
(2015) 05 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1112 of 2013 (O&M)

Ilam Singh Chauhan

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 18-05-2015

Acts Referred:

Citation : (2015) 05 P&H CK 0037

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Advocate : Daman Dhir, for the Appellant; Shruti Goel, A.A.G., Advocates for the Respondent

Final Decision : Allowed

Judgement

Ajay Tewari, J.—The petitioner is aggrieved by the action of the respondents in not considering him for promotion to the post of Chief Fire Officer with effect from the date he obtained necessary qualification i.e. January 2007.

2. Brief facts are that the petitioner was appointed as Fire Station Officer on ad-hoc basis on 11.10.1990 in the State Civil Services. In the year 1991, his services were terminated. He filed CWP No. 9225 of 1991, which was disposed of by this Court on 20.6.1991 with a direction that the petitioner be not terminated till a regular incumbent was recruited. Thereafter, w.e.f. 1.4.1993 services of the petitioner were regularized as Fire Station Officer. On 23.3.1995, he was deputed to the post of Fire Officer but again reverted back as Fire Station Officer in December 1996, as another Fire Station Officer of Municipal cadre was taken on deputation. The petitioner challenged this action by way of CWP No. 7097 of 1997, which was allowed by this Court holding that the petitioner's experience in the Air Force entitled him to be considered for the higher post. An SLP against the said order was dismissed. Thereafter, in 2003, one post of Chief Fire Officer was created with the following qualifications:-

"1. A degree preferably in Science from a recognized University or equivalent.

2.(a) Advance Diploma of National Fire Services, Nagpur

Or

(b) Bachelor of Engineering (Fire) from a recognized University

Or

c) Passed Membership Examination of the Institution of Fire Engineers of equivalent."

3. The petitioner had a degree of Bachelor of Laws and obtained his advanced diploma in Fire Engineering in 2007. Consequently, by representation dated 10.1.2007, he staked claim for being considered for the post of Chief Fire Officer. During the time his claim was pending, he was placed under suspension. He filed CWP No. 14489 of 2007 challenging the suspension order. He was reinstated on 27/30.6.2008. He filed another CWP No. 2957 of 2009 claiming promotion to the post of Chief Fire Officer, which was disposed of with a direction to the respondents to decide the representation of the petitioner. The claim of the petitioner was rejected by the respondents, vide order dated 14.5.2009. Meanwhile, on 12.11.2009, disciplinary proceedings concluded with a strict warning to remain alert in future. Thereafter, on 31.12.2009/12.1.2010, the petitioner was served with another charge-sheet pertaining to selection of candidates to the Fire Fighting Course in November 2005. During the pendency of these proceedings, the petitioner was compulsorily retired on 27.5.2010. The petitioner challenged this action by way of CWP No. 15564 of 2010. During the pendency of the said writ petition, on a representation of the petitioner the respondents treated the suspension period as leave of the kind due, vide order dated 14.1.2011. The petitioner filed two appeals before the appellate Authority challenging the orders dated 12.11.2009 vide which a strict warning was issued to him, as well as the order dated 14.1.2011 vide which suspension period was treated as leave of the kind due. Meanwhile, CWP No. 15564 of 2010 was allowed by this Court vide order dated 4.8.2011 and the petitioner was reinstated in service. In March 2012, both the appeals of the petitioner were also accepted and he was exonerated of the charges levelled against him. The petitioner filed representations for his promotion, which were rejected. Hence the present writ petition.

4. In the reply, it is claimed that the petitioner did not have the essential qualifications since he did not have the degree in Science. The only other ground taken is that at the time when the case of the petitioner was taken up for consideration, the charge-sheet had already come.

5. Counsel for the petitioner has argued that as per the rules, the essential qualification is a degree from University and preference may be given to a candidate who has a degree in Science but in the present case, there was no candidate who had a degree in Science. As per him, the respondents had sought to fill up the post on deputation/transfer in the year 2004 but did not receive

even a single application. He has further argued that even if on the date of consideration of the claim of the petitioner a charge-sheet had been issued, it was incumbent upon the respondents to have considered his claim for promotion and kept in a sealed cover to await the outcome of the charge-sheet. As per him, had this been done, once the petitioner was found innocent of the charges, consequential order would have been passed. He relies upon the decision of the Hon'ble Supreme Court in Union of India Vs. K.V. Jankiraman, etc. etc., AIR 1991 SC 2010 : (1991) 63 FLR 767 : (1991) 3 JT 527 : (1991) 2 LLJ 570 : (1991) 2 SCALE 423 : (1991) 4 SCC 109 : (1991) 3 SCR 790 .

6. Counsel for the respondents is not in a position to justify the action of the respondents in not considering the claim of the petitioner and put in a sealed cover to await the outcome of the inquiry. Moreover, as the facts have turned out, those inquiry proceedings against the petitioner have culminated in his favour.

7. No other argument has been raised. A perusal of the facts reveals that the petitioner had to face an uphill battle against the respondents throughout his service career. At the time when the petitioner was looking forward for promotion, he was slapped with inquiry after inquiry and at one stage, he was suspended and thereafter, he was compulsorily retired. However, all those actions taken by the respondents were ultimately stillborn. In these circumstances, it is hard to resist the conclusion that the petitioner's claim has not been considered as per law.

8. Consequently, this writ petition is allowed, the respondents are directed to consider the claim of the petitioner for promotion to the post of Chief Fire Officer as on 10.1.2007, keeping in view the fact that there is nothing against him on record, and pass necessary orders in accordance with law, within a period of two months from the receipt of a certified copy of this order. Needless to say that in case, the petitioner is promoted, he would be entitled to all consequential benefits and the same would be released to him within a further period of three months, failing which he would be entitled to claim the same with interest @ 8% pa from the date/s the same fell due till the date of payment.