



**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO.060/00372/2019
(Reserved on: 09.09.2020)
Pronounced on: 30.09.2020

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

Rajesh Bansal, Aged 50 years S/O Sh. Jagdish Chander Bansal, presently working as Executive Engineer (W&E) O/O Chief Engineer-cum-Special Secretary (Engineering), Union Territory, Chandigarh.

(BY: MR. R.K. SHARMA, ADVOCATE)

Applicant

Versus

1. Union of India through Secretary to Government of India, Ministry of Urban Development, Nirman Bhawan , New Delhi 110011

(BY: MR. V.K. ARYA, ADVOCATE)

2. Union Territory, Chandigarh Administration through its Administrator, Sector 6, Chandigarh-160015
3. Advisor to the Administrator, Union Territory, Chandigarh Administration, U.T. Secretariat, Sector 9, Chandigarh
4. Secretary, Engineering Department, Union Territory, Chandigarh, Chandigarh-160009.
5. Chief Engineer-cum-Special Secretary Engineering, Union Territory, Sector 9, Chandigarh.

(BY: MR. ASEEM RAI, ADVOCATE)

Respondents



ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

The applicant has filed this application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the Order dated 21.11.2017 (Annexure A-1), to the extent he has been promoted as Executive Engineer with immediate effect instead of from 1.2.2011 when vacancy was available and order dated 18.01.2019 (Annexure A-2), whereby his representation has been rejected and for issuance of directions to the respondents to consider and promote him as Executive Engineer (Public Health) w.e.f. 01.02.2011 by ante-dating his date of promotion from 21.11.2017 with all the consequential benefits.

2. Before touching upon the basic issue as to whether one can be considered for promotion from the date of vacancy or not, let us have a bird's eye view of the facts. The applicant joined the Chandigarh Administration as Assistant Engineer Public Health on 09.09.1998. The post of Assistant Engineer, also known as Sub Divisional Engineer (SDE), is governed by Punjab Water Supply and Sanitation (Engineering Wing) Group "A" service Rules, 2007 (for short "Rules of 2007"). Chandigarh Administration does not have its own Recruitment Rules and is following the Punjab Rules by virtue of the Punjab Reorganization Act, 1966 and Notification dated 13.01.1992.

3. That next channel of promotion from the post of SDE is to the post of Executive Engineer (XEN), which is governed by the Rules of 2007. Being eligible, applicant was assigned the additional charge of the post of XEN, Public Health Divn.No.1,



Chandigarh vide order dated 09.11.2010, upon retirement of Sh. V.K.Arora, EE(PH), pursuant to vigilance clearance given by the Chief Vigilance Officer (CVO), UT, Chandigarh vide memo dated 03.11.2010. He remained as such till 08.01.2013. He was appointed as XEN, Public Health (PH) on deputation basis in the Municipal Corporation, Chandigarh vide order dated 08.01.2013 and continued as such till 30.04.2015. He joined back in parent department as SDE in the Public Health Wing of the Engineering Department, UT, Chandigarh.

4. On the basis of a complaint made by Shri V.K. Arora, the Vigilance Department, UT, Chandigarh registered a Vigilance Enquiry No.9/Vig/C dated 31.01.2011 against the applicant for irregularities in the construction of 4 Nos. Toilet Block at Lake Sector 42, Chandigarh. The applicant submitted detailed reply dated 30.01.2015 denying the charges and prayed for withdrawal of the charge sheet. Meanwhile post of XEN became available w.e.f. 01.04.2015 on account of retirement of Sh. A.K. Duggal. The applicant made a representation dated 02.08.2016 for dropping the charge-sheet and for consideration of his case for promotion as XEN. Since the respondents had already assigned the additional charge of the post of XEN, to Mr. Mukesh Kapoor (junior to the applicant) w.e.f. 01.04.2015, and no decision was taken in the disciplinary proceedings initiated against him, therefore, he approached this Tribunal by filing O.A. No.060/00973/2016 for quashing of the charge-sheet dated 12.11.2014 and for consideration of his case for promotion to the post of XEN w.e.f. 01.04.2015, which was disposed of vide order dated 24.10.2016 with the direction to the respondents to decide representation dated 02.08.2016. Meanwhile, the



