

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.NO.060/00614/2017

Orders pronounced on: 13.07.2018
(Orders reserved on: 10.7.2018)

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

1. Bal Krishan, aged 54 years,
2. Rajesh Kumar Luthra, aged about 54 years,
3. Sandeep Kumar, aged about 53 years,

(Applicant No.1 and 2 presently working as Head Clerks and
Applicant No.3 presently holding the post of Head Clerks /
Divisional Accountants (Current Duty Charge), Group-B
Post, Department of Hospital Engineering, PGIMER, Sector-
12, Chandigarh).

Applicants

By: Mr. H.S. Saini, Advocate.

Versus

1. Post Graduate Institute of Medical Education and Research,
Sector-12, Chandigarh through its Director
2. Professor-in-Charge, Department of Hospital Engineering,
PGIMER, Sector-12, Chandigarh.
3. Dr. D. Behera, Chairman of DPC & HOD, Pulmonary Medicine,
PGIMER, Sector-12, Chandigarh.
4. Jagdish Chand, presently working as Divisional Accountant,
Group-C Post, Department of Hospital Engineering, PGIMER,
Sector-12, Chandigarh.

...

Respondents

By : Mr. Abhishek Kumar, Advocate, for Mr. Amit Jhanji, Advocate,
counsel for Respondents No.1-3.
Mr. Vipin Kumar, Advocate for Respondent No.4.

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicants have filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of impugned Departmental Promotion Committee (DPC) minutes dated 27.4.2017 (Annexure A-1), wherein it has recommended promotions of Upper Division Clerks (UDCs) for promotion to the posts of Divisional Accountants (DAs) and Head Clerks (HCs), from immediate effect, instead of from the date of occurrence of vacancies and order dated 28.4.2017 (Annexure A-2), vide which respondent no.4 has been promoted as DA, by giving him benefit of reservation ignoring the law settled by Hon'ble Supreme Court of India and making promotions in order of approval of agenda by Governing Body etc. and promoting applicants No.1&2 from the date of occurrence of vacancies and respondent no.3 against the slot to be vacated by private respondent as there is no reservation in promotion.

2. The facts of the case, as culled out from the pleadings of the parties, are that the applicants, were initially appointed as Lower Division Clerks (LDCs) on 20/30.6.1983. In course of time, they were promoted as UDCs 1988-89 etc. The next channel of promotion is to the post of HC & DA. The appointment is to be made from Accountants/UDCs with 5 years of experience in the grade, out of which 3 years experience should be in PWD A/C/Engg. Deptt. A/Cs. They claim to have become eligible for promotion to the post of HC/DA in 1993-94 on completion of 5 years of service. Had they been promoted at that time, they would have been further promoted to still higher post in time. The posts of HCs/DAs were lying vacant since 2000 but to no avail and instead the applicants were given current duty charge in

2010-2016. The Governing Body in meeting held on 15.10.2014, approved Agenda Item No. G-5, for grant of one time relaxation in experience clause of Recruitment Rules, to fill up all the 12 vacant higher posts in hierarchy in the Ministerial cadre of Engineering Department but was not to be a precedent for future. Institute Body approved it on 8.2.2015. The GB approved proposal of making promotions of all 12 vacant higher posts in meeting held on 13.10.2015. Agenda was also placed before the Departmental Screening Committee (DSC) on 25.4.2016 but it was deferred. Ultimately, DSC was held on 10.8.2016 but no decision was taken regarding reservation in promotion. The applicants and others filed O.A. No. 060/00275/2017 in this Tribunal and during pendency thereof, DPC meeting was held on 24.4.2017 and on recommendations thereof, minutes / orders dated 28.4.2017, Annexures A-1 and A-2 were passed promoting applicants No.1 and 2 to the post of HC/DA but with immediate effect only and ultimately O.A. was dismissed as withdrawn on 26.5.2017. It is pleaded that promotion of respondent no.4 by grant of benefit of reservation is also illegal as such reservation is not permissible and in that process, applicant no. 3 has suffered and could not be promoted. Even the options of the applicants were not invited for choosing the posts of HC/DA and as such action of respondents is termed to be arbitrary. Hence, the Original Application.

