible. An onerous duty is cast upon the respondents to promote the eligible (who has become eligible for grant of ACP scale) on the vacant promotional post. The petitioner had retired on 30.11.2014. The claim of the petitioner was rejected on the ground that the relief for notional promotion is not available to the petitioner as the petitioner had retired on 30.11.2014.

[4]. Learned counsel for the petitioner submitted that non-consideration of the case of the petitioner for promotion would violate the fundamental right of the petitioner as the respondent-Department itself was desirous to fill the vacancies available on 30.06.2014, for which even DPC was conducted on 25.02.2014, wherein candidature of the petitioner was also considered on three occasions, resulting in recommendations in his favour.

Learned counsel with reference to **Major General H.M. Singh, VSM Vs. Union of India and another, 2014(1) SCC (L&S) 649, Chaman Lal Lakhpal Vs. Union Public Service Commission, 1999(1) SCT 175 (DB), Kartar Singh and others Vs. State of Punjab and others, 2019(1) SCT 620** and **CWP No.5148 of 2020** titled **Vijay Kumar Bansal Vs. State of Punjab** decided on 13.01.2023 submitted that non-consideration of the claim of the petitioner would violate his fundamental right under Articles 14 and 16 of the Constitution of India. The respondent-Department was desirous for filling vacancies available on 30.06.2014. Para No.22 of Major **General H.M. Singh Singh, VSM case (supra)** is reproduced hereasunder:-

“22. 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 senior most 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. 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 16A 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. Besides the above, we are also of the considered view, that consideration of the promotional claim of the senior most 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 16A 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 16A, 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 16A of the Army Rules.”

[5]. Admittedly, the petitioner was eligible to be considered for promotion on 30.06.2014. Even DPC was conducted for anticipated vacancies on 25.02.2014, in which candidature of the petitioner was also considered on three occasions for promotion to the post of District Attorney and recommendations were also made in favour of the petitioner. The claim of the petitioner was rejected solely on the ground that the petitioner has already retired.

[6]. Learned counsel for the petitioner submitted that at the time of retirement of the petitioner, the matter was pending with the authority and the petitioner had a right to be considered with effect from due date and on being found suitable, he could be fictionally granted the relief which had been denied to him for no

fault of his. The right of equality of opportunity in the matter of promotion is guaranteed under Article 16 of the Constitution of India and the right cannot be stifled by an arbitrary failure to perform the duty imposed by statutory regulations. The right of the petitioner could not have been denied by merely choosing to avoid the culmination of proceedings. The petitioner has retired from the service and this cannot be the ground for refusal of his claim. The right to be considered for the promotion to the post of District Attorney had accrued on 30.06.2014. The Department had not discharged its duty as enjoined upon them by law. The wrong done to the petitioner can only be remedied by one mechanism i.e. directing the respondents to do the needful on the hypothesis that he was in service at the relevant time and was found fit for promotion to the post of District Attorney. The petitioner could not have been denied promotion merely on account of delay of approval by the competent authority. Once the respondent-Department had taken a decision to promote the petitioner after having found him eligible and suitable for the promotion, the denial thereof merely on the ground of superannuation of the petitioner is not justified. Reference can be made to **Vijay Kumar Bansal's case (supra)**.

[7]. The name of the petitioner was recommended even before Ish Kumar Kalra, who had 70% good or more than good record during the last 10 years and his integrity was also found

to be in order. No disciplinary action was taken against him, but he had foregone his promotion on 11.07.2013 and he opted for promotion during the year 2014 after forgoing his promotion. He was not considered for promotion for one year as per Rules and thereafter, he was promoted to the post of District Attorney. The aforesaid Ish Kumar Kalra and Madan Lal were seniors to the petitioner. Ish Kumar Kalra has foregone his promotion and Madan Lal was promoted on notional basis w.e.f. 27.12.2011.

[8]. By referring to the factual position, learned counsel for the petitioner submitted that after the retirement of Rameshwar Dass and Ravi Kumar Chhabra, District Attorney on 31.06.2014, two posts of District Attorney came to be vacant. As per recommendations of the Departmental Promotion Committee, names of Madan Lal, Deputy District Attorney and the petitioner were to be considered for promotion. Madan Lal was considered on notional basis w.e.f. 2011, whereas the case of the petitioner was dropped on the ground that he has retired. The aforesaid position was noticed in the departmental proceedings on 04.07.2014, wherein Madan Lal and the petitioner were proposed to be promoted to the post of District Attorney in grade of PB-3 15600-39100+6400 G.P. In the proposal of appointment, necessary particulars were also noticed with reference to confidential reports by the office of Director Prosecution, Haryana in the proceedings dated 03.09.2014.