department considered case of the applicant for promotion to the post of XEN (PH) by convening the meeting of the DPC on 01.03.2017, which placed its recommendations in the sealed cover due to the pendency of Vigilance case/ departmental proceedings against him. Upon a reference, AA-cum-CVO, UT, Chandigarh vide letter dated 18.09.2017 forwarded the advice of the CVC as contained in the letter dated 23.08.2017 that CVC was in agreement with the Administration for dropping of charge memo to the applicant and also advised to carry out vigilance investigation with due diligence in future. Consequently, the charges have been dropped by the competent authority vide order dated 14.10.2017. The competent authority reviewed the sealed cover of the DPC and promoted the applicant to the post of XEN (PH) on regular basis vide order dated 21.11.2017 with immediate effect.

5. The applicant submits that he has been deprived of his right of consideration for promotion due to unfounded proceedings which remained pending against him during the period from 2011 to 2017 on the basis of Pseudonymous complaint, which was subsequently dropped vide order dated 14.09.2017. The respondents promoted him as XEN (PH) but with effect from 21.11.2017 only instead of from the date of vacancy on 01.02.2011 which arose consequent upon the retirement of Shri V.K. Arora.

6. To a query, as to whether, any vacancy was available as on 1.2.2011, learned counsel for applicant submitted that though practically all the four vacancies of XEN (PH) were filled up at that relevant stage of time but one vacancy was deemed



to be available as on 01.02.2011 as Mr. Rajinder Singh Ahluwalia was on deputation with the Municipal Corporation, Chandigarh since 1996, in terms of DPC Guidelines under Para 4.1, which inter-alia, provide that it is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possible. For this purpose the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long term promotion and deputation or from creation of additional posts on a long term. As regards vacancies arising out of deputation, only those cases of deputation for periods exceeding one year should be taken into account, due note, however, being kept also of the number of the deputationists likely to return to the cadre and who have to be provided for. Purely short terms vacancies created as a result of officers proceeding on leave, or on deputation for a shorter period, training etc. should not be taken into account for the purpose of preparation of a panel. In cases where there has been delay in holding DPCs for a year or more, vacancies should be indicated year-wise separately. Mr. A.K. Duggal was also promoted against the same vacancy in 2010 vide order dated 11.02.2010.

7. It is submitted that there are number of instances in the department wherein employees have been promoted from the date of vacancy or promoted from the date of their acquittal from the criminal charges, whereas in this case the applicant has been ordered to be promoted as XEN (PH) vide order dated 21.11.2017 with immediate effect only which is discrimination. It is submitted that number of persons have been given ante-



dated promotion from time to time such as Mr. D.P. Singh, XEN (Electricity) and Mr. Puranjit Singh, Chief Engineer, UT, Chandigarh. In terms of guidelines issues by the Chandigarh Administration vide letter dated 13.05.2002 there is implicit obligation on the part of the State to grant same relief to other members of the cadre whose claim was based upon identical facts and points of law. The applicant submitted a representation dated 05.04.2018 for ante-dating his promotion which was rejected vide Memo dated 18.01.2019. Hence, the O.A.

8. Respondents No.2 to 5 have filed a joint written statement stating that charge-sheet issued under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, was dropped vide order dated 4.10.2017 (Annexure A-12). Upon this, sealed cover procedure was opened and as per approval of competent authority, applicant was promoted as XEN (PH) vide order dated 21.11.2017. The claim of applicant for ante-dating of promotion is not sustainable as at the relevant point of time all the four sanctioned posts of XEN (PH) were occupied by seniors to him namely S/Shri (1) Trilochan Singh (2) R.S. Ahluwalia (3) A.K. Duggal and (Amin Chand). However, one vacancy of Shri R.S. Ahluwalia, who was on deputation to MC, Chandigarh, was available against which applicant was given charge w.e.f. 9.11.2010 and continued as such till 31.1.2011. Applicant remained on deputation as XEN (PH) in MC, Chandigarh till 30.4.2015 and repatriated as SDE (PH). The vacancy of XEN (PH) became available w.e.f. 31.3.2015, when departmental proceedings were pending against the applicant pursuant to charge sheet dated 12.11.2014. It is submitted that



promotion is to be allowed to an employee only w.e.f. the date the same is approved by competent authority. As per para 6.4.4 of DPC Guidelines, Annexure R-1, promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s). Secondly, the claim of applicant is not tenable in terms of the of Hon'ble Supreme court in the case of **NIRMAL CHANDRA SINHA VS. UOI ETC.** 2008(4) SLR, 61.

