
(2011) 09 SHI CK 0292
In the High Court Of Himachal Pradesh
Case No : Civil Review No. 26 of 2008

Krishan Kumar Suman

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 14, 16

Citation : (2011) 09 SHI CK 0292

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

Bench : Single Bench

Judgement

V.K. Sharma, J.

CMP (T) No. 174 of 2011

1. Reply not filed. Heard.

2. The application, which is duly supported by an affidavit, is allowed in view of the grounds stated therein. Consequently, judgment dated 10.11.2010, pursuant to which Civil Review (T) No. 26 of 2008 Krishan Kumar v. State of H.P. and Anr. was disposed of pursuant to the statement at the bar made by the learned Counsel for the Petitioner, is recalled. Resultantly, Civil Review (T) No. 26 of 2008 shall stand restored for disposal on merits.

Civil Review No. 26 of 2008

3. Order dated 06.03.1997, passed by the erstwhile H.P. State Administrative Tribunal (since abolished), in O.A. No. 82 of 1997 Krishan Kumar v. State of H.P. and Ors., text whereof is as under, is the subject matter of the present review petition:

1. This is an application u/s 19 of the Administrative Tribunals Act, 1985 seeking promotion as Senior Assistant. The applicant is working in the Respondent department as Junior Scale Stenographer and has sought his promotion as

Senior Assistant in the department.

2. The Respondents have stated that the category of Junior Scale Stenographer and clerks are entirely different and they have different promotion channels. The Recruitment and Promotion Rules for the post of Senior Assistant prescribed the promotion from Clerks and not from Junior Scale Stenographers. For the post of Junior Scale Stenographer promotion channel is to the post of Personal Assistant while earlier it was Senior Scale Stenographer which has recently been upgraded as Personal Assistant. Hence there is no violation of Articles 14 and 16 of the Constitution of India and the applicant cannot be promoted to the post of Senior Assistant as it will be against the Recruitment and Promotion rules.

3. The applicant has also assailed the Recruitment and Promotion rules for the post of Senior Assistants on the ground of discrimination and violative of the right of equality of equal opportunity.

4. We have considered the pleadings and arguments advanced by both the parties. We find that since separate Recruitment and Promotion rules have been provided for the post of Senior Assistant and Personal Assistant, the applicant being a feeder category to the post of Personal Assistant only and not to senior Assistant, he cannot claim promotion to the category of Senior Assistant in violation of Recruitment and promotion rules. The mere fact that some Clerks who had joined the department after he joined as Junior Scale Stenographer have been promoted to the post of Senior Assistant while the applicant still continues in the post of Junior Scale Stenographer, does not entitle him to promotion to the post of Senior Assistant. Each cadre has their own line of promotion when the post in that line is available. Consequently the application is dismissed with no order as to cost.

5. During arguments the learned Counsel for the applicant stated that the applicant has worked for four months as Senior Assistant for which period he has not been paid the salary for Senior Assistant. The Respondents are directed to pay him the salary of Senior Assistant if he has worked as such on proper order of the competent authority

4. In nutshell the grievance raised by the Petitioner, who at the relevant time was working as Junior Scale Stenographer, in the Respondent-Corporation since the year 1986, was that he was stagnating against the said post for want of any promotional avenues. However, while passing the impugned order dated 06.03.1997 the learned Tribunal observed in para 4 thereof as under:

We find that since separate Recruitment and Promotion rules have been provided for the post of Senior Assistant and Personal Assistant, the applicant being a feeder category to the post of Personal Assistant only and not to senior Assistant, he cannot claim promotion to the category of Senior Assistant in violation of Recruitment and promotion rules.

5. Thus it is manifest that the learned Tribunal had proceeded on the premise

that the Petitioner was in the feeder category to the post of Personal Assistant. Such an observation was apparently beyond the pleadings on behalf of the parties and admittedly there was no post of Personal Assistant against which the Petitioner could have been promoted.

6. As a result, the petition is allowed reviewing the impugned order dated 06.03.1997 as under:

In view of the law laid down by Hon''ble Apex Court in Food Corporation of India and Others Vs. Parashotam Das Bansal and Others, and A. Satyanarayana and Others Vs. S. Purushotham and Others, followed by this Court in CWP (T) No. 5389 of 2008 Kashmir Singh and Ors. v. State of Himachal Pradesh and Ors. decided on 30.04.2010, the petition is disposed of with a direction to the Respondents/competent authority to consider the case of the Petitioner for providing promotional avenues within six months from the date of production of copies of this judgment and the judgments referred to hereinabove by the Petitioner before the Respondents/competent authority, after affording an opportunity of being heard to him, if so desired. Needless to say that unpaid amount of due and admissible emoluments, if any, for the period the Petitioner had worked as Senior Assistant shall also be paid to him within the same time as above.

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