3. On notice, the respondents No.1to3 have filed a joint written statement. They plead that applicants were not even eligible to claim benefit of promotion from the dates of occurrence of vacancies or from the date when current duty charge was given to them as said promotions were made in pursuance of one time relaxation in experience clause of the Recruitment Rules in- force present of all the

cadres / post from the level of UDC to AAO granted by the Governing Body of the Institute vide Agenda No. F-3, dated 15.10.2014. While approving the Agenda on 15.10.2014, the Government Body approved it as "one time relaxation as proposed and it would not be quoted as precedence in future". The Institute body also approved proposal in principle for one time relaxation in experience but before implementation, it was directed that an agenda be brought to the GB to bring out the comparative position vis-à-vis the main institute cadre of the ministerial staff, if the promotions were to be given based on the relaxation to the ministerial staff of engineering cadre". Thus, such comparison was placed before GB in meeting dated 13.10.2015 which was approved (Annexure R-1/1). The promotions of the applicants have been made in pursuance of DoPT guidelines dated 9.4.1996, which provide that "while promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s)". As per Agenda, sequence of date of fall of vacancy was criterion for consideration of promotion of either as HC or DA. They have given details of vacancies as under :-

i) Divisional Accountant	13.07.2000
ii) Divisional Accountant	03.10.2000
iii) Head Clerk	03.10.2000
iv) Divisional Accountant	03.09.2004 (Reserved for S.C. category)
v) Head Clerk	30.11.2007
vi) Head Clerk	30.09.2008

It is submitted that the promotion to the said posts were made in accordance with the seniority list. Sh. Krishan Lal Sharma and Smt. Charanjit Kaur, who were at Sr. No. 01 and 02 of the seniority list, were promoted to the post of DA as the two posts were available. The post of DA at Sr. No. 4 was reserved for SC category and as such respondent

no.4 was promoted against the same. The proposal was submitted to DPC and on the basis of seniority in feeder cadre, DPC recommended first 2 senior most UDCs to the post of DA and UDCs at Sr. No.3 and 4 for the post of HC. Against one post of DA reserved for SC, person at Sr. No. 8 was promoted, subject to outcome of SLP bearing No. 19481/2016 titled **PGIMER VS. BRIJ MOHAN DHAWAN & OTHERS.**

The applicants are seeking appointment against slots consumed by Sh. Krishan Lal Sharma and Smt. Charanjit Kaur, who have not even made as a party in the O.A. Thus, the O.A. is not maintainable.

4. Respondent No.4 has also filed reply on similar lines. The applicants have filed rejoinder reiterating the averments made in the Original Application.

5. We have heard the learned counsel for the parties at length and examined the pleadings on the file.

6. There are two issues raised in this Original Application, which are to be considered by this Tribunal, first one as to whether the applicants No.1 and 2 are entitled for promotion from the date of occurrence of vacancies and secondly, as to whether applicant no.3 is entitled to promotion by quashing promotion of respondent no.4, who has been so promoted by grant of benefit of reservation.

7. First of all, we would touch upon the second issue. Learned counsel for the applicant vehemently argued that applicant no. 3 is entitled to claim promotion against the slot consumed by respondent no.4 on the ground that there being no reservation in promotion, respondent no.4 could not be promoted and as such that slot should go to the applicant, in view of law laid down in the case of **M. NAGARAJ VS. UNION OF INDIA**, 2006 (8) SCC 212. However, one cannot dispute at all that now the issue has been referred to a larger Bench of