9. We have heard the learned counsel for the parties at length and examined the material on file with their able assistance.

10. The learned counsel for the applicant vehemently argued that the vacancy of XEN (PH) was available since 2011 as the holder of the post was on deputation with MC, UT, Chandigarh and as per instructions such posts are deemed to be vacant and promotions can be effected there against and in any case, retrospective promotion have been granted to number of named individuals in the past, denial of which to the applicant is illegal, arbitrary and discriminatory. On the other hand learned counsel for respondents argues that as per DPC Guidelines, one can be promoted only when recommendation of DPC is approved by competent authority i.e. prospective only and the claim of applicant for retrospective promotion or ante-dating thereof is not tenable more so in view of the decision of Hon'ble Apex Court in the case of Nirmal Chandra Sinha (supra).

11. The short question that arises for our consideration is as to whether an employee, who is exonerated/acquitted from the Disciplinary Proceedings, is entitled for promotion from the date of availability of vacancy or only from the date when



recommendations of the DPC are approved by the Competent Authority?

12. In so far as claim of the applicant for grant of promotion from the deemed date of vacancy, on account of holder of post being on deputation is concerned, learned counsel for the applicant restricted his claim to promotion against the vacancy which became available in 2015.

13. For the indicated claim, both the sides are relying upon the Instructions relating to the DPC. On the one hand the learned counsel for applicant argues that it was incumbent upon the respondents to have conducted meeting of DPC to fill up the post of XEN (PH) becoming available as on 1.4.2015 whereas the learned counsel for respondents says that meeting was held in 2017, when case of applicant was kept in sealed cover and on approval of DPC recommendations by competent authority, the applicant was promoted in terms of para 6.4.4 of the Guidelines, Annexure R-1. Admittedly, there is no provision in the Rules as to whether one would be entitled to promotion from the date of vacancy or not. Thus, for this we may have to fall back on the Instructions issued from time to time. It is not even disputed by the respondents that indeed vacancy became available w.e.f. 1.4.2015. We may have to examine as to whether there is inherent contradiction in the Guidelines or the same have to be read together as a whole to give it a meaningful purpose to it. The question also arises as to whether the respondents were expected to carry out exercise to fill up that post in time or not. For this, we will have to revert back to the Guidelines on Departmental Promotion Committees, Annexure R-1, relied upon



by the respondents themselves. The Guidelines are divided into many parts. Part I is regarding Functions and Composition of Departmental Promotion Committees (DPCs). Part II is regarding Frequency of DPC Meetings. Part III is regarding preparatory action for holding DPCs. Part IV is relating to procedure to be observed by DPCs.

14. Part II of the guidelines relate to the frequency of meeting of the D.P.C. Para 3.1 indicates that the D.P.Cs should be convened at regular annual intervals to draw panels which could be utilised for making promotions against the vacancies occurring during the course of a year. For this purpose, it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel, by collecting relevant documents like C.Rs., integrity certificates, seniority list etc. for placing before the D.P.C. D.P.Cs. should be convened every year, if necessary, on a fixed date, i.e. 1st April or May. The Ministries / Departments should lay down a time schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that recruitment rules for a post are being reviewed/amended. Under para 3.2, the requirement of convening annual meetings of the D.P.C. should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question. It is, thus, more than clear that



DPCs are required to sit every year, regularly on or before 1st April or 1st May of the year to fill up the vacancies likely to arise in the year for being filled up. The required material should be collected in advance and merit list finalised by the appointing authorities and placed before the D.P.Cs for consideration. This requirement can be dispensed with only after a certificate is issued by the appointing authority that there are no vacancies to be filled by promotion, or that no officers are due for confirmation, during the year in question.

