

(2020) 11 SHI CK 0140

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2893 Of 2016, 244 Of 2018

Union Of India And Others

APPELLANT

Vs

Parmod Gupta And Others

RESPONDENT

Date of Decision : 12-11-2020

Acts Referred:

Citation : (2020) 11 SHI CK 0140

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Shashi Shirshoo, Dilip Sharma, Manish Sharma, B.C. Negi, Divya Sood, Dilip Sharma, Manish Sharma, Shashi Shirshoo

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Both these writ petitions assail the order passed by the learned Central Administrative Tribunal (in short 'CAT'), Chandigarh on 25.05.2016 in O.A. No.063/00165/ 2015, whereby directions were given for:- (i) counting the ad hoc service rendered by respondents No.1 to 3 as Deputy Assistant Director (Non-Medical) [in short 'DAD(NM)'] for determining their eligibility for promotion to the post of Assistant Director (Non-Medical) [in short 'AD(NM)'] and

(ii) for completing the process of promotions of such eligible persons to the posts of AD(NM) before resorting to direct recruitment.

2. Respondents No.1 to 3 were appointed as Technical Supervisors in Central Research Institute (CRI), Kasauli in 1978, 1979 and 1982, respectively. They were subsequently promoted to the post of Assistant Technical Officers. Next promotional avenue available to them was to the post of DAD(NM). As per the Recruitment and Promotion (R&P) Rules, 1979, 33-1/3% posts of DAD(NM) were to be filled up by promotion and remaining by direct recruitment. Process was initiated by Union of India in 1995 for filling up ten vacancies of DAD(NM), out of which four were meant for promotion and six for direct recruitment. The posts

were not filled by any mode on the ground that the same had lapsed and required to be revived. Respondent No.1 filed O.A. No.545-HP of 1997 before the learned CAT Chandigarh, claiming promotion to the post of DAD (NM). The original application was decided on 19.10.2000, wherein on the basis of stand taken by the employer, it was observed that there was need for revival of the posts. The official respondents were directed to consider and take a decision on the revival/ recreation of ten posts of DAD (NM) within a period of three months. In case of revival of posts, respondent No.1 was to be considered against the promotion quota as well as against direct recruitment quota. The operative part of the judgment reads as under:-

"On a consideration of the matter, we deem it appropriate to dispose of the OAs' with a direction to respondent No.4 to consider and to take a decision on the proposal of revival/re-creation of 10 posts of Deputy Assistant Director (Non-Medical) within a period of 3 months of the date of receipt of a copy of this order. In case the said posts are revived, the vacancies shall be filled up strictly in accordance with the rules. The applicants shall be considered against the promotion quota as also direct recruitment quota as per their eligibility and suitability. The official respondents shall also decide the case of relaxation of age limit of the applicants and the private respondents within a period of 3 months from the date of receipt of a copy of this order."

3. Inaction on the part of Union of India regarding promotion of respondent No.1 to the post of DAD(NM) led her to file O.A. No.216-HP of 2005 before the learned CAT, Chandigarh. The original application was allowed on 17. 05.2007 in following terms:-

"7. We feel that the apprehension of the applicant is quite right that in case the post gets lapsed for having remained vacant for a considerable period of time, she would lose her valuable right of consideration for promotion. In our considered view, if the posts are available, notwithstanding the process initiated or to be initiated by the respondents for filling up the same by direct recruitment, they should have no difficulty in filling up the same by making adhoc promotions subject to the condition that such promotes shall have to vacate the posts as and when a regular appointment against the same are made. We find no cogent explanation from the respondents in this regard and find that there is no justification for keeping the posts vacant particularly when the respondents have had been seeking revival of the same. Ld. Counsel for the applicant prays that a direction may be given to the respondents to consider the applicant for promotion against the vacant post subject to the condition that she will vacate the same on appointment of a regularly selected candidate.

8. In view of the above, this O.A. is allowed. Pending finalization of recruitment against the vacant posts of Deputy Assistant Director (NM) in the respondent Institute, respondents are directed to consider and appoint the eligible persons on these posts by giving them promotion on adhoc basis within one month from the date of receipt of a copy of this order, subject, however, to the condition that

such promotees shall have to vacate the posts on appointment of the regularly selected candidates."

