

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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LPA-1703-2023 (O&M)
Decided on 30.01.2024

Prem Kumar Aggarwal

... Appellant

Versus

State of Punjab and others

... Respondents

**CORAM: HON’BLE MS.JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON’BLE MR.JUSTICE AMAN CHAUDHARY**

Present: Mr. R.K .Arora and
Mr. Jugam Arora, Advocates for the appellant.

Mr. Rohit Bansal, Senior DAG, Punjab.

AMAN CHAUDHARY, J.

CM-4315-2023

For the reasons mentioned therein, delay of 179 days in refiling the
appeal is hereby condoned.

Application stands disposed of, accordingly.

Main Appeal

1. Instant intra-court appeal, under Clause X of the Letters Patent has been filed against the judgement dated 17.02.2023, vide which the civil writ petition preferred by the appellant was dismissed.
2. Learned counsel would submit that the appellant, a physically challenged person having 80% permanent disability on account of the post polio residual paralysis of both legs from childhood, appointed as a Clerk on 20.07.1976, received his last promotion as Treasury Officer on 29.10.2010 and he being placed at Sr.No.9, was the senior most to be promoted as the officials up to Sr.No.8 had already received their promotions. However, despite there being

availability of 20 posts and the appellant having fulfilled the eligibility conditions for promotion as District Treasury Officer on 29.12.2016 and being meritorious as also falling within the 3% reservation to handicapped person in promotion in the service of A, B, C and D groups as per Instructions of State of Punjab dated 05.07.2011 was not even considered for promotion, despite he having made a number of representations and finally retired on 31.12.2017 on attaining the age of superannuation. Even though, there were Instructions dated 21.11.1995 upto 08.05.2017 by the Government of Punjab for conducting Departmental Promotion Committee meetings on regular intervals so that the employees get promotion in time against the vacant posts, due to the inaction and wrong committed on the part of the State, he was deprived of it, which was his legitimate expectations in service career. Learned Single Judge without properly appreciating the facts, declined relief to him.

3. Learned counsel for the respondent-State opposes on the ground that the appellant having retired, cannot be granted any benefit and the learned Single Judge had rightly dismissed his petition.

4. Heard learned counsel on either side, we find there to be considerable weight in the submissions canvassed on behalf of the appellant.

5. Undisputed facts emerging from the pleadings are that the appellant is a 80% handicapped person thus, Persons with Disabilities Act, 1995 is applicable, in terms of which, the State of Punjab has issued instructions dated 05.07.2011, providing 3% reservation in promotion to physically handicapped; he was senior most in his cadre and eligible for promotion against the vacancies that were available and no DPC was held prior to his superannuation which was on 31.12.2017 but was convened five months thereafter, on 22.05.2018.

6. Evidently, the reason stated for the appellant to have been promoted as reflected in para 1 of the preliminary submissions of the written statement dated 14.01.2020, filed to the writ petition, was the non-convening of the meeting of DPC prior to 31.12.2017. Pertinent fact as stated therein that also requires to be noticed here is that the appellant had been granted extension in service till 31.12.2019 and the DPC was held on 22.05.2018, his case could have been considered on notional basis by the Department itself. The above having not been done, constrained the appellant to approach the Court.

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.

14. Pending applications, if any, shall be rendered as disposed of.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE

30.01.2024
Ashok/gsv

Whether speaking / reasoned: YES / NO

Whether Reportable: YES / NO