15. It is, thus, clear that para 3.1 and 3.2 are unequivocal on the issue that duty is cast upon the administrative authorities that the "D.P.Cs should be convened at regular annual intervals to draw panels which could be utilised for making promotions against the vacancies occurring during the course of a year" and deferment can be done only in two situations namely after a certificate is issued by the appointing authority that there are no vacancies to be filled by promotion, or that no officers are due for confirmation, during the year in question. Admittedly, this was not the case with the respondents nor such material has come on record that respondents had taken any conscious decision not to fill up the post for any lawful reason.

16. Parties may like to extract a part of the instructions to suit their convenience but a Court of law cannot allow them to do so as the aim and intention of the Guidelines can be achieved only when the same are read as a whole to find out the purpose for which these have been issued. So, the provision providing for holding of meetings of DPCs on yearly basis has to be read with in conjunction with grant of promotion only on prospective basis.



If both are read independently, the purpose of the Guidelines is likely to be defeated. The guidelines cast a duty upon the Administration to hold meeting of DPCs on yearly basis and simultaneously these provide that promotion would be only prospective in nature. The guidelines clearly provide as to in what cases the meetings can be deferred. So, if the respondents have to take benefit of provision relating to prospective promotion, then they also have to show that they have followed the mandate provided in para 3.1 and 3.2 aforesaid.

17. It is now well settled principle of law that the Court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions. IN **ANWAR HASAN KHAN V. MOHD. SHAFI AND ORS.** (2001) 8 SCC 540, the Court held: "8.....It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved...."



18. In the case of **S.K. RIZVI & ORS. VS. UNION OF INDIA & ORS.** 1993 Supp. (3) SCC 575, the mandatory duty of the preparation of the select list of the officers for promotion to the All India Services has been indicated in para 35 of the judgment by holding that "preparation of the select list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Government concerned and this Court takes serious note of wanton infraction".

19. The guidelines relating to holding of meeting of DPC, year-wise issued by the DoP&T were considered by the Hon'ble Apex Court in the case of **UNION OF INDIA VS. N.R. BANERJEE**, (1997) 9 SCC 287, and it was held that "the authorities are required to anticipate in advance the vacancies for promotion on regular basis including long-term deputation posts and additional posts created and then to take the action plan in finalising the ACRs, preparation of the select list and place necessary material before the DPC for consideration of the candidates within the zone of consideration, as are found eligible for the relevant year/years.

20. Hon'ble Delhi High Court in the case of **DR. SAHADEVA SINGH VS UOI AND ORS VS. UOI ETC.** W.P.(C) 5549/2007, decided on 28.02.2012, relating to mandatory character of guidelines of timely holding of DPC, has held that "The concern of the Government on account of delay in convening DPC was conveyed to all the Ministries and



Departments vide OM No. 22011/9/98-Estt.(D) dated 14.12.2000 and they were also directed that in case of non-adherence to the prescribed time-frame, steps should be taken to fix the responsibility for the lapse in this regard. Such instructions issued by the Government are meant for compliance and not for being ignored in an arbitrary manner and unless repugnant to the Recruitment Rules, they supplement the Recruitment Rules and, therefore, have a binding force. The mandatory nature of the OM's can also be gathered from the instruction to fix responsibility for non-adherence to the time schedule fixed therein. We also take note of the view taken by Supreme Court in N.R. Banerjee (supra) that in the absence of a certificate from the appointing authority that no vacancy would arise or no suitable candidate was available, the preparation and finalization of the yearly panel is a mandatory requirement."

21. Now the question arises as to whether guidelines are statutory or merely directory in nature. In the case of **ASHOK LANKA V. RISHI DIXIT**, 2005 (5) SCC 598, it was held that "the question as to whether a statute is mandatory or directory would depend upon the statutory scheme. It is now well known that use of the expression 'shall' or 'may' by itself is not decisive. The court while construing a statute must consider all relevant factors including the purpose and object the statute seeks to achieve." Similarly, in the case of **P.T.RAJAN V. T.P.M.SAHIR**, 2003 (8) SCC 498, it was held that "A statute as is well known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependent on the user of the words 'shall' or 'may'. Such a question must be posed and



answered having regard to the purpose and object it seeks to achieve”.