4. Union of India assailed order dated 17.05.2017 before this Court in CWP No.1455 of 2007. The writ petition was dismissed on 26.09.2007 observing that the respondents had taken considerable time, but still not implemented the judgment dated 19.10.2000. The Court directed the official respondents to fill up the posts of DAD(NM) by 15.10.2007. The operative part of the judgment dated 26.09.2007 is extracted hereinafter:-

"..... In such circumstances, when the directions issued by the learned CAT were general in nature and no specific directions were even given in regard to the claim of the respondent and the petitioners have flouted the orders passed by the learned CAT, the said order passed giving general directions for filling up the post on ad hoc basis do not suffer from any illegality to be interfered with. However, in view of the facts of the case that the petitioners have taken sufficient time and had still not complied with the orders passed by the learned CAT, it is directed that the post of the Deputy Assistant Director in question shall be filled on or before 15.10.2007 positively by the petitioners, failing which, they shall be liable for contempt. There is no merit in the petition and as such the petition filed by the petitioner is dismissed accordingly with no orders as to costs."

As a result of above pronouncement, respondents No.1 to 3 were promoted as DAD(NM) on 12.06.2008 on ad hoc basis. Their ad hoc promotions were followed by regular promotions on 29.07.2015.

5. An advertisement was issued by the Union of India on 14.11.2015, inviting applications for filling up six posts of AD(NM) by direct recruitment in CRI, Kasauli. This led respondents No.1 to 3 to file O.A. No.063/00165/2015 before the learned CAT Chandigarh, claiming that the posts of AD(NM) under the R&P Rules are required to be filled up first by promotion, failing which the posts can be filled up by direct recruitment. Inter-alia, a prayer was also made for treating the ad hoc service rendered by respondents No.1 to 3 on the posts of DAD(NM) as eligible service for promotion to the posts of AD(NM). The employer opposed the prayers by contending that respondents No.1 to 3 did not possess requisite five years' regular service in the feeder cadre post of DAD(NM) since they were promoted as DAD(NM) on regular basis on 29.07.2015. Their ad hoc promotion on these posts on 12.06.2008 would not confer them any right for regular appointment or promotion to the posts of AD(NM). There being no eligible DAD(NM) or Factory Manager with five years' service in the grade for filling the post of AD(NM) by promotion, the advertisement was issued on 14.11.2015 for filling the posts of AD(NM) by direct recruitment.

The original application was disposed of on 25.05.2016 with direction to the official respondents to consider ad hoc service rendered by respondents No.1 to 3 as DAD(NM) for determining their eligibility for promotion to the post of

AD(NM). The operative part of the judgment reads as under:-

"11. In the special circumstances of this case, we are of the view that the ends of justice will be met with direction to the respondents to count the adhoc service rendered by the applicants as Deputy Assistant Director (NM) for determining their eligibility for promotion to the post of Assistant Director (NM) . The process of promotion of such eligible persons may be completed before resorting to direct recruitment of Assistant Director (NM) in respect of posts that cannot be filled through promotion. Accordingly, the O.A. is allowed."

6. The order dated 25.05.2016 passed by the learned CAT Chandigarh in O.A. No.063/00165/2015 has been assailed by the Union of India in CWP No.2893 of 2016 as well as by two individuals in CWP No.244 of 2018, who had applied for direct recruitment to the post of AD(NM) under advertisement dated 14.11.2015. The common contentions of the writ petitioners are:- that respondents No.1 to 3 were promoted as DAD(NM) on ad hoc basis on 12.06.2008 with clear rider that such ad hoc promotion will not confer them any right for regular appointment or promotion in the higher grade; It will not count for the purpose of seniority/ promotion in the next higher grade; Respondents No.1 to 3 were appointed on regular basis on 29.07.2015; It is contended that they had not completed five years of regular service in the grade of DAD(NM) required for promotion to the post of AD(NM), therefore, they were not eligible for the post of AD(NM) at the time of issuance of advertisement dated 14.11.2015; The direction of the learned CAT Chandigarh to consider the cases of respondents No.1 to 3 for promotion to the post of AD(NM) before resorting to direct recruitment is not justified.

