



CWP-444-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-444-2024 (O&M)
Date of Decision: 23.05.2024

Anurag Mahajan

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Dhiraj Chawla, Advocate for the petitioner.

Mr. Satnampreet Singh, DAG, Punjab.

Mr. D.S. Patwalia, Sr. Advocate, with
Mr. Kannan Malik, and
Ms. Alisha Sharda, Advocates for respondent No.2

AMAN CHAUDHARY J. (Oral)

1. The present petition is for quashing the impugned order dated 18.12.2023, Annexures P-13, whereby superior claim of the petitioner for promotion has been rejected.
2. Learned counsel submits that the petitioner, appointed as Assistant Corporation Engineer w.e.f. 01.06.1999, was promoted to Superintending Engineer on 22.01.2016. While being considered for promotion to Chief Engineer, he submitted his unwillingness vide his office note dated 31.10.2018/01.11.2018, Annexure P-5, on account of critical health condition of his aged parents staying with him. Consequent thereto he was debarred from further promotion for two years vide order dated 10.12.2018, Annexure P-7, concluding on 09.12.2020, prior to which, DPC was constituted on 29.09.2020 and persons junior to him namely, Mukesh Garg, Ashwani Chaudhary and Rajinder Chopra, were recommended for promotion, two of whom were promoted on 27.10.2020, while one post was kept



vacant. Respondent No.2 was notionally promoted as Chief Engineer w.e.f. the date his two juniors were promoted i.e. on 27.10.2020. Subsequent to the order of this Court dated 11.08.2023 in CWP-15630-2023, rejection order dated 18.12.2023, Annexure P-13, was issued by reason of him being debarred for promotion vide order dated 10.12.2018. It is further submitted that pursuant to said period having elapsed, he was up for consideration for promotion, however there is no reason that has come forth for DPC not having been convened between 2020 to 2024. Notwithstanding, he having retired in the meantime, on attaining the age of superannuation on 31.03.2024, is entitled for consideration, as held by the Division Bench of this Court in **Prem Kumar Aggarwal vs. State of Punjab and others**¹, which is applicable to his case on all fours. Relevant paras whereof read thus:

“7. The right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) of the Constitution of India, as held by Hon'ble the Supreme Court **Ajit Singh vs. State of Punjab, (1999) 7 SCC 209** and reiterated in **Ajay Kumar Shukla and Ors. vs. Arvind Rai and Ors, 2021 SCC OnLine SC 1195**.

8. A profitable reference can be made to a judgement of the Division Bench of this Court in **Chaman Lal Lakhanpal vs. UPSC, 1999(1) SCT 175**, a case wherein the petitioner aggrieved against his non-consideration for promotion had been unsuccessful before the Central Administrative Tribunal, claimed that he though had become eligible to be considered for promotion to the Indian Administrative Service in the year 1987 and in the year 1992, meeting of DPC was not held, though prior to it was wherein the persons senior to him were considered. Thereafter, even from year 1994-95 onwards the meeting was not held, consequently, his consideration did not take place and petitioner, who was to retire on 30.09.1998 from service, the Tribunal on that basis denied to give direction that by the time would be held he would stand retired. It was observed that, "The right to equality of opportunity in matters of promotion is guaranteed under Article 16 of the Constitution. The right cannot be stifled by an arbitrary failure



to perform the duty imposed by statutory regulations. By merely choosing to avoid the meeting, a citizen cannot be denied the right to be considered." Further, held that, "It was then urged that the petitioner has since retired from service. Even this cannot be a ground for refusing to consider his claim. The right to be considered had accrued in the year 1994-95. The respondents had failed to consider his claim. They had not discharged their duty as enjoined upon them by law. The wrong done to the petitioner can only be remedied by one method viz. directing the respondents to do the needful on the hypothesis that he was in service at the relevant time. If the petitioner is found suitable for inclusion in the select list and if his turn for appointment comes against an available post in the promotion quota, he will be deemed to have been promoted with effect from the due date. Consequential reliefs shall ensue in accordance with the rules."

9. In **State of Punjab vs. Jagjeet Singh and another**, 2018(4) SCT 549, the Division Bench of this Court had observed that the State cannot take undue advantage of their own inaction and wrongs in granting regular promotions, which was a legitimate expectations in service career and in the meantime, the employees had unfortunately retired without getting formal tag of a regular promotion, directed promotion be granted retrospectively but on notional basis only and they be entitled to fixation of their pension and other retiral benefits as per the pay deemed to have been drawn by them on the higher promotional posts. Interest of 7% per annum was also to be granted on arrears of pension and other retiral benefits.

10. Hon'ble the Supreme Court in **MP Singh Bargoti vs. State of Madhya Pradesh**, 2015 AIR SC 556, observing that the appellant therein was never considered by the DPC till he was in service or even thereafter when person junior to him in the combined gradation list was considered on basis of another subsequent gradation list and promoted, it was held that he suffered only on account of passage of time or innocuous delay and was held entitled to notional promotion and post retiral benefits by recalculating the same.

11. Notably, the appellant satisfied the eligibility criteria for promotion on the post of District Treasury Officer prior to his retirement, both, as per his merit on basis of seniority, as well as under 3% quota for handicapped employees in terms of the Instructions of 05.07.2011, his case, despite several requests and representations made by him, came to be not considered. The inaction and the inordinate delay in holding of DPC, lay on the part of the Department, that caused a prejudice to his right to receive pension in the promotion scale, a recurring loss.

12. Upon an analysis of the peculiar facts and circumstances of the present case, viewed holistically in the backdrop of the legal principles as enunciated, this Court finds merit in the appeal. The impugned judgement is set aside. The respondents are directed to consider the case of the appellant in accordance with law and grant notional promotion and other pensionary



benefits accruing therefrom within a month from the date when a web-print of this judgement is received and inform this Court.

13. The present appeal is allowed accordingly.”

3. Learned Senior counsel for respondent No.2 submits that since the petitioner has retired, he has no objection of his consideration, as his promotion does not get affected.

4. Learned State counsel despite his best efforts has not been able to controvert the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.

5. In view of the aforesaid, the impugned order dated 18.12.2023, Annexure P-13 is set aside. In case there is no other impediment in consideration of the petitioner, he, if found eligible and suitable, be promoted *albeit* on notional basis from the date that of his juniors. Needful be done within a period of three months.

(AMAN CHAUDHARY)
JUDGE

May 23, 2024

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Whether speaking : Yes/No

Whether reportable : Yes/No