

(2011) 05 SHI CK 0153
In the High Court Of Himachal Pradesh
Case No : CWP-T No. 2581 of 2008

Shri Tulsi Ram

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 05 SHI CK 0153

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

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayer:

It is respectfully prayed that the present O.A. may kindly be allowed and the applicant be ordered promotion to the post of Deputy Secretary from the date of his juniors have been promoted i.e. 24.1.1988 with all consequential benefits, to meet the ends of justice and his pension may kindly be revised accordingly.

2. In the reply, the Respondents have taken the following stand vide para 2 of the preliminary submissions and paras 3, 6.5 and 6.8 on merits:

Preliminary submissions:

2. That the relaxation in the provisions of notified R&P rules is only considered justified in view of the circumstances prevailing at a particular stage in the exigencies of public service and in the instant case applicant never worked physically as Under Secretary and retired on 30.4.88 from Government service whereas promotions in relaxation of rules to the post of Deputy Secretary of S/ Shri R.C. Bhatnagar, H.R Vashisht and O.D. Pathak, which were regularized w.e.f. 31.5.91. As such considering of relaxation after retirement in favour of applicant is not tenable/justified.

On merits:

3. That in regard to the averments made in this para it may be submitted that all

the directions of the Hon''ble Tribunal including that of dated 6.11.95 passed in Revision Petition No. 25/95 have since been implemented by the Respondent-State vide its orders No. 8-70/63-II dated 12th June, 1997 (Annexure R-I) and benefits upto the level of Under Secretary have been released by creating temporary tenure posts to accommodate the applicants. The applicant alongwith others was promoted as Under Secretary after retirement vide orders dated 27.8.97 (Annexure A-5 to OA). Promotion of the applicant to the level of Deputy Secretary was not made because he was not eligible in view of the fact that he was not possessing minimum qualifying service and after retirement considering grant of relaxation in favour of the applicant was not justified/required in the public interest. Hence no violation of Articles 14 and 16 of the Constitution of India have taken place.

6.5. That in regard to the averments made in this para it is submitted that the date of promotion of applicant as Under Secretary is 27.1.86 against temporary tenure post created after his retirement and not 24.1.86 as contended. Similarly S/Sh. R.C. Bhatnagar, H.R. Vashisht and O.D. Pathak were promoted as Under Secretary w.e.f. 24.1.86 notionally and regularized from different date(s). Rest of the averments are admitted. It is a fact that the applicant was in service as on 24.1.88 (Retd. On 30.4.88) the date from which retrospective temporary promotions in relaxation of rules were ordered vide orders dated 5.5.1998 (Annexure A/6 to OA). The matter in question remained sub judice and Hon''ble HPAT was pleased to direct the Respondent State in OA No. 443 of 88/Execution Petition No. 14 of 98 on 11.1.2002 to consider the request of applicant within two months after hearing the applicant. Thus as submitted in the preliminary submissions considering of relaxation in the R&P Rules for the purpose of retrospective promotion as Deputy Secretary, after retirement from Government service is not justified and not going to serve any public interest as promotion to Deputy Secretary was ordered on 5.5.88 (the day he was not in service).

6.8. These averments are not tenable in view of the submissions made in para 6.5 supra and especially when retrospective promotions to the level of Deputy Secretary from 24.1.88 in relaxation of rules were made vide orders dated 5.5.1988 and there was no cause to consider relaxation in favour of the applicant who remained as Under Secretary for a period of 2 years 3 months and 5 days only (not physically as promoted after retirement). As per requirement of R&P Rules minimum essential service of 3 years was necessary for the purpose of promotion as Deputy Secretary.

3. Rejoinder refuting the above stand on behalf of the Respondents and reiterating the averments set up in the petition has been filed.

4. The Petitioner has based his claim mainly on the basis of order dated 6.11.1995, Annexure A-2, passed by the erstwhile H.P. Administrative Tribunal (since abolished) in Rev. Pet. No. 25/95, which reads as under:

We have perused the record and have heard Shri Narinder Thakur, the learned

Additional Advocate General for the Petitioner as also S/Shri K.D. Shreedhar and Lokinder Thakur, the learned Counsel for the private Respondents. The Review Petition is allowed and order dated March 30, 1995 passed in OA-443/88 is modified to the extent that the seniority list circulated on December 24, 1979 referred to in the order dated March 30, 1995 shall be implemented in its letter and spirit qua S/Shri Devi Chand Kashyap, Prem Lal Gupta, Tulsi Ram and Salig Ram Sharma. The order dated March 30, 1995 as modified be implemented within a period of three months.

The Review Petition stands disposed of accordingly.

5. In compliance of the above order dated 6.11.1995, Annexure A-2, the Petitioner along with other retired officials/Officers was given retrospective promotions as Assistant, Deputy Superintendent and Section Officer, vide orders dated 23.6.1997, Annexures A-3 and A-4, respectively and as Under Secretary, vide order dated 27.8.1997, Annexure A-5.

6. It is seen from the records that thereafter vide order dated 5.5.1988, Annexure A-6, Shri R.C. Bhatnagar and Shri H.R. Vashisht, who admittedly were junior to the Petitioner, were promoted as Deputy Secretary w.e.f. 24.1.1988. Admittedly, the Petitioner had retired from Government service on 30.4.1988. Thus, the Petitioner was still in service when the aforesaid Shri R.C. Bhatnagar and Shri H.R. Vashisht, who were juniors to him, were promoted as Deputy Secretaries on 24.1.1988. Thus, the claim of the Petitioner for promotion as Deputy Secretary from the date his juniors aforesaid were promoted, could not have been ignored by the Respondents.

7. In view of the above, the petition is allowed with a direction to the Respondents to consider the case of the Petitioner for promotion to the post of Deputy Secretary on and w.e.f. 24.1.1988 at par with his juniors aforesaid, namely, Shri R.C. Bhatnagar and Shri H.R. Vashisht, within three months from the date of production of copy of this judgment by the Petitioner and to pay to him the consequential benefits, if any, within further one month, failing which interest at the rate of 9% shall also be payable.

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