[9]. By referring to **CWP No.17366 of 2013** titled **Darshan Lal Kwatra Vs. State of Haryana** decided on 14.07.2014, learned counsel for the petitioner submitted that the case of the petitioner is covered by the aforesaid judgment as the petitioner was legally required to be promoted as District Attorney w.e.f. 01.07.2014 when two posts of District Attorney fell vacant on account of retirement of Rameshwar Dass and Ravi Kumar Chhabra on 30.06.2014. Even the case of the petitioner was recommended for promotion to the post of District Attorney by the DPC on 25.02.2014, but unfortunately despite recommendation of the petitioner, the petitioner was not promoted due to fault of the Department and the petitioner has retired on 30.11.2014 due to delay on the part of the respondent. Learned counsel also referred to similarly situated case of Jai Pal Singh Chauhan, who was Deputy District Attorney and after his retirement, he filed CWP No.2233 of 2012 for his promotion to the post of District Attorney as his case was also considered by DPC in the meeting dated 16.09.2011. After due consideration, the Department has decided to promote Jai Pal Singh Chauhan, Deputy District Attorney (Retd.) notionally to the post of District Attorney in the pay scale of Rs.15600-39100+6400 G.P. w.e.f. 28.12.2011 i.e. the date on which the other Deputy District Attorneys were promoted as District Attorneys. He was not entitled for any arrears of pay on his

promotion as he had not served in the capacity of District Attorney. However, he was held entitled for all pensionary benefits by deeming him to be the District Attorney w.e.f. 28.12.2011. With reference to the aforesaid case, learned counsel sought parity with Jai Pal Singh Chauhan, who was similarly situated on factual analogy of the case.

[10]. In the written statement, the respondent-Department has admitted the factual position, thereby admitting that according to the letter dated 17.10.2014, the Director of Prosecution was asked to give details of vacancies by the competent authority. In response thereof, the Director Prosecution vide letter dated 31.10.2014 intimated that 8 posts of District Attorney were lying vacant, out of which, 5 posts for direct recruitment and 3 posts to be filled up by way of promotion, against which, Ish Kumar Kalra, Madan Lal and the petitioner were proposed to be promoted. The matter was processed and submitted to the Administrative Authority on 05.11.2014 for obtaining orders of the competent authority as per Rules of the Business of the State. In the meanwhile, the then Administrative Authority i.e. Additional Chief Secretary to Government, Haryana, Administration of Justice Department was transferred and new incumbent assumed the charge of the Administration of Justice Department on 16.11.2014. The matter was again processed afresh in order to bring all the facts to the

notice of new incumbent and proposal was received on 19.12.2014 i.e. after the date of retirement of the petitioner on 30.11.2014. The matter was again put up before the Administrative Authority on 14.01.2015. As per recommendation of DPC, promotion orders were issued on 30.06.2015 and persons seniors to the petitioner i.e. Ish Kumar Kalra and Madan Lal were promoted.

[11]. With reference to the aforesaid facts, the respondent-Department had tried to explain that on 01.07.2014, there was no administrative approval, against which the petitioner could not be promoted in the line of his seniority.

[12]. Learned State counsel with reference to **CWP No.17079-CAT of 2013** titled **Union Territory, Chandigarh Administration and others Vs. Tarlochan Singh and others** decided on 05.03.2014 submitted that the petitioner is not entitled to seek promotion from the date of vacancies arise. It is the employer to initiate the process of promotion and to fill up the post keeping in view the requirement. The employee has no right to claim promotion for a particular date.

[13]. In the instant case, the employer itself has initiated the process by way of conducting DPC for anticipated vacancies on 25.02.2014, in which, the candidature of the petitioner was recommended consecutively for three occasions for promotion to the post of District Attorney, but the approval of the

competent authority could not be granted owing to the delay on the part of the Department itself, which is not attributable to the petitioner, therefore, on this ground alone, the ratio of **Union Territory, Chandigarh Administration and others Vs. Tarlochan Singh and others case (supra)** is not applicable.

[14]. In the present case, there was a process initiated by the department for promotion. The case of the petitioner was considered even along with Madan Lal, whose serial number was 11 and the serial number of the petitioner was 12. In the process of consideration, the names of both were recommended for promotion. Madan Lal was already granted notional promotion w.e.f. 2011. Even in case of the petitioner also confidential report was prepared. Even in case of Jai Pal Singh Chauhan, similar relief has already been granted by the competent authority when he filed CWP No.2233 of 2012 in the High Court. The petitioner seeks parity on this score as well.

[15]. Having considered the controversy in the light of proved facts on record, I find that the case has been made out in favour of the petitioner and the petitioner is entitled for deemed promotion on notional basis with all consequential benefits. The petitioner is entitled to be promoted to the post of District Attorney notionally in the pay scale of Rs.15600-39100+6400 GP with effect from the date of his retirement on 30.11.2014. He will not be entitled for arrears of pay on his promotion as he has

not served in the capacity of District Attorney. However, the petitioner shall be entitled to all pensionary benefits on deeming fiction on the post of District Attorney.

[16]. For the reasons recorded hereinabove, this writ petition is allowed. Normal consequences to follow.

01.06.2023
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No