22. A perusal of DPC Guidelines, Annexure R-1, would indicate that the language used for meetings of the DPCs is that these “should be” convened at regular intervals and dispensation can be only in two exceptions as enumerated therein which exceptions are totally missing in this case as the respondents have not given any explanation for not holding the meetings of the DPCs during the relevant period. The fact is that the rule of law prohibits arbitrary action and command the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of bias, favouritism and nepotism or negation of right accrued by the policy or order, as held in **HAJI T.M. HASSAN RAWTHER VS. KERALA FINANCIAL CORPORATION**, AIR 1988 SC 157. It is, thus, clear that the respondents were under duty to conduct the meeting of the DPC in time or record lawful reasons for not doing so, which is totally missing in this case.

23. Not only that, there is no manner of doubt that the public authorities and the Government are bound to act reasonably and fairly and each action of such authorities must pass the test of reasonableness and whenever action taken is found to be lacking bonafide and made in colourable exercise of the power, the Court should not hesitate to strike down such unfair and unjust proceedings, as held in the cases of **DELHI**



TRANSPORT CORPORATION VS. D.T.C. MAZDOOR

CONGRESS & ORS., AIR 1991 SC 101 and **HANSRAJ H. JAIN**

VS. STATE OF MAHARASHTRA & ORS. (1993) 3 SCC 634). In

essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides as it would only be a case of colourable exercise of power. The Rule of Law is the foundation of a democratic society.

24. One cannot dare to question the law laid down by Hon'ble Apex Court in the case of **NIRMAL CHANDRA SINHA VS. UOI & OTHERS**, 2008 (4) SLR 61. However, that case would not be applicable to the facts of this case for the primary reason that in that case para 3.1 and 3.2 of Guidelines, Annexure R-1 or similar provision were not at all under consideration. In that case Nirmal Chandra Sinha belongs to the Indian Railway Service of Mechanical Engineers (IRSME) having been appointed on 2.5.1958. When his turn came for consideration for promotion as General Manager, he was working as Chief Mechanical Engineer of Southern Eastern Railway. He was promoted to the post of General Manager on 29.11.1996. He claimed notional promotion w.e.f. 13.3.1996 with consequential benefits. His O.A. was rejected by the Central Administrative Tribunal, but against that order he filed a writ petition which was partially allowed by the High Court and ultimately view taken by Tribunal was upheld by Apex Court. The respondents have picked up that decision just because it suits their point of view formed in view of para 6.4.4 of the Guidelines, providing for prospective promotion only. However, as discussed above, this decision would not save them from the clutches of mandatory duty cast upon them in view of para 3.1



and 3.2 aforesaid in which they have miserably failed to perform for which the applicant cannot be made to suffer.

25. Not only this, even on the principle of parity that similar benefits have been allowed to other colleagues of the applicant namely in the case of **D.P. SINGH VERSUS UNION TERRITORY, CHANDIGARH** O.A. No. 890/CH/2002 decided on 06.08.2003, as upheld by the Hon'ble Jurisdictional High Court in CWP No. 816 of 2004 titled **U.T. VERSUS CAT AND OTHERS**, decided on 04.02.2009 and upheld in SLP(CC) No. 12317/2009 decided on 18.12.2009 by Hon'ble Apex dispensation. Similarly, in **PURANJIT SINGH VERSUS UNION OF INDIA AND OTHERS** this Court vide order dated 18.10.2006 allowed O.A.No.56/CH/2006, which was upheld by the Hon'ble Jurisdictional High Court in CWP No.18535/2007 **UNION OF INDIA VERSUS PURANJIT SINGH** decided on 14.12.2007 and as upheld by the Hon'ble Supreme Court in SLP(CC) 14214 of 2008 **U.T. VERSUS PURANJEET** decided on 03.11.2008. These facts have not been specifically denied by the respondents. The only objection taken is that in view of para 6.4.4 aforesaid, the applicant is not entitled to retrospective promotion.

26. In the wake of aforesaid discussion, this O.A. is partly allowed. The respondents are directed to consider the case of the applicant for promotion as XEN (PH) from 1.4.2015 and if he is found fit by the DPC, promote him as such from that date but only on notional basis, till he was promoted on actual basis in 2017. The impugned orders, Annexures A-1 and A-2 shall stand quashed to that extent only. The needful be done within a period

of three months from the date of receipt of a certified copy of this order.



27. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh
Dated: 30.09.2020

HC*