the Hon'ble Supreme Court. Not only that, even Hon'ble Apex Court in Special Leave to Appeal (C) No(s). 28306/2017 (Arising out of impugned final judgment and order dated 04-08-2017 in CWP No. 2797/2015 passed by the High Court Of Judicature At Bombay) in the case titled **THE STATE OF MAHARASHTRA & ANR. VERSUS VIJAY GHOGRE & ORS**, vide order dated 5.6.2018, has observed that "Union of India is not debarred from making promotions in accordance with law, subject to further orders, pending further consideration of the matter." In view of this, we find that the applicant No.3 has no cause of complaint at this stage and as such O.A. qua his claim is disposed of with liberty to him to raise his claim, as and when decision on pending issue is delivered by the Hon'ble Apex Court.

8. In so far as other claim is concerned, a perusal of the record particularly Agenda Item No. 13 considered by the Institute Body would reveal that relaxation was sought in experience clause of the Recruitment Rules in force, of all the cadres from the posts of UDC to that of AAO, till such time regular incumbents working in the feeder cadre fully satisfy the experience clause of Recruitment Rules for their promotion to higher cadres / posts. However, then a list is given of officials who are entitled for promotion in which names of (1) Krishan Lal Sharma, (2) Mahesh Kumar Mehta, (3) Charanjit Kaur, (4) Bal Krishan, (5) Rajesh Kumar Luthra (6) Rajinder Pal Singh (7) Sandeep Kumar (8) Sudesh Kumari (9) Gurdip Singh (10) Jagdish Chand. are given. The posts of Head Clerk are said to have fallen vacant on 3.10.2000 (S.P. Bhardwaj), 19.12.2008 (B.P. Sharma) and 20.09.2010 (Surinder Gupta). It is mentioned that out of these two posts are un-reserved and 1 for SC. UR point No. 6 is for Sr. No.1 (Krishan Lal Sharma), SC point at Sr. No. 7, for Sr. No. 9 (Gurdip Singh) and UR

point No.8 for Sr. No.4 (Bal Krishan). Similarly, there were three posts of DA which fell vacant on 3.10.2000 (Rajinder Kumar), 3.9.2004 (R.K.Thakur) and 30.4.2010 (Ashok Gupta). Out of these, two are for UR and one for SC. UR point No.5 is for Sr. No.2 (Mahesh Kumar Mehta), UR point no.6 for Sr. No.3 (Charanjit Kaur) and SC Point No. 7 is for Sr. No.10 (Jagdish Chand). The Governing Body in its meeting held on 13.10.2015, approved grant of one time relaxation. However, the matter kept pending for clarification on reservation in promotion and ultimately, on recommendation of the DPC, the respondent PGIMER carried out promotions. Krishan Lal Sharma and Smt. Charanjit Kaur, who were at Sr. No.1 and 2 of the seniority list, were promoted as DAs, as two posts fell vacant. The post of DA at Sr. No. 4 becoming available on 3.9.2004, was reserved for SC category and as such respondent no.4 was appointed against the same. We find merit in the plea of the respondents that if the claim of the applicants is to be accepted, then they would have to be adjusted against points of DAs which have been consumed by other individuals who are not a party before us and as such in their absence, no order adverse to their interests can be passed.

9. In so far as claim for retrospective promotion is concerned, even that is not tenable. The Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, issued instructions / guidelines dated 10.4.1989, with regard to the holding of meeting of DPCs and related matters. Para 6.4.4 of these guidelines postulates that "While promotions will be made in the order of the consolidated select list, *such promotions will have only prospective effect even in cases where vacancies relates to earlier year(s)*". Therefore, the mere fact that the PGIMER did not hold the DPC

on account of the pendency of certain clarifications, is not a ground, to grant retrospective promotion to the applicants. Even the instructions relied upon by the respondents also do not provide for any retrospective promotion. In fact, there is a clear mandate that even if vacancies are of earlier years, promotion is to be made with prospective effect only.

