

2024:PHHC:058829-DB
CWP-13053-2017 (O&M)
Date of Decision: 30.04.2024.

...Petitioner

Vs.

...Respondent

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present Mr. D.S. Rawat, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl. AG, Haryana.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The petitioner has preferred this petition assailing the Regulation 9 (1) (d) of the Haryana State Pollution Control Board (Group A, B, C and D) Service Regulations 2004 (hereinafter referred to as ‘the Regulations of 2004’), which provides for filling up the post of Senior Accounts Officer only by way of deputation from the Finance Department, Haryana.

2. Learned counsel for the petitioner submits that the petitioner is eligible to hold the post of Senior Accounts Officer and in fact he was given charge of the said post for a short period of time and, therefore, the post should be allowed to be filled only from the department candidates by way of promotion and not ought to be filled up by way of deputation from Finance Department, Haryana.

3. Learned counsel submits that the action of brining people from other departments to fill up the post takes away valuable rights of

consideration of promotion of the candidates working in the department. He also relies on the judgment of this Court in the case of Union of India and others vs. Puranjit Singh and another, 2008 (2) RSJ 196, wherein, this Court has observed that if a person is available in the department, person from another department ought not be brought to fill up the post by way of deputation.

4. Learned counsel has also submitted that earlier even the lower post of Sanction Officer was being filled up by way of deputation but the same was included in Board's cadre and the Regulation of 2004, was suitably amended treating the post to be available for promotion and it is only on account of the same that the petitioner who was earlier working as Accountant was further promoted to the post of Sanction Officer. From the post of Sanction Officer, the post of Senior Accounts Officer is the next post in the ladder and the said post ought not to be filled by way of deputation.

5. We have considered the submissions and also heard the learned State Counsel.

6. No right of promotion is available under the law and Hon'ble the Supreme Court in the case of Ashok Kumar Gupta vs. State of UP 1997 (5) SCC 201, has held as under:-

“43. It would thus be clear that right to promotion is a statutory right. It is not a fundamental right. The right to promotion to a post or a class of posts depends upon the operation of the conditions of service. Article 16 (4A) read with Articles 16 (1) and 14 guarantees a right to promotion to Dalits and Tribes as fundamental right where they not have adequate representation consistently with the efficiency in administration. The Mandal's case,

has prospectively overruled the ratio in Rangachari's case, i.e., directed the decision to be operative after 5 years from the date of the judgment; however, before expiry thereof, Article 16 (4A) has come into force from June 17, 1995. Therefore, the right to promotion continues as a constitutionally guaranteed fundamental right. In adjusting the competing rights of the Dalits and Tribes on the one hand and the employees belonging to the general category on the other, the balance is required to be struck by applying the egalitarian protective discrimination in favour of the Dalits and Tribes to give effect to the Constitutional goals, policy and objectives referred to hereinbefore.

44. In R.K. Sabharwal's & Ors. V/s. State of Punjab & Ors. [(1995) 2 SCC 745], the Constitution Bench was called upon to consider whether the reservation in promotion as per the roster was correct in law and, therefore, constitutional and whether the employees belonging to Scheduled Castes have right to be considered for promotion in their own merits, if so, how they are required to be adjusted in the roster prescribed by the Government. The Constitution Bench has pointed out that when percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserved points, it has to be taken that the posts shown at the reserved points are to be filled from amongst the members of the reserved categories. The candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand, the reserved category candidates can compete for the non-reserved posts. In the event of

their appointment to the said posts, In the event of their appointment to the said posts, their number cannot be added and taken into consideration for working out the percentage of reservation. When the State Government after doing the necessary exercise makes reservation and provides the extent of percentage of posts to be reserved for the said backward class, then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed or promoted against the general seats. The fact that considerable number of members of the backward classes have been appointed/ promoted against the general seats in the State may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the backward classes are operative, the same have to be followed. It was further held that the reserved vacancies like a running account. When the reserved quota is full in the cadre then application of rule of reservation would be stopped until vacancies as per the roster arise and operate. It was also held following Mandal's case that the judgment therein could be operative prospectively from that date, viz., February 10, 1995 and all the promotions which became settled rights due to reservation in promotion could not be unsettled. As seen earlier, "right to equality", "equality or status and opportunity"; duty to "improve excellence"; "opportunities and facilities to remove inequality in

status" and "social justice", all should be given their due and full play under rule of law to bring about equality in results to establish an egalitarian social order. It would, therefore, be clear that reservation in promotion is constitutionally valid; the posts earmarked for Dalits and Tribes shall be filled up and adjusted with them. The Dalits and Tribes selected in open competition for posts in general quota should be considered appointees to the general posts in the roster as general candidates. The promotions given in excess of the quota prior to the judgment in Sabharwal's case should not be disturbed.”

