

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/01110/2016

...
Chandigarh, this the 1st day of December, 2017

...
CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MS. P. GOPINATH, MEMBER (A).

...
 Sh. H.C. Rohilla son of Sh. Om Prakash Rohilla, aged 48 years, currently working as Accounts Officer, (Group "B" Post), National Horticulture Board, Plot No. 85, Sector 18, Institutional Area, Gurgaon-122015.

.... Applicant

(Argued by: Mr. Alok Jagga, Advocate)

Versus

1. Union of India, Ministry of Agriculture and Farmers Welfare, Govt. of India, Krishi Bhawan, New Delhi through its Secretary
2. National Horticulture Board, Plot No. 85, Sector 18, Institutional Area, Gurgaon 122015 through its Managing Director

Respondents

(Argued by: Mr. Harsh Chopra, Advocate).

ORDER (Oral)

JUSTICE M.S. SULLAR, MEMBER (J)

1. The challenge in the instant Original Application (OA), instituted by applicant H.C. Rohilla son of Om Prakash Rohilla, working as Accounts Officer, National Horticulture Board (NHB), is to the impugned order dated 1.7.2016 (Annexure A-7), whereby his claim for promotion to the post of Accounts Officer (AO) w.e.f. 3.3.2003, the date of his officiation on the post of Assistant Director (Accounts), has been rejected, by the Competent Authority.

2. The matrix of the facts and the material, which needs a necessary mention, for the limited purpose of deciding the core controversy involved in the instant OA and exposted from the record, is that the applicant, while working as Assistant Accounts Officer (AAO), was given the officiating charge of the post of Assistant Director (Account), in the pay scale of Rs.7450-11,500, as approved by the competent authority of the NHB, vide letter dated 3/5.3.2003 (Annexure A-3). He continued officiating on the said post, without any break, till he was regularly promoted on the post of Accounts Officer, vide order dated 27.10.2006 (Annexure A-4). He was placed in the grade pay of Rs.4,800/- in the pay band of Rs.9300-34800 w.e.f. 1.1.2006, vide order dated 25.8.2014 (Annexure A-5). His repeated requests, for changing the date of his promotion, made vide representations dated 1.10.2014, 5.11.2014, 24.3.2015, 22.9.2015, 24.5.2016, 22.8.2016 and 4.10.2016 [Annexure A-6 (colly)], were rejected vide impugned order dated 1.7.2016 (Annexure A-7), by the Competent Authority.

3. Aggrieved thereby, the applicant has preferred the present OA challenging the impugned order, Annexure A-7 and action of the respondents, being arbitrary, illegal and without jurisdiction and on the various other grounds mentioned therein in the main O.A. On the strength of the aforesaid grounds, the applicant seeks to quash the impugned order, Annexure A-7 and claims promotion w.e.f. 3.3.2003, the date of his officiation, in the manner indicated hereinabove.

4. On the contrary, the respondents have refuted the claim of the applicant and filed the written statement, stoutly denying all the allegations and grounds contained therein in the OA and prayed for its dismissal.

5. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire material on record, we are of the firm view that the instant OA deserves to be partly accepted, in the manner and for the reasons, mentioned herein below.

6. As is evident from the record that the applicant has already completed 5 years of regular service as Accountant/Cashier and was duly eligible for further promotion to the post of Accounts Officer (stated to be earlier as Assistant Director (Accounts)). Subsequently, a post of AO became vacant. Since the applicant was fully eligible for promotion, so the competent authority of the NHB gave officiating charge of the post of ASD (A), in the pay scale of Rs.7450-11500 along with officiating allowance of 15% of his basic pay, subject to a maximum of Rs.1,000/- per month + usual allowance, till such time the post of AD (A) is filled up, vide orders dated 3/5.3.2003 (Annexure A-3).

7. It is not a matter of dispute that the applicant continuously performed the duties of the post of AD (A), till he was regularly promoted on the post of AO vide orders dated 27.10.2006 (Annexure A-4). The representations (Annexure A-6 Colly), to change his date of regular promotion w.e.f. 3.3.2003 moved by the applicant were rejected vide a very brief one line

order dated 1.7.2016 (Annexure A-7), that his “request has been considered as per rules of the Board and the same cannot be acceded to”, even without disclosing any cogent reasons, which appears to be a result of non application of mind, by the Competent Authority.

8. Meaning thereby, the impugned order is sketchy, non-speaking and the result of non-application of mind. If the post of Accounts Officer to which the applicant was promoted vide order dated 27th October, 2006 (Annexure A-4) was equal to the post of Assistant Director (Accounts), of which the applicant was given the officiating charge vide order dated March 3/5,2003 (Annexure A-3), then prima facie, he is entitled to retrospective promotion from the date of officiation. Similarly, in case the posts of Accounts Officer and Assistant Director (Accounts) were entirely different in hierarchy, then the case of the applicant of retrospective promotion becomes somewhat doubtful. Even, the relevant authority has not adhered to consider a single indicated point/issue raised by the applicant in his representations (Annexure A-6 colly) and passed the impugned order in a very casual manner, without assigning any cogent reasons. Such authority is required to consider the entire matter contained in the representations, in the right perspective, and then to pass a speaking & reasoned order to decide the grievance of the applicant, which is totally lacking in the present case.

9. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the case of Chairman, Disciplinary

Authority, **Rani Lakshmi Bai Kshetriya Gramin Bank Vs.**

Jagdish Sharan Varshney and Others (2009) 4 SCC 240 has in

para 8 held as under:-

“8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of **S.N.Mukherjee vs. Union of India** reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation”.

10. An identical question came to be decided by Hon’ble Apex Court in a celebrated judgment in the case of **M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. & Others** 1970 SCC (1) 764 which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that “recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just”. It was also held that “while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before him: it must appear that he has

reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to its solution". Such authorities are required to pass reasoned and speaking order. The same view was again reiterated by Hon'ble Apex Court in the case of **Divisional Forest Officer Vs. Madhuusudan Rao** JT 2008 (2) SC 253.

11. Therefore, thus seen from any angle, the impugned order cannot legally be sustained and the the ratio of law laid down in the aforesaid judgment is, *mutatis mutandis*, applicable to the present case and is a complete answer to the problem in hand.

12. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

13. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side, during the course of fresh consideration, the instant O.A. is partly accepted. Impugned orders dated 1.7.2016 (Annexure A-7), is hereby set aside.

14. As a consequence thereof, the case is remitted back to the competent authority to decide the matter afresh, after providing adequate opportunity of hearing to the applicant, by passing speaking / reasoned order, in the light of the indicated observations and in accordance with law, within a period of two months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

HC/sk*

(JUSTICE M.S. SULLAR)
MEMBER (J)
Dated: 01.12.2017