

(2022) 10 SHI CK 0024

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) 7472 Of 2020

Rajesh Kumar

APPELLANT

Vs

Himachal Road Transport Corporati And Others

RESPONDENT

Date of Decision : 20-10-2022

Acts Referred:

Citation : (2022) 10 SHI CK 0024

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : H. S. P. Chaterji, Vikas Rajput

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for the following substantive relief:-

"That the respondent corporation may be ordered to consider the promote applicant to the post of Chief Inspector w.e.f. 10.7.2017 or from the date he has become eligible for promotion to the post of Chief Inspectors i.e. 12.8.2017, with all consequential benefits."

2. Petitioner approached erstwhile H.P. State Administrative Tribunal by filing O.A. No. 146 of 2019. On abolition of the Tribunal, the matter came to be transferred to this Court and registered as CWPOA No. 7472 of 2020.

3. Initial appointment of petitioner was as Conductor in HRTC. He was promoted to the post of Inspector on 12.8.2014. Petitioner attained the age of superannuation on 31.12.2017.

4. On 10.7.2017, DPC was convened to consider the cases of Inspectors for promotion to the post of Chief Inspectors. The DPC recommended names of ten incumbents against fourteen available vacancies to the post of Chief Inspectors.

5. The grievance of the petitioner is that on the date of DPC i.e. 10.7.2017, he had already rendered two years, ten months and twenty eight days service as Inspector and was short of one month and two days to complete three years. As per Recruitment & Promotion Rules for the post of Chief Inspector, by promotion, the feeder category was Inspector and was required to have completed three years service as Inspector. Petitioner was not considered by the DPC held on 10.7.2017. He was not granted the benefit of relaxation, though such benefit in the past had been granted to the similarly situated persons. Further contention of the petitioner is that he became eligible for promotion to the post of Chief Inspector on 12.8.2017, yet he was not promoted till his superannuation on 31.12.2017, despite availability of eight vacancies to the post of Chief Inspector. As per petitioner, no waiting panel was prepared, which had also prejudiced his rights.

6. Respondents have contested the claim of petitioner on the grounds that on the date of holding of DPC, the petitioner had not completed three years service as Inspector and was not eligible to be considered for promotion to the post of Chief Inspector. It is further submitted that since the petitioner was not eligible, he could not have found place in waiting panel. The DPC could not be held before retirement of petitioner due to enforcement of Model Code of Conduct as also pending dispute with regard to seniority of Inspectors. The next DPC was held in April, 2018 by which time, petitioner had already retired. As regards relaxation given to similarly situated persons in past, it is submitted that it was a onetime exercise taken in the past.

7. In rejoinder, petitioner has placed reliance on Chapter-XVI of Hand Book on Personnel Matters, Volume-I (Second Edition), published by Government of Himachal Pradesh to stress that the respondents were liable to hold DPC as per these instructions not only for existing vacancies but also for anticipated vacancies for the year.

8. I have heard learned counsel for the parties and have also gone through the record carefully.

9. Learned counsel for the petitioner on being asked by the Court, fairly conceded that no power was vested with the Chairman or the Board of respondent No.1 to relax the condition of Recruitment & Promotion Rules for the post of Chief Inspector, especially to relax the minimum service criteria in the feeder category post. It being so, merely because relaxation was allowed in the past by the Chairman of the Board to some of the incumbent(s), petitioner cannot claim right of equality or parity as the same would amount to allowing negative parity, which is not permissible under law.

10. Admittedly, the petitioner had not rendered three years service as Inspector on 10.7.2017, when DPC was convened and as such, his non consideration for promotion to the post of Chief Inspector cannot be faulted with. Similarly, petitioner cannot have found place in the waiting panel, if any, as he was well

short of eligibility condition.

11. As regards non holding of DPC after 10.7.2017 till the retirement of petitioner, respondents have submitted that the DPC could not be held on account of two reasons; firstly that modal code of conduct was in operation and secondly, there was a pending dispute with respect to seniority list of Inspectors. Such contention has not specifically been rebutted by the petitioner. In this view of the matter, the non holding of DPC before superannuation of petitioner cannot be sufficient to grant relief to the petitioner. The next DPC was held in April, 2018 and petitioner had superannuated before such date. Petitioner had become eligible to be promoted as Chief Inspector on 12.8.2017. There is nothing on record to suggest that the petitioner had raised any grievance before respondents with respect to non holding of DPC before his superannuation. It is not even the case of petitioner that despite his representation, respondents had not convened the DPC.

12. Petitioner approached the erstwhile Tribunal on 8.4.2019 i.e. after more than fifteen months of his retirement. In absence of any claim having been raised by petitioner regarding non holding of DPC before his superannuation, petitioner cannot be held entitled to the relief as prayed for in the instant petition.

13. Learned counsel for the petitioner has placed reliance on Chapter-XVI of Hand Book on Personnel Matters, Volume -I (Second Edition), in support of his case. The contention so raised will not help the cause of petitioner for the reasons that he had not raised any claim before his superannuation regarding non holding of the DPC or non consideration of anticipated vacancies to the post of Chief Inspector during relevant year. It is settled that the promotion to a vacant post is said to have been made from the date, the promotion is granted and not from the date of which, the post fell vacant or vacancy was created. Reference can be made to judgment passed by Hon'ble Supreme Court in Union of India & others vs. K.K. Vadhera & others 1989 (Suppl.) (2) SCC 625.

14. Learned counsel for the petitioner further placed reliance on the judgment passed by Hon'ble Supreme Court in Major General H.M. Singh, VSM vs. Union of India and another, (2014) 3 SCC 670, in support of his case. After going through the aforesaid judgments, I am of the considered view that the petitioner cannot draw any benefit therefrom as the fact situation in both the cases is different. In that case, the DPC was not held for fourteen months and was held only two days prior to superannuation of the petitioner therein. Further, the petitioner in that case had been repeatedly seeking consideration orally as well as writing by informing the authorities about the date of his retirement, whereas in the facts of instant case, petitioner had not agitated his alleged cause of action before date of his superannuation.

15. Resultantly, the petition fails and the same is accordingly dismissed, with no orders as to costs. Pending applications, if any, also stand disposed of.