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

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**CWP-23972-2016 (O&M).
Date of Decision: 20.01.2025.**

JAI SINGH

... Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Dr. Suresh Kumar Redhu, Advocate,
for the petitioner.

Mr. Arihant Goyal, Advocate,
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Challenging the action of the respondents in withholding the promotion of the petitioner to the post of Inspector, the instant writ petition has been filed.

2 Learned counsel for the petitioner argues that the petitioner was initially recruited as a Constable in ITBP Force on 17.11.1980. He qualified his junior cadet course in the year 1990 whereupon he was promoted to the rank of Lance Naik on 18.03.1991 vide order No.2878 dated 15.05.1991.

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He was further promoted to the rank of Havildar on 10.10.1997 and thereafter, on qualifying the Platoon Commander Course, he was promoted to the rank of Sub Inspector (General Duty) on 15.10.2010. It is submitted that medical check-up and categorization of petitioner was conducted on 31.08.2009; 15.06.2010; 18.10.2011 and 02.03.2013 and he was categorized as "Shape-1." It is further submitted that the petitioner having been found medically fit for the S.O. Tech. Course, he was deputed for the said course from 27.05.2013 to 03.09.2013 which was successfully completed. He was accordingly promoted to the rank of Inspector General Duty by the Directorate of ITBP Force vide order No.19012/1/2014/ Establishment-28482-99 dated 31.12.2013 in accordance with standing Order No.3/2013. The approval for promotion of the petitioner acknowledging his categorization as "Shape-1" was issued vide order dated 31.12.2013. He contends that the petitioner was, however, on leave at that time and that he felt acute chest pain whereupon he reported to the Unit Hospital for treatment from where he was referred to Govt. Hospital/CGHS Hospital by the Medical Officer 39th Bn. ITBP Force. He was admitted in Metro Hospitals and Heart Institute, Gurgaon on 23.01.2014 and was discharged on 28.01.2014. The petitioner was thereafter medically examined by the Board of Doctors on 29.05.2014 and he was categorized as P3 (T-24) w.e.f. 28.05.2014 and was advised next medical review on 28.11.2014. The annual medical check-up and categorization of the petitioner was conducted on 14.11.2014 and 01.12.2015. He also submitted a representation through

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proper channel to the Commandant, 39th Bn. ITBP Force regarding his promotion from Sub Inspector (General Duty) to Inspector (General Duty). He contends that instead of redressing his grievance regarding promotion from the rank of Sub Inspector (General Duty) to Inspector (General Duty), an explanation was sought from the petitioner as to why he submitted his application after a delay of 19 months, to which he replied by referring to the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. He contends that the respondents have not promoted the petitioner and that their action is illegal, unfair and in violation of the Rules, considering that the petitioner had already been approved for promotion after duly noticing his categorization in physical fitness as “Shape-1” and he had also been examined prior to his reporting for promotion Course, hence, any subsequent acts beyond the control of the petitioner, whereby he is not able to maintain the same fitness shape should not lay foundation for denial of the benefit of promotion that had already been approved.

3 It is also argued that the respondents have taken a stand that as per the Standing order No.3/2013, the eligibility condition for promotion to the post of Inspector requires the medical fitness category of “Shape-1”, and he is deemed to be not suffering from any ineligibility, in terms of the conditions prescribed thereunder on the date of his order of promotion, having fulfilled the requirements for promotion as Inspector and being in medical category “Shape-1.”

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4 He also submits that after filing of the reply by the respondents, replication has been filed by the petitioner on 03.05.2018 wherein it was specifically averred that the defence taken by the respondents is untenable as under similar circumstances, the respondents' promoted one Shri Suresh Kumar, Assistant Commandant to the rank of Deputy Commandant and that he is still in service. The relevant extract of the averments contained in the replication reads thus:-

“3. That the contents of para No. 3 of the written statement are wrong hence denied. It is further respectfully submitted that at the relevant point of time i.e. on 31.12.2013 the petitioner was having category shape-1 and after 23 days he suffered heart problems. Moreover, the respondents have promoted similarly situated Shri Suresh Kumar, Assistant Commandant, 52 Bn. Amritsar to the rank of Deputy Commandant who is presently serving in 2 Bn in Shimla. However, contents of para No. 3 of the petition and reply to para No. 1 of the preliminary submissions are reiterated.”

5 He submits that no rejoinder or counter has been filed by the respondents to the factual pleading recorded in the replication by the petitioner and the same has remained uncontroverted. He thus submits that there is hence no reason as to why the said benefit ought not be granted to the petitioner as well.

6 Counsel for the respondents, on the other hand, does not dispute the issuance of the approval letter vide order dated 31.12.2013 and

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the claim that the petitioner was physically in “Shape-1” at the relevant point. He, however, contends that when the petitioner reported back to the Unit, he was unwell and that he was initially placed in P3 (T-24) category. The medical Board thereafter placed the petitioner in P3 (P) category as permanent medical category. The petitioner does not fulfill the essential condition of being in Shape-1 for availing the promotion and as such, the decision has been rightly taken by the respondents to not issue the promotion order of the petitioner.

