



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

CWP-25215-2022

Reserved on: 28.11.2024

Pronounced on : 16.12.2024

Tarsem Lal Garg

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Harpal Singh Saini, Advocate,
for the petitioner (through video conferencing).

Mr. Ravi Dutt Sharma, DAG, Haryana.

NAMIT KUMAR, J.

1. The instant petition has been filed by the petitioner seeking a writ of mandamus directing the respondents to promote the petitioner as Sub Divisional Engineer (Civil) w.e.f. 19.03.2020, the date the name of the petitioner was approved by the departmental promotion committee and pay the arrears of pay and allowances and consequently revise the pensionary benefits of the petitioner.

2. The brief facts, as have been pleaded in the petition, are that the petitioner, who is a degree holder had joined the respondent-department as Junior Engineer (Civil) 01.01.1993 and retired as such on 30.04.2020 on attaining the age of superannuation after serving for 27 years without any promotion. The next channel of promotion from the post of Junior Engineer (Civil) is to the post of Sub Divisional Engineer (Civil). As per the Public Works Department (B&R) Rules, Haryana, a

Junior Engineer having five years service is eligible for promotion to

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the post of Sub Divisional Engineer (Civil) and since the petitioner joined the service on 01.01.1993 and being degree holder, he became eligible in the year 1998 itself on completion of five years service. Petitioner was given the current duty charge of the post of Sub Divisional Engineer (Civil) vide order dated 06.09.2019 (Annexure P-2) along with nine other JEs in their own pay scales against a vacant post and was transferred from Karnal to Chandigarh and vide order dated 13.09.2019, petitioner was relieved from Karnal to join duty at Chandigarh. The order dated 06.09.2019 was challenged by the petitioner before this Court by filing CWP No.30395 of 2019 on the ground that due to his ill health he has given his unwillingness to accept the current duty charge and has submitted representation dated 12.09.2019 to forgo the same to continue at Karnal and is to retire within the next six months. Thereafter, the petitioner retired from service on 30.04.2020, therefore, the said writ petition was disposed of as infructuous, vide order dated 23.05.2022 (Annexure P-4). It has further been pleaded that vacancies in the promotional quota were available in the respondent-department and meeting of the departmental promotion committee was held in February, 2020 and even prior thereto for making promotion to the post of Sub Divisional Engineer (Civil) but was deferred every time for the reasons best known to the respondents. Thereafter, a DPC meeting was held on 19.03.2020 against the existing vacancies for making promotion to the post of Sub Divisional Engineer (Civil) and the petitioner being fully eligible was also considered and was found suitable for promotion to the post of Sub Divisional Engineer



(Civil) in the said DPC, however, the promotion orders were issued on 08.10.2020 (Annexure P-1), whereby as many as 22 Junior Engineers were promoted to the post of Sub Divisional Engineer (Civil), however, name of the petitioner did not figure in the said promotion orders whereas juniors to the petitioner have been promoted.

3. The grievance of the petitioner in the present petition is that although he was fully eligible for promotion to the post of Sub Divisional Engineer (Civil), the DPC meeting was held on 19.03.2020 against the existing vacancies for making promotion to the post of Sub Divisional Engineer (Civil) and the case of the petitioner was also considered in the DPC and he was found suitable for promotion but due to the delay caused by the respondents, promotion order was issued on 08.10.2020, whereby twenty two JEs were promoted as Sub Divisional Engineer (Civil), however, the petitioner was not promoted on account of the fact that during holding of the meeting of the DPC and issuance of order dated 08.10.2020, the petitioner had retired from service on attaining the age of superannuation on 30.04.2020, which is totally illegal and arbitrary and the petitioner is entitled for promotion to the post of Sub Divisional Engineer (Civil) w.e.f. 19.03.2020.

4. Short reply on behalf of respondents No.1 and 2 has been filed wherein it has been stated that the petitioner joined the respondent-department as Junior Engineer (Civil) on 01.01.1993 and vide order dated 06.09.2019, he was given the current duty charge as a stop gap arrangement to the post of Sub Divisional Engineer (Civil) in his own pay scale and rank subject to the condition that he will not claim



seniority on the basis of assigning the current duty charge. The charge can be withdrawn without any notice and no extra payment will be given for the current duty charge. It has also been stated that a meeting of the departmental promotion committee to adjudge the suitability of the Junior Engineer (Civil) Diploma, AMIE/Degree for promotion to the post of Sub Divisional Engineer (Civil) was held on 19.03.2020 in the office of the Additional Chief Secretary, Public Works (B&R) Department, and copy of the draft proceedings of the meeting of the departmental promotion committee were sent to the Government vide office order dated 16.04.2020 (Annexure R-1) for signature of the competent authority and copy of the proceedings duly signed by the competent authority has been received from the Additional Chief Secretary to Government Haryana, Public Works (B&R) Department, vide memo dated 14.05.2020, with a request to send the proposal for promotion to the post of Sub Divisional Engineer (Civil) and in compliance to the said letter, proposal for promotion to the post of Sub Divisional Engineer (Civil) was sent to the Government vide office memo dated 20.05.2020, for promoting 15 JEs (Diploma) category as mentioned in Table-B and five JEs (AMIE/Degree) category as mentioned in Table-C out of which, the petitioner at serial No.4 has retired on 30.04.2020 from Government service after superannuation. It has further been stated that when the proposal for promotion to the post of Sub Divisional Engineer (Civil) was sent to the Government vide memo dated 20.05.2020, the petitioner had already retired from service, hence he could not be considered for promotion to the post of Sub