7. It is well settled that the only right available to an employee is for consideration for promotion on the post which is available for promotion in the department. Admittedly, the Senior Accounts Officer's post in the Board is meant to be filled by way of deputation from the Finance Department, Haryana. The regulation impugned by the petitioner is not based on any legal rule. Since, there is no right of promotion available, the rule framed by the State cannot be declared *ultra vires* merely because the same provides for filling up of post by way of deputation alone. It has also been noticed that the post of Senior Accounts Officer has not been included in the cadre of the Board and is an ex-cadre post. Law relating to deputation has been well examined by Hon'ble the Apex Court in the case of M. Hara Bhupal vs. Union of India, (1997) 3 Supreme Court Cases 561, wherein, it was held as under:-

“5. He contends that since the analogous posts, i.e., Private Secretaries and Section Officers, carry, admittedly, the same

scale of pay, the petitioner is entitled to be transposed and treated as S.O. right from the date of the absorption and, therefore, he is entitled to seniority from the date when he was holding the post of S.O. in his parent Department or alternatively from the date of his deputation. We find no force in the contention. It is true that under the above instructions, as indicated above, if the post held in the parent Department from which he came on deputation and the post in incumbent holds in the deputation service are analogous, certainly he is entitled to have the benefit of the above instructions. But when candidates are governed by two different sets of rules in the deputation service, even if they are analogous posts, one cannot be transposed from the service of one set of rules into the service of another set of rules. The object of the rules made was to regulate the conditions of service in each cadre/grade and to provide method of direct recruitment or by promotion from one ladder to the higher ladder. If the adoption of this transposition by analogous situation is given acceptance; necessarily one can, by manipulation, get into another service and seek promotional avenues or recruitment by back door method, which can never be given acceptance. Under those circumstances, we think that the Tribunal was right in not accepting the contention of the petitioner that he should be given the seniority as Section Officer w.e.f. the date when he was holding that post in parent Department or from the date of his deputation to the CAT,

though, admittedly, he had not held the post as Section Officer in the CAT.

6. It is then contended by the learned counsel that since the petitioner had given his option conditionally, he cannot be put in a disadvantageous position than those who equally hold the analogous post, namely Section Officers, Private Secretaries and the Stenographers who performing the Same set of responsibilities and duties. Therefore, Item 2 of the analogous position explained in the above O.M. would be applicable to the petitioner to the same. We End no force in the contention to give acceptance. Merely because the persons performing the analogous responsibility governed by two sets of rules, they cannot be treated to be on par for the purpose of giving seniority.”

8. Thus, if any post as per regulation is available for promotion as well as deputation, right of promotee will first be available and it is only when no one is available from the concerned persons that the post can be filled up by way of deputation. This Court in the case of Puranjit Singh’s case (supra) following the said principle has observed as under:-

“We have heard the learned Counsel for the Union Territory Administration at a considerable length and find that there is no error in the view taken By the Tribunal. It is well settled that when a senior most departmental employee is available then it would be wholly unwarranted to call another person on deputation unless there are any compelling reasons like the

pendency of criminal or disciplinary proceedings. In the absence of any such facts, the non-consideration of the respondent No. 1 for promotion to the post of Chief Engineer after it became available on the dismissal of Shri. K.K. Jerath, respondent No. 1 was entitled to be considered notwithstanding the fact that he was on deputation with the Municipal Corporation, Chandigarh. In any case, the Tribunal has not granted the relief of arrears of pay but has confined the relief to notional refixation of pay and then release of retiral benefits on that basis. 4. Therefore, we do not find any, room warranting interference of this Court in the well reasoned order of the Tribunal. The writ petition is misconceived and the same is accordingly dismissed.”

9. However, in the present case, the facts are different. The rules of the Board do not provide channel of promotion to the post of Senior Accounts Officer, which is an ex-cadre post to be filled up from the Finance Department, Haryana.
10. In view thereof, the challenge to regulation fails and the writ petition is accordingly dismissed.
11. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

30.04.2024.
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No