

(2011) 04 SHI CK 0250
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 10020 of 2008

Karam Chand

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0250

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayers vide para 7 (i) to (iv):

i) That the Respondents may be directed to hold the DPC for promotion to the post of Assistant Engineer (Electrical) forthwith.

ii) That the Respondents may be directed to consider the applicant for promotion to the post of Assistant Engineer (Electrical), on the basis of reservation and the principle of carried forwarded to deserved posts with all consequential benefits, forthwith, from the date the applicant attain eligibility of AMIE.

(iii) That the Respondents may be directed to hold a review DPC, after considering the OM dated 23.1.1988 vide Annexure A-5, after quashing the promotion of the Respondent No. 3 on 5.11.1998 (A-8), by considering the applicant for promotion as Assistant Engineer (Electrical), from the due date with all consequential benefits, forthwith.

(iv) That the action of the Respondents in depriving the applicant of his fundamental right to be consider for promotion, on the basis of reservation, may be held to be malafide, arbitrary and unconstitutional.

2. In reply, Respondents No. 1 and 2 have taken the following stand by way of preliminary submissions:

1. That the present OA is not maintainable in its present form. It is submitted here that the D.P.C meeting for the promotions to the post of Assistant Engineer (Electrical) in Public Works Department was convened on 19.9.1998 in consultation with H.P Public Service Commission and promotion were made vide orders dated 5.11.1998. It is further submitted here that the applicant by that time was not holding AMIE Degree, as such he could not be considered for the promotion to the post of Asstt. Engineer from AMIE category. It is further submitted here that it is the policy of the Govt. that in case of promotion to the posts which are filled on non-selection basis where adequate numbers of candidates belonging to the cadre for whom the post is reserved are not available, the reservation is to be carried forward to three subsequent recruitment years. In the 3rd recruitment year, in case of Schedule Caste candidate is available for the promotion against the post reserved for schedule case, the vacancy can be offered to Schedule Tribes and vice versa. In case of promotion to the posts filled on selection basis from Class III to Class II, within Class II and from Class II to the lowest Class I, no carry forward of reservation will take place, but exchange of vacancies between Schedule Caste and Schedule Tribes can be permitted in the year in which the vacancy arises. Since the applicant was not eligible for the promotion to the post of AE (Electrical) i.e. lowest rung of Class I cadre of the department at the time of holding D.P.C; the Respondent No. 3 was promoted as per seniority list. It is further submitted here that the cadre strength of Assistant Engineer (Elect) was 21 and against the 15% reservation quota to the Schedule caste category 3 posts of SC cadre were already filled up at that time. It is submitted here that Sh. O.P. Sharma and Sh. Sanjeev Kumar were appointed as Asstt. Engineer (Electrical) against Schedule Caste category by direct recruitment and Sh. Nanak Chand by promotion prior to 19.9.1998.

2. That the claim of applicant is false, vague and based upon hypothesis surmises and has not approached the Hon"ble Tribunal with clean hands. The bare perusal of petition/application will demonstrate that the applicant has himself admitted that he has completed his AMIE Degree in the year 1999 i.e. much after the issuance of promotion orders dated 5.11.98. It is further submitted here that no posts of any category can be kept vacant for indefinite period on the plea that the applicant is going to improve qualification by that time and the promotion, if any, should be made only when he will complete the requisite qualification as such petition deserves to be dismissed. Besides the O.A filed after a gap of about 5 years and, therefore, it becomes time barred and deserves dismissal in limini.

3. Reply on behalf of Respondent No. 3 is akin to that of Respondents No. 1 and 2.

4. Rejoinders refuting the above replies on behalf of the Respondents and reiterating the averments set up in the petition have been filed.

5. It is seen from the records that the Petitioner has submitted representation

dated 20.9.1999, Annexure A-9, followed by reminders dated 9.12.1999, Annexure A-10 and 16.2.2000, Annexure A-11, but no decision has been taken on the same.

6. In view of the above, the petition is disposed of with a direction to Respondent No. 1 to consider the representation dated 20.9.1999, Annexure A-9 and take a final decision in the matter in accordance with law by taking into consideration the Recruitment and Promotion Rules, issued vide notification dated 21.1.1997, Annexure A-2 and instructions dated 23.1.1988 Annexure A-5, regarding dereservation of "Selection" posts, within two months from the date of production of copy of this judgment by the Petitioner, after affording an opportunity of being heard and to place on record additional facts, if any, if so desired.

7. The petition stands disposed of, so also pending CMP (s), if any.