10. A similar case was decided by a Division Bench of the Punjab & Haryana High Court, in the case of **Union Territory, Chandigarh Administration & Others Vs. Tarlochan Singh & Others**, CWP No. 17079-CAT-2013 decided on 5.3.2014, wherein having considered the various relevant judgments, it was ruled in this regard, as under :-

"A Full Bench of this Court in a judgment reported as Head Constable Sardul Singh v. Inspector General of Police, Punjab and others, AIR 1970 Punjab 481, reiterated the proposition that no civil servant has a right to be promoted to a higher rank and that only right is that he has a right for being considered for the promotion. He can impugn his non-selection either on the ground of mala-fide or based on an irrelevant or extraneous consideration. The Court said to the following effect:-

"13. My brother Sandhawalia, J., has referred to various propositions of law in relation to the fundamental right guaranteed under Article 16 of the Constitution. These propositions are by now well settled by the pronouncements of the highest judicial authority in the land. One such proposition is that no civil servant has the right to be promoted to the higher rank and the only right that he has is the right to be considered for that promotion. If he is considered on merits and is not selected for promotion, he can have no cause of grievance except when he can successfully plead and prove that the selection made was either *mala fide* or based on irrelevant or extraneous considerations"

In State of Haryana v. Subash Chander Marwaha and others, AIR 1973 SC 2216, the Court held to the following effect:-

"8. One fails to see how the existence of vacancies gives a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed....."

The Hon'ble Supreme Court in the case reported as Union of India and others v. K.K. Vadera and others, AIR 1990 SC 443, held that there is no law or rule under which a promotion is to be effective from the date of creation of a promotional post and that after a post falls vacant for any reason whatsoever a promotion to that post should be from the date the promotion is granted and not from the date when such post falls vacant.

In T.N. Administrative Service Officers Assn. v. Union of India, (2000) 5 SCC 728, it was held as under:-

"The question then arises whether there is any such right in the petitioners to seek such creation of additional posts. It is a well-settled principle in service jurisprudence that even when there is a vacancy, the State is not bound to fill up such vacancy nor is there any corresponding right vested in an eligible employee to demand that such post be filled up. This is because the decision to fill up a vacancy or not vests with the employer who for good reasons, be it administrative, economical or policy, can decide not to fill up such post(s). (See *State of Haryana v. Subash Chander Marwaha.*)"

In *State of Uttaranchal v. Dinesh Kumar Sharma*, (2007) 1 SCC 683, has held to the following effect:-

"28. It is clear from the above that a person appointed on promotion shall not get seniority of any earlier year but shall get the seniority of the year in which his/her appointment is made. Therefore, in the present fact situation the respondent cannot claim promotion from the date of occurrence of the vacancy which is 1995-96 but can only get promotion and seniority from the time he has been substantively appointed i.e. from 1999. Likewise, the seniority also will be counted against the promotion/appointment in the cadre from the date of issuance of order of substantive appointment in the said cadre i.e. from 19-11-1999.

29. In a recent judgment of this Court in *Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P.*, 2006(4) SCT 487 (Dr. Ar. Lakshmanan and Tarun Chatterjee, JJ.), this Court was of the view that seniority has to be decided on the basis of rules in force on the date of appointment, no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre. Similar view was taken by this Court in *Keshav Chandra Joshi v. Union of India*, 1992 Supl.(1) SCC 334.

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34. Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-96 he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in the case of *Jagdish Ch. Patnaik & Ors v. State of Orissa & Ors.*, (1998)4 SCC 456."

Similar is the view taken in *Nirmal Chandra Sinha v. Union of India*, (2008) 14 SCC 29, when it was held to the following effect:-

"7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide *Union of India v. K.K. Vadera*, AIR 1990 SC 442, *State of Uttaranchal v. Dinesh Kumar Sharma*, (2007)1 SCC 683, *K.V. Subba Rao v. Govt. Of A.P.*, (1988)2 SCC 201, *Sanjay K. Sinha-II v. State of Bihar*, (2004)10 SCC 734."

