

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

228

CWP-14124-2018 (O&M)

Date of decision: 24.04.2024

Bhag Mall (now deceased)
through his legal heirs

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Vivek Sharma, Advocate for the petitioner.

Mr. Swapan Shorey, DAG, Punjab.

AMAN CHAUDHARY, J.

1. The prayer made in the present petition is for quashing the reply dated 04.10.2017, Annexure P-9, to the legal notice of the petitioner and granting him promotion to the post of Superintendent Grade-I, as well further prayer to fix pension, release arrears of pay and pension, with consequential benefits along with penal interest @ 18%.

2. Learned counsel would contend that the petitioner, working as Senior Assistant since 14.03.1987, was eligible for promotion to the post of Superintendent Grade-I since September, 2014, with no departmental/ police/ vigilance inquiry pending against him as per Noting dated 23.09.2014, Annexure P-2. DPC meeting to consider his promotion was fixed for 17.11.2014, wherein the following observations were made:

“Regarding para 'C' of Sr. no.2, it is submitted that Sh. Bhag Mal, Senior Assistant was promoted vide Endst. No. Sorts-SS-2-D.A.3-2002/9765-9814, Dated 13.09.2002 as Senior Assistant. Hence, the Storekeeper-cum- Accountant which has been mentioned in Agenda Note, the same has been given to this post of Senior Assistant by the department in the district. Hence, while considering the concerned employee only as Senior Assistant it would be appropriate to promote him for the post of Superintendent Grade-1.”

3. However it was adjourned time and again for reasons best known, being finally scheduled for 26.03.2015, but still not held. Thereafter, on 29.04.2015, Annexure P-5, the Special Secretary sought information from Director Sports, Punjab as to whether any extension in government service had been given to the petitioner, whereafter, he retired on 30.04.2015, without having been promoted.

4. On the contrary, learned State counsel submits that the meeting could not take place for administrative reasons and since the petitioner has retired, no relief can be granted.

5. Heard learned counsel on either side.

6. In order to proceed to adjudicate the present case, a reference can be made to **Chaman Lal Lakhanpal vs. UPSC**, 1999(1) SCT 175, wherein non-consideration for promotion was challenged before the Division Bench of this Court, aggrieved of the order passed by the Central Administrative Tribunal, the petitioner therein had submitted his eligibility for consideration for promotion to the Indian Administrative Service in the year 1987. The DPC meeting of 1992, to be constituted under the Indian Administrative Service (Appointment by Promotion) Regulations, 1995, was not held, even though via prior meeting the persons senior to him were considered. Subsequent meetings in the year 1994-95 too were adjourned, as a result, his consideration did not materialise, thereby, the Tribunal on that premise that petitioner was to retire on 30.09.1998 from service, denied to give any direction that by the time, it would be held, he would stand retired. While allowing the petition, it was observed thus:

“5. It is the admitted position that the petitioner was eligible to be considered for promotion in the year 1994-95. It is also not disputed that his claim has not been considered. Thus, the petitioner, even if he was approaching the date of retirement when the matter was pending before the Tribunal, had a right to be considered with effect from the 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 relief could not be denied to him merely because a statutory authority viz. the committee as constituted under the Indian Administrative Service (Appointment by Promotion) Regulations, 1995 had not met. The respondents cannot be permitted to take advantage of their own wrong. By sleeping over the matter, they cannot defeat the rights of a citizen available to him under the Constitution as well as the statutory provisions of the regulations.

6. 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.

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9. 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.”

7. It would be worthwhile to also refer to **Prem Kumar Aggarwal vs. State of Punjab and others**, LPA-1703-2023, decided on 30.01.2024, wherein the appellant was eligible for promotion to the post of District Treasury Officer, however he retired without having been considered, due to non-convenience of DPC, despite numerous Instructions by the Government of Punjab and submission of several representations for expediting the same. The respondents were directed to consider him for notional promotion to the said post for pensionary benefits.

8. A gainful reference may be made to CWP-5148-2020, **Vijay Kumar Bansal vs. State of Punjab**, decided on 13.01.2023, wherein the notional promotion was granted owing to the factum that the proposal for promotion was made while in regular service, however DPC had not convened and he ultimately

retired. Thereafter, it was determined that he was unfairly denied the benefit on the premise of him that the petitioner retired prior to the approval by the Department.

9. Trite to say that the State must act reasonably and fairly. Hon'ble the Supreme Court in **State of Maharashtra vs. Jagannath Achyut Karandikar**, 1989 Supp (1) SCC 393, had observed that due to the faulty conduct of the Department, no employee should be forced to endure hardships.

10. The Constitution Bench of Hon'ble the Supreme Court while weighing on the importance of Articles 14 and 16(1) of the Constitution of India in **Ajit Singh vs. State of Punjab** (1999) 7 SCC 209, observed that if eligibility and criteria for promotion are satisfied, however there still is no consideration for the same, then there is clear violation of fundamental right. A similar legal discourse was reiterated in **Ajay Kumar Shukla and Ors. vs. Arvind Rai and Ors**, 2021 SCC OnLine SC 1195.

11. The legitimate expectation of an employee of promotion in one's service career, which in case, he is unable to obtain, on account of inaction of the State, while in the meantime, he unfortunately retires, without a formal tag thereof, would leave him with a brooding sense of injustice.

12. As it emerges that the petitioner being eligible was recommended for consideration for promotion to Superintendent Grade-I, however, the DPC meeting was not conducted in a timely manner, either due to blatant dithering by the respondents or owing to their lackadaisical approach, he in the interregnum having retired on attaining the age of superannuation, thus, he cannot be deprived of that he duly deserved. The contention of learned State counsel cannot be countenanced that, now the petitioner has since retired, he cannot be granted any benefit, for, in that he was not at fault and the respondents are not permitted to take advantage of their own illegal action. Notwithstanding, he no longer being in service, in all fairness and as a

matter of principle as laid down in the abounding judicial pronouncement, this Court rules in his favour.

13. In cumulative consideration of facts and circumstances of the case, the respondents to consider the petitioner for promotion as Superintendent Grade-I from the due date, *albeit* on notional basis only for the purpose of pensionary benefits, within a period of two months from when a web-print of this judgment is received by the competent authority.

(AMAN CHAUDHARY)
JUDGE

24.04.2024
Hemant

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No