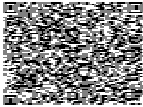


CWP-16907-2024 (O&M)

2024:PHHC:099041-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16907-2024 (O&M)
Date of Decision: August 2, 2024

Union of India and others Petitioners

Versus

Central Administrative Tribunal and another Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Ms. Divya Sharma, Advocate for the petitioners.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside order dated 19.12.2019 passed by learned Central Administrative Tribunal, Chandigarh (for short – ‘the Tribunal’) whereby present petitioners were directed to convene a meeting of review Departmental Promotion Committee (DPC) for promotion as Assistant General Manager (AGM) for vacancy year 2018-19 so that name of applicant – respondent No. 2 could be considered therein. It was directed that respondents should expedite the matter and carry out this exercise within eight weeks of receipt of certified copy of the order. Petitioners also challenge order dated 09.05.2024 passed by learned Tribunal whereby application by present petitioners seeking review of order dated 19.12.2019 has been dismissed.

2. Brief facts necessary for adjudication of the matter are that respondent No. 2 filed OA No. 060/1042/2019 seeking a direction to present petitioners (respondents in OA) to convene meeting of review DPC to consider the case of applicant-respondent No. 2 for promotion as AGM for vacancy 2018-

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19 as per norms dated 08.05.2017 of DoPT. It is the case of respondent No. 2 that earlier DPC was deferred thrice on 13.07.2018, 25.07.2018 and 26.12.2018. Before the learned Tribunal, stand of present petitioners (respondents therein) in the written statement filed by them was that proceedings of previous DPC could not be finalized due to objection raised by Direct Recruited Managers selected through UPSC. It was stated in para 4 of preliminary objections/submissions that no communication had been received from the Ministry of Defence on the reasons for withholding the outcome of DPC held on said dates. Thus, proceedings were not finalized and panel was yet to be published.

3. In this factual matrix, OA was disposed of by learned Tribunal while directing respondents to convene the meeting of review DPC within eight weeks from receipt of certified copy of the order for vacancy year 2018-19 so that name of applicant-respondent No. 2 could be considered. Petitioners did conduct DPC on 13.02.2020 for promotion to the grade of AGM/SGM. Respondent No. 2 was also considered in the said proceedings. However, respondent No. 2 was not granted promotion on the premise that he had already retired on 31.01.2020. Petitioners, it is stated, carried out the exercise in terms of Office Memorandum (for short – ‘OM’) dated 12.10.1998 wherein it is clarified that names of retired officials may be included in panel(s) but they would not have any right for actual promotion. Contempt petition was filed before learned Tribunal by respondent No. 2. Petitioners took a stand that no contempt is made out as order dated 19.12.2019 passed by learned Tribunal had been complied with. However, learned Tribunal continued with contempt proceedings on the premise that provisions of OM dated 12.10.1998 would apply only in the case of fresh DPC and not for review DPC. In this situation, petitioners filed review petition dated 02.02.2024 seeking review of order dated 19.12.2019, while

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seeking a clarification that since DPC for post of AGM had never been convened prior to 13.02.2020, direction for holding review DPC was superfluous. Said Review Application was dismissed by learned Tribunal while concluding that order dated 19.12.2019 did not suffer from any patent mistake or error apparent on record to warrant its review and that to accept the contention on behalf of petitioners that convening of review DPC was superfluous would amount to rehearing the Original Application, which is not within the scope of adjudication in review application. It was further concluded by learned Tribunal that review application had been filed after delay of 1506 days without any justifiable cause. Application for condonation of delay alongwith review application was, thus, dismissed. Aggrieved therefrom, present writ petition has been filed.

4. Learned counsel for petitioners vehemently argued that direction to conduct review DPC in the given factual matrix is an error apparent on record, therefore, learned Tribunal should have rectified the same. In the given facts and circumstances, order dated 19.12.2019 passed by learned Tribunal should be set aside in *toto*. Continuation of contempt proceedings before learned Tribunal, it is submitted is in complete violation of settled law. Once order dated 19.12.2019 had been complied with and DPC convened, the question whether applicant-respondent No. 2 was correctly denied the benefit of promotion or not, cannot be the subject matter of adjudication in contempt proceedings. If applicant-respondent No. 2 has any grievance qua the same, he may challenge said action in appropriate proceedings. It was prayed that present petition be allowed.

5. We heard learned counsel for petitioners and have carefully gone through file.

6. Passing of order dated 19.12.2019 and convening of DPC subsequent thereto on 13.02.2020 is a matter of record. It is further not denied

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that petitioners did not challenge order dated 19.12.2019 at any stage, till after filing of contempt petition by the applicant. Review application was filed thereafter before learned Tribunal. There is indeed no explanation for inordinate delay in filing of such review application. Insofar as filing of writ petition is concerned, doubtlessly there is no prescribed period of limitation but it is a settled position that such petition would have to be filed within a reasonable period. Yet again, there is no explanation as to why order dated 19.12.2019 was not challenged at the appropriate time. Filing of review application in 2024 by itself cannot extend cause of action. Moreover, argument as to whether applicant-respondent No. 2 is entitled to actual promotion or not, cannot be subject matter of adjudication in present proceedings. We do not find any ground whatsoever to interfere in the present writ petition for setting aside impugned orders dated 19.12.2019 and 09.05.2024. Petitioners needless to say are at liberty to raise all the available pleas before learned Tribunal in the contempt proceedings stated to be pending.

7. Keeping in view the facts and circumstances as above, no ground is made out for setting aside orders dated 19.12.2019 and 09.05.2024.

8. Writ petition is, accordingly, dismissed with no order as to costs and with liberty to petitioners as aforementioned.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

August 2, 2024

rts

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