Similar is the view taken in *K. Ramulu (Dr.) v. (Dr.) S. Suryaprakash Rao*, (1997) 3 SCC 59; a Division Bench of the Delhi High Court in *Union of India v. Vijender Singh & Ors.*, 2011(176) DLT 247 and Division Bench judgments of this Court reported as *Ram Niwas, Junior Engineer, Marketing Board, Faridabad v. The Haryana State Agricultural marketing Board, Panchkula* and another 1994(2) SLR 729 and in CWP No.3865 of 2012 titled as *Union Territory of Chandigarh and*

another v. Vin Dosanjh and another decided on 4.3.2013. In Vin Dosanjh's case (supra), the Bench reiterated the well established principles that an official is not entitled to promotion from the date the vacancy arose. It was held as under:-

"4. During the course of hearing, it is fairly conceded by Ms. Lisa Gill, learned counsel for the petitioners on instructions from the departmental official that pursuant to the order under challenge passed by the Tribunal, the first respondent would not get any monetary benefit as she was already officiating as Head of the Department on current duty charge basis w.e.f. 12.12.2005 and was getting the salary of Head of the Department. It is pointed out by learned counsel for respondent No. 1 that she is otherwise senior-most in the Department. If that is so, it is obvious that neither respondent No. 1 would be entitled to any monetary benefit nor she affects anybody's seniority in the department as a result of retrospective promotion from the date of occurrence of the vacancy. In this view of the matter, we do not deem it necessary to interfere with the directions issued by the Tribunal except to the extent that in our considered view, retrospective promotion cannot be claimed as a matter of right unless the Rules permits so or there exists some special or peculiar facts and circumstances for issuing such direction. The writ petition is accordingly disposed of without interfering with the order passed by the learned Tribunal, however, with a clarificatory direction that as and when an applicant seeks retrospective promotion on the basis of the instances referred to above or on the strength of the order under challenge, the learned Tribunal shall not be influenced by its previous orders and shall decide the same keeping in view the binding precedents in accordance with law."(Emphasis Supplied)

In view of the various judgments referred to above, we find that a person is not entitled to seek promotion from the day vacancies arises. It is for the employer to initiate the process of promotion and to fill up the posts, keeping in view its requirements. The employee has no right to claim promotion from a particular date or for a direction that the vacancy in the promotional post should be filled up. However, if the decision of the employer to fill up the promotional post is actuated by the considerations other than administrative, such action or inaction can be subjected to the judicial review, but there cannot be any direction to grant promotion from the date the vacancy arises. However, in case, an Officer is given Current Duty Charge or promoted on adhoc basis, he shall be entitled to the pay of the promoted post as has been held in Arindam Chattopadhyay's case (supra) and State of Haryana Vs. P.K. Grover (1983) 4 SCC 291. In view of the consistent well established principles of law as enunciated in the above mentioned judgments, we find that the direction of the Tribunal holding that the applicants are entitled to be promoted from the day the vacancy arose is clearly not sustainable in law. Consequently the present writ petition is allowed and the impugned order dated 15.3.2012 passed by the Tribunal is set aside."

The aforesaid decision was followed by a Division Bench of this Tribunal in O.A.No.063/00084/2016 – **RANENDRA BARMAN VS. UNION OF INDIA & ANOTHER** decided on 30.8.2017.

11. In the light of the aforesaid discussion, it is held that the applicants are not entitled for retrospective promotion as claimed by

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them in view of the instructions of DoPT which provide for prospective promotion only and law declared by Hon'ble jurisdictional High Court.

12. In the conspectus of the aforesaid discussion, this O.A. qua claim of retrospective promotion and promotion as DA is found to be bereft of any merit and is dismissed accordingly. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place : Chandigarh.
Dated: 13.07.2018

HC*