7 On a pointed query, it is not disputed that no rejoinder has been filed by the Department to the specific pleadings made by the petitioner in the replication filed on 03.05.2018, despite lapse of nearly 07 years as on today when the matter has been taken up.

8 He, however, emphatically argues that the standing order No.3 of 2013 necessitates that a candidate must fulfil the medical category in “Shape-1” to be eligible for promotion to the post of Inspector from Sub Inspector and undisputedly the medical category of the petitioner is not “Shape-1”. Hence, the present writ petition deserves dismissal.

9 It was also argued that the order dated 31.12.2013 is only an approval for promotion and not an order of promotion and that as per the para no.2 of the said order, the officials were to take charge of the post of Inspector (General Duty) after ensuring the eligibility conditions mentioned in para no.1 above. Hence, the eligibility condition of a candidate was also required to be assessed as on the date when he takes a formal charge of the

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post of Inspector on General Duty. Since the petitioner was not in the fitness medical category prescribed as on the date of taking charge, hence, he could not be promoted to the post of Inspector (General Duty).

10 A specific query was also put to the counsel for the respondents about the date when the other similarly placed persons were given charge of the post of Inspector (General Duty). He pleads ignorance of the same and contends that the petitioner submitted his application for promotion only after a lapse of nearly 19 months and as such, he did not fulfill the requisite conditions. He is also not in a position to submit any response as to what would be the fate in case a person suffered the same problem after joining.

11 Neither any other argument was raised nor any judgment cited by the learned counsel appearing for the respective parties.

12 I have heard the learned counsel for the respective parties and have gone through the documents appended with the present petition.

13 The only issue that arises for consideration before this Court is as to whether the subsequent acts, as a consequence whereof the employee is not able to retain the medical category within “Shape-1”, is sufficient to deny the benefit of promotion that has already been approved-in-principle by the competent authority after noticing all the parameters.

14 A specific query was also put to the counsel for the respondents as to whether a separate medical categorization and examination was held with respect to all other similarly placed persons when they were handed

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over the charge of the post of Inspector, he contends that he has no instructions in this regard.

15 This Court thus does not have any means to determine as to whether condition No.2 as incorporated in order dated 31.12.2013 was actually being applied in all its rigor at the time of joining or even the medical condition as ascertained through the annual medical check-up was also being accepted as sufficient proof of compliance of condition No.2 of the Standing Order. Further, there is also no rejoinder/counter filed by the respondents to the specific averments made by the petitioner in the replication to the effect that under similar circumstances, order for promotion has been issued in respect of Shri Suresh Kumar, Assistant Commandant to the rank of Deputy Commandant. Hence, it seems that even though the respondents claim that the standing order stipulates that the eligibility conditions mentioned in para no.1 of the office order are required to be fulfilled before issuance of formal promotion orders, however, it seems that in actual implementation, the said procedure was not being pressed upon and the annual medical examination and the fitness record therein formed the basis for issuance of formal promotion orders. It is not in dispute that the petitioner fulfilled all other eligibility conditions prescribed thereunder and was fully eligible even on the date 31.12.2013 when the promotion of the petitioner was approved by the competent authority. The subsequent act, which was beyond the control of the petitioner, would thus

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not be held to stand in the way of the petitioner to claim promotion or to be denied a right that had already accrued in his favour.

16 It seems that the petitioner has been discriminated against other similarly placed persons to whom such benefit has been given by the respondents without insisting upon the necessity of fulfilling the eligibility conditions pertaining to the medical category. No reasons have been put forward by the respondents as to why the said benefit ought not be extended to the petitioner. It needs no reiteration that position in law is well settled that if a party does not deny the averments or fails to respond to the specific queries about similar treatment being extended to other persons, an adverse inference may be drawn against it.

17 The queries put forth to the respondents are to be answered to from the records in possession of the respondents and if they have chosen to not respond to the same for nearly 07 years, there is no justification for prolonging the litigation indefinitely.

18 Under the given circumstances, the writ petition is allowed. The respondents are directed to notionally give the benefit of promotion to the petitioner w.e.f. the date when other persons were granted promotion pursuant to the order dated 31.12.2013 and to notionally calculate the benefit admissible to him. The differential pensionary-cum-retirement benefits shall be released to the petitioner in a time bound manner and preferably within a period of 03 months of the receipt of a certified copy of this order. In the event of failure to release the admissible benefits within

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the period as prescribed, the petitioner shall be entitled to interest @ 6% per annum from the date when the said benefits fell due. The petitioner shall, however, not be entitled to any arrears of salary on refixation, for the said promotional post.

19 Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

January 20, 2025.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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