

206

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-24385-2015 (O&M)
Date of Decision:19.07.2023

SALWINDER SINGH

.....Petitioner

V/s.

**THE STATE OF PUNJAB THROUGH ITS FINANCIAL
COMMISSIONER (DEVELOPMENT) AND PRINCIPAL SECRETARY TO
THE GOVERNMENT OF PUNJAB, DEPARTMENT OF
AGRICULTURE, MINI SECRETARIAT, PUNJAB, SECTOR-9,
CHANDIGARH AND ANOTHER**

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Arvinder Singh, Advocate,
for the petitioners.

Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of this Writ Petition has prayed for issuance of Writ in the nature of *mandamus* for directing the respondents to give notional promotion to the petitioner w.e.f. 22.07.2015 when the Departmental Promotion Committee (DPC) considered the case of the petitioner for the post of Soil Conservation Officer.

2. The short point involved in the present petition is whether the competent authority can sit over the recommendations of the Departmental Promotion Committee (DPC) and in view of the said delay in passing orders of promotion, deny the individual of his/her claim for promotion on the ground that the individual has superannuated in the interregnum period.

3. Learned counsel for the petitioner(s) submits that the petitioner was recommended for promotion for the post of Soil Conservation Officer by the DPC on 22.07.2015 and he was due to retire on 31.07.2015. In spite of the recommendations having been sent to the concerned competent authority, he did not pass the orders and proceeded abroad/leave and returned back in the month of August, 2015 and passed the order dated 17.08.2015 in respect of the other persons. Resultantly, the petitioner, who had attained superannuation on 31.07.2015, was denied benefit of promotion.

4. Learned counsel for the petitioners submits that the action of the respondents is totally arbitrary and illegal and the petitioner's rights cannot be taken away on account of the whims and fancies of the concerned competent officer who may sit over the recommendations of the DPC to deny an individual his rightful claim for promotion. It is not the case that the petitioner was not eligible for recommending for promotion,

5. In support of his submissions, learned counsel for the petitioner has placed reliance on the decision rendered by this Court in CWP-1391-1993, titled as C.K. Shukla, Lt. Col. Vs. Union of India and others decided on 08.12.1995, wherein there is a similar circumstance relating to an Army Officer who was denied promotion from the post of Lieutenant Colonel to Colonel and in the meanwhile the concerned officer had retired. The relevant extract of the said order reproduced as under:-

“4. Admittedly, the petitioner was working as a Lt. Colonel since August 2, 1984. He was eligible to be considered for promotion to the rank of Colonel. The vacancies were available prior to November 1992. The Board had met on November 24, 1992 and found the petitioner suitable for promotion. In the normal course, he should have got the promotion soon after his selection by the Board.

However, the Government of India took almost six months to approve the panel. As a result, the petitioner retired on January 31, 1993. In my view, the approval granted by the Government on May 11, 1993 relates back to the original date of selection and a person who has been found suitable prior to his retirement should have been granted promotion. In any event, even if he has retired from service, it has not been pointed out that any rule debars him from being actually promoted after the approval of the panel. That being so, the petitioner was entitled to be granted the promotion along with others especially those who were junior to him. The action of the respondents in denying him the actual promotion was clearly unjust and unfair.

5. *It has been contended on behalf of the respondents that the person should be in service before he can be considered for promotion. Since the petitioner had retired prior to the approval of the panel, he cannot be granted actual promotion as he was no longer in service.*

Such a contention, if accepted, would lead to unfair results. It would enable the respondents to take advantage of their own wrong. By delaying the approval of the panel, they will be able to deny an officer his rightful due. This would be arbitrary and violative of Articles 14 and 16 of the Constitution. By this process, juniors would gain an advantage over a senior person who has already been declared fit for promotion. This is all the more so in view of the fact that on promotion as Colonel, an officer gets extension in service by two years. The position may have been different if the Government had taken a conscious decision that it did not need to fill up the posts in the higher rank. In that situation, it may have been permissible to say that none junior to the petitioner having been promoted, he has no cause for grievance. However, in the present, case, it has not been disputed that various officers juniors to the petitioner were actually promoted and that he was denied his rightful due only on account of the fact that a Lt. Colonel can continue in service only upto the age of 55 years. An officer who has served the Army to the satisfaction of the authorities is entitled to have a reasonable expectation of

promotion to a higher rank. The petitioner having been found suitable, does not deserve to be denied that promotion.”

6. *Per contra*, learned counsel for the respondents submits that the promotion would come into effect only when the competent authority passes order to promote and it is not from the date of recommendation.

7. I have considered the submission of the learned counsel for the parties.

8. The interpretation as sought for by learned State counsel if allowed to be taken would result in arbitrariness and would violate the principles of the Article 14 of the Constitution of India.

9. A person cannot be deprived of rightful claim of his promotion by an authority who may sit over the recommendations for the years together. The concept of “promotion” has to be understood differently from that of the “appointment”. This Court is of the view that once the recommendations have been made by the DPC, a right is created in the individual for being promoted. It is not the case that the petitioner suffered any inability in between except that the respondents did not pass an order of his promotion, resulting in superannuation. The superannuation cannot act as bar/disability for the purpose of denying the promotion which has already been recommended by the DPC.

10. In view of the aforesaid, the action of the respondents in not granting promotion to the petitioner, which has already been recommended by the DPC, is held to be unjustified and arbitrary. In fact, it is the case where the concerned competent authority has not performed its legal duty. Be that as

it may, the petitioner cannot be deprived of his rightful claim of higher promotion and consequential benefits.

11. The Writ Petition is allowed accordingly. Respondents are directed to pass an appropriate order in terms of the recommendations of the DPC dated 22.07.2015 and give all consequential and retiral benefits to the petitioner. The arrears shall also be calculated and released to the petitioner within a period of 3 months.

12. Pending application(s), if any, shall stand(s) disposed of.

July 19, 2023
Ess Kay

[SANJEEV PRAKASH SHARMA]
JUDGE

Whether speaking / reasoned	:	Yes / No
Whether Reportable	:	Yes / No