Divisional Engineer (Civil). Relevant portion from the short reply is as under :-

“3. That a meeting of Department Promotion Committee to adjudge the suitability of Junior Engineer (Civil) Diploma, AMIE/Degree for promotion to the post of Sub Divisional Engineer (Civil) was held on 19.03.2020 in the office of W/ACSPW. Further, a copy of draft proceeding of the Meeting of the Department Promotion Committee held on 19.03.2020 under the Chairmanship of Sh. Rajeev Arora, IAS, Additional Chief Secretary to Govt. Haryana, Public Works (B&R) Department, Chandigarh was sent to Govt. vide this office U.O. No.55169/EI dated 16.04.2020(Annexure R1) for signature of the competent authority.

4. That a copy of proceeding duly signed by competent authority has been received from the Additional Chief Secretary to Govt. Haryana, Public Works (B&R) Department vide Govt. Memo No.4/18/2020-5B&R (E) dated 14.05.2020 with a request to send the proposal for promotion to the post of SDE (Civil) (Annexure-R2). In compliance of above letter, proposal for promotion to the post to Sub Divisional Engineers (Civil) was sent to Govt. vide this office Memo No. 131-EI-59/DPC-2020/64033/Estt.-I dated 20.05.2020 (Annexure-R3) for promoting 15 JEs (Diploma) category as mentioned in Table B and 05 JEs (AMIE/Degree) category as mentioned in Table C out of which Sh. Tarsem Lal at Sr. No. 4 has been retired on 30.04.2020 from Government service after superannuation.

5. That, it is submitted that when proposal for promotion to the post to Sub Divisional Engineers (Civil) was sent to Govt. vide head office MemoNo. 131-EI-59/DPC-2020/64033/Estt.-I dated 20.05.2020, petitioner was retired from Govt. service after attaining the age of superannuation on 30.04.2020. Hence petitioner could not be considered for promotion to the post of Sub Divisional Engineer (Civil).”

5. The only question which requires consideration in the present petition is as to whether the petitioner is entitled for promotion to the post of Sub Divisional Engineer (Civil) w.e.f. 19.03.2020,



when the meeting of the DPC was held and his name was recommended for promotion.

6. The facts are not in dispute that a meeting of the DPC was held on 19.03.2020 for considering the cases of the eligible diploma/degree holder JEs for promotion to the post of Sub Divisional Engineer (Civil) against 20 existing vacancies out of which five were meant for petitioner's category i.e. AMIE/degree holders. Petitioner's name was duly considered and he was recommended for promotion and promotion order was finally issued on 08.10.2020 and by that time, the petitioner already stood retired on 30.04.2020 and persons junior to him were promoted in the said order.

7. This Court in ***Faqir Chand Chawla Vs. State of Punjab : 2013(4) S.C.T. 659***, while considering the similar issue, has held that mere recommendation for promotion does not confer any right. In the said case also the recommendations for promotion was made by the D.P.C. prior to the date of retirement of the petitioner therein and the actual promotion order was issued after his retirement. However, he was not given promotion and it was held that the date of promotion would be the date on which the order of promotion is passed by the Competent Authority and thereafter, the petitioner is not entitled for notional promotion as Sub-Divisional Engineer from the date of recommendations of the D.P.C. as the Competent Authority approved the recommendations after his retirement.

8. To the same effect is the judgment of this Court in ***Raj Kumar Sharma and others Vs. State of Punjab and others : Law***



Finder Doc Id #2427561. In the said case similar issue was raised by the petitioners therein for issuance of directions to the respondents to grant notional promotion w.e.f. the date when the D.P.C. recommended their names and it was held that report of the D.P.C. is recommendatory and the final decision is required to be taken by the Competent Authority and the promotions cannot be ordered from the date vacancy arises.

9. The Hon'ble Supreme Court in its recent judgment dated 27.11.2024 passed in ***Government of West Bengal and others Vs. Dr. Amal Satpathi and others : 2024 INSC 906*** has held that the promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of vacancy or the date of recommendation. In the said case, the respondent namely Dr. Amal Satpathi became eligible for promotion to the post of Chief Scientific Officer. The department initiated the promotion process and the Public Service Commission in its meeting dated 29.12.2016 recommended his name for promotion. However, the department received the final approval for promotion on 04.01.2017 but by that time he had already superannuated on 30.12.2016. He submitted representation to the department claiming promotion and promotional benefits. Since the said benefits were not granted by the department, he filed Original Application before the Tribunal and the Tribunal had held that the promotion cannot be granted retrospectively after the retirement of the Government employee, however the Tribunal acknowledged that respondent No.1 had been duly recommended for promotion before his



superannuation, which was only delayed due to procedural obstructions beyond his control, therefore, while actual promotion was not acceded to, however, he was entitled for grant of notional financial benefits of the promotional post w.e.f. 31.12.2016 to ensure pensionary benefits commensurate with the promotional post. The said order of Tribunal was challenged before the Calcutta High Court and the said writ petition was dismissed by concurring with the Tribunal. The said judgment of the High Court was challenged before the Hon'ble Supreme Court and the same was reversed and it was held as under :-

