
(2006) 08 P&H CK 0416
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 12305 of 2006

Ajmer Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 08 P&H CK 0416

Hon'ble Judges : M.M.S. Bedi, J;M.M. Kumar, J

Bench : Division Bench

Advocate : Onkar Singh Batalvi, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The prayer made in this petition filed under Article 226 of the Constitution is for issuance of direction to the respondents to consider and promote the petitioner to the post of Civilian Officer Grade-II and Civilian Officer Grade-I with effect from the date when he became eligible for promotion and as a result of promotion all consequential benefits such as fixation of pay, revised pensionary benefits as per the assurances given in the order dated 26.10.2005 (P- 3), which had disposed of C.W.P. No. 1898 of 1987. It is appropriate to mention that the earlier writ petition filed by the petitioner, namely, C.W.P. No. 1898 of 1987 came up for consideration before this Court on 26.10.2005 and the following order was passed:

In this writ petition, it is grouse of the petitioner that he, despite being senior, was ignored for promotion as Civilian Officer Grade-II, whereas his juniors were promoted to the said post in the year 1987.

It is an admitted fact that subsequent thereto, the petitioner was also promoted to the post of civilian officer grade-II. In this writ petition, it is prayer of the petitioner that his claim for promotion, be considered from the date when his juniors were promoted. Mr. Sharma, appearing on behalf of the respondents very

fairly states that the respondents have no objection to the prayer made and are ready to consider the case of the petitioner for promotion to the next post, as claimed in this writ petition and this petition will be treated as a representation and the competent authority i.e. respondent No. 2 shall pass a speaking order, regarding entitlement of the petitioner, for promotion and if it is found that the petitioner was eligible for promotion from the date when his juniors were promoted, he shall be promoted forthwith.

In view of fair concession given, this writ petition is disposed of with a direction to respondent No. 2 to treat this writ petition as a representation and to consider case of the petitioner for promotion from the date when his juniors were promoted, as per law and if the petitioner is found eligible, he be promoted forthwith/consequential benefits be extended to him. Needful be done positively within three months from the date of receipt of a copy of this order. The petitioner shall supply a copy of this order passed, to respondent No. 2 within 15 days from today.

2. In pursuance to the aforementioned statement made by the learned Counsel for the respondents, respondent No. 2 has now considered the case of the petitioner vide order dated 4.4.2006 (P-5), which is the subject matter of challenge in the instant petition. We have perused the detailed order, which shows that the case of the petitioner for promotion to the post of Civilian Officer Grade-II could not be considered on 22.2.1983 as the petitioner did not have the degree qualification. His name was considered in the Departmental Promotion Committee held on 12.12.1986 and he was promoted as Civilian Officer Grade-II vide order dated 13.3.1989. In para 4 of the order dated 4.4.2006 (P-5), respondent No. 2 has categorically asserted that 11 officers indicated by the petitioner were in fact direct recruits on the post of Civilian Officer Grade-III of the years 1965, 1966 and 1967 through the Union Public Service Commission (for brevity, "the Commission"), whereas the petitioner was promoted as Civilian Officer Grade-III through the Departmental Promotion Committee with effect from 22.12.1973. Those 11 officers stood promoted in February, 1973 as all of them were eligible for promotion to the post of Civilian Officer Grade-II except the fact that they lacked educational qualification, which was relaxed by the Commission vide its order dated 14.3.1972. Therefore, the petitioner was not entitled to claim any parity with those 11 direct recruits recruited by the Commission much earlier to the date of promotion of the petitioner as Civilian Officer Grade-III. It is appropriate to mention that the Recruitment and Promotion Rules, 1968, requires three years service in the Grade after appointment on a regular basis and possession of a degree or equivalent for any Civilian Officer Grade-III to seek promotion to the post of Civilian Officer Grade-II. It has further been clarified that Departmental Promotion Committee did not meet from 1977 to 1983 as the proposal for reconstruction of the cadre was under consideration. The name of the petitioner along with nine other officers was recommended by the Secretariat Border Roads Development Board on 2.4.1982 to the Commission to consider their case for promotion by relaxing

educational qualification. The Commission, however, asked for prior approval of the Department of Personnel in that regard, which in fact refused the relaxation on 28.7.1982. Therefore, the name of the petitioner along with 8 others was dropped as per letter dated 7.8.1982. The name of the petitioner was, however, duly considered by the Departmental Promotion Committee on 12.12.1986 when the petitioner had acquired the degree qualification in November 1984, for a vacancy belonging to the year 1986. The name of the petitioner appeared at Sr. No. 3 of the eligibility list and he was not found fit by the Departmental Promotion Committee because he did not make the bench mark. In the year 1984-85 no vacancy of Civilian Officer Grade-II for promotee quota had arisen. The post of Civilian Officer Grade-II is a selection post and the rule of "merit-cum-seniority" is applicable. Accordingly, comparative merit of each and every employee is examined by keeping in view the performance and conduct etc. as reflected in the Annual Confidential Reports. However, the petitioner was promoted against a vacancy for the year 1988 for which the Departmental Promotion Committee had met on 16.2.1989.

3. Having perused the order dated 4.4.2006 (P-5) we do not find any illegality which might have prejudiced the rights of the petitioner as all his claims have been considered in accordance with law. The argument of the learned Counsel for the petitioner that there is no requirement of graduate qualification for promotion to the post of Civilian Officer Grade-II from the post of Civilian Officer Grade- III has remained unsubstantiated. On the contrary, respondent No. 2 in the impugned order has categorically referred to the Recruitment and Promotion Rules, 1968, which stipulates that Civilian Officer Grade-III with three years service in that Grade after appointment on regular basis were entitled to be considered for promotion on the post of Civilian Officer Grade-II provided they have degree or equivalent qualification. No rule to the contrary has been cited by the learned Counsel for the petitioner before us to take a different view. We wholly agree with the view taken by respondent No. 2 in the impugned order dated 4.4.2006 (P-5). The writ petition is wholly misconceived.