*“19. It is a well settled principle that promotion becomes effective from the date it is granted, rather than from the date a vacancy arises or the post is created. While the Courts have recognized the right to be considered for promotion as not only a statutory right but also a fundamental right, there is no fundamental right to the promotion itself. In this regard, we may gainfully refer to a recent decision of this Court in the case of **Bihar State Electricity Board and Others v. Dharamdeo Das 2024 SCC OnLine SC 1768**, wherein it was observed as follows:*

*"18. It is no longer res integra that a promotion is effective from the date it is granted and not from the date when a vacancy occurs on the subject post or when the post itself is created. No doubt, a right to be considered for promotion has been treated by courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself. In this context, we may profitably cite a recent decision in **Ajay Kumar Shukla v. Arvind Rai (2022) 12 SCC 579** where, citing earlier precedents in **Director, Lift Irrigation Corporation Ltd. v. Pravat Kiran Mohanty (1991) 2 SCC 295** and **Ajit Singh v. State of Punjab (1999) 7 SCC 209**, a three-Judge Bench observed thus:*

*41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in **Director, Lift Irrigation***



Corpn. Ltd. v. Pravat Kiran Mohanty in para 4 of the report which is reproduced below:

'4.....There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified.'

42. A Constitution Bench in **Ajit Singh v. State of Punjab**, laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27:

'Articles 14 and 16(1) : is right to be considered for promotion a fundamental right

22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the 'State shall not deny to any person equality before the law or the equal protection of the laws'. Article 16(1) issues a positive command that:

'there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State'.

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14



and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16 (1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right. "Promotion" based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1).

*27. In our opinion, the above view expressed in **Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P. (1997) 5 SCC 201**, and followed in **Jagdish Lal [Jagdish Lal v. State of Haryana (1997) 6 SCC 538**, and other cases, if it is intended to lay down that the right guaranteed to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that 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) and this has never been doubted in any other case before **Ashok Kumar Gupta***



[Ashok Kumar Gupta v. State of U.P.], right from 1950.'

"20. In ***State of Bihar v. Akhourī Sachindra Nath*** 1991 Supp (1) SCC 334, it was held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be given with retrospective effect as that might adversely affect others. The same view was reiterated in ***Keshav Chandra Joshi v. Union of India*** 1992 Supp (1) SCC 272, where it was held that when a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in the quota and not from any anterior date of promotion or subsequent date of confirmation. The said view was restated in ***Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P. (2006)*** 10 SCC 346, in the following words:

'37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in ***Keshav Chandra Joshi v. Union of India*** held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice



to the promotes, it would not be proper to do injustice to the direct recruits.....

38. This Court has consistently held that no retrospective promotion can be granted nor can any seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validity in the meantime."

(emphasis supplied)

20. In the instant case, it is evident that while respondent No.1 was recommended for promotion before his retirement, he could not assume the duties of the Chief Scientific Officer. Rule 54(1)(a) of the West Bengal Service Rules, clearly stipulates that an employee must assume the responsibilities of a higher post to draw the corresponding pay, thus, preventing posthumous or retrospective promotions in the absence of an enabling provision.

21. While we recognize respondent No.1's right to be considered for promotion, which is a fundamental right under Articles 14 and 16(1) of the Constitution of India, he does not hold an absolute right to the promotion itself. The legal precedents discussed above establish that promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation. Considering that respondent No. 1 superannuated before his promotion was effectuated, he is not entitled to retrospective financial benefits associated to the promotional post of Chief Scientific Officer, as he did not serve in that capacity.

22. As a result of the above discussion, the judgment dated 1st February, 2023 passed by the High Court of Calcutta and the judgment dated 26th June, 2019 passed by the Tribunal are unsustainable in the eyes of law and are hereby reversed and set aside."

10. Now, coming back to the facts of the present case, it may be stated that the name of the petitioner was recommended for



promotion in the DPC meeting held on 19.03.2020 which has been finalized on 08.10.2020, when actual promotion order was issued and in the interregnum the petitioner has retired from service on 30.04.2020. This cannot be considered to be intentional delay on the part of the respondents as if there was any ill-intention on behalf of the department to deny the promotion to the petitioner then the promotion order would have been issued immediately after his retirement and since the same has been issued even after about six months of his retirement, the same can be held to be a procedural act on the part of the respondent. Though the respondents are expected to finalize the DPC proceedings at the earliest, however, for the delay which has occurred in finalizing the proceedings, the petitioner cannot be held to be entitled for promotion w.e.f. the date of recommendations of the DPC i.e. 19.03.2020.

11. In view of the above, finding no merit in the present petition, the same is hereby dismissed.

16.12.2024
R.S./kothiyal

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No