7. During hearing of the case, learned counsel for the parties informed that respondents No.1, 2 and 3 had retired on 31.10.2016, 30.06.2016 and January, 2020, respectively. It is not disputed that respondents No.1 to 3 were promoted and discharged their duties as DAD(NM) on ad hoc basis w.e.f. 12.06.2008. The employer regularised their ad hoc service on 29.07.2015. Under R&P Rules, method of recruitment to the post of AD(NM) is "by promotion failing which by direct recruitment". The feeder cadre consists of:-

"(i) Deputy Assistant Director (Non-Medical) (ii) Factory Manager. with 5 years service in the grade." It is not in dispute that respondents No.1 to 3 possess five years of service as DAD(NM) w.e.f. the date of their ad hoc promotion on 12.06.2008. The record shows respondents did not hold DPC for filling the posts of DAD(NM) on regular basis for want of revival of lapsed posts. The posts were revived as per order dated 29.05.2014, whereas directions were issued by the learned CAT to finalize the matter regarding revival and filling of posts of DAD(NM) on 19.10.2000. It was only after the directions were issued by this Court on 26.09.2007 that the action was taken to fill up the posts of DAD (NM) and respondents No.1 to 3 were promoted on ad hoc basis as such on 12.06.2008. Subsequent to the issuance of order dated 29.05.2014 reviving the posts, respondents No.1 to 3 were promoted on regular basis on 29.07.2015. In the peculiar facts and circumstances, learned CAT was justified in observing that:-

"10. The promotions were effected in 2008 and the applicants were designated as DAD (NM) on adhoc basis. The order for revival of the posts was issued in 29.05.2014. It cannot be said that the posts of DAD (NM) in CRI Kasauli had lapsed and were required to be revived when the applicants and some others were ostensibly promoted against DR vacancies and were actually manning these posts since July, 2008 and were drawing the salary attached with these posts. Even as per DOP&T guidelines dated 03.04.2013 referred by the respondents it has been stressed that adhoc appointment/promotions should be made only in rare cases and for exigencies of work, where the post cannot be kept vacant until regular candidate becomes available. Persons appointed on adhoc basis to a grade are to be replaced by persons approved for regular appointment by direct recruitment, promotion or deputation, as the case may be, at the earliest opportunity. The total period for appointment/promotion on adhoc basis is limited to one year only and for extending any adhoc appointment/promotion beyond one year, the approval of DOP&T is to be sought at least two months in advance before the expiry of one year period. In spite of these guidelines, the applicants continued to function as Deputy Assistant Director (NM) on adhoc basis from 12.06.2008 till 29.07.2015 when they were regularly promoted as such. It is only on account of the delay in processing the matter for revival of the posts (if at all such action was required) and regular promotion, that when the posts of Assistant Director became available, the claim of the applicants for promotion was not considered on the ground that they did not fulfil the requirement of five years service in the grade for promotion as Assistant Director, as the period of adhoc service rendered by them as DAD(NM) could not be counted for eligibility for promotion to the next grade. The respondents appear to have applied the DOP&T guidelines dated 03.04.2013 in a selective manner. While no action was taken by the respondents to fill the posts of Deputy Assistant Director (NM) on regular basis, pleading non-availability of the posts on account of these having lapsed, at the same time the services of the applicants as Deputy Assistant Director (NM) continued for over seven years on adhoc basis and the applicants were subsequently denied counting of their adhoc service for determining their eligibility for promotion as Assistant Director."

When the employer did not implement the judgments passed in favour of respondents No.1 to 3 for a long period, then it cannot be allowed to take the benefit of its own wrongs to deny benefits to respondents No.1 to 3, who have retired as DAD(NM) during pendency of litigations.

In the peculiar facts and circumstances of the case, we do not find any infirmity in the judgment passed by the learned CAT Chandigarh in directing the petitioner (in CWP No.2893 of 2016) to count the ad hoc service rendered by respondents No.1 to 3 for determining their eligibility for promotion to the post of AD(NM) and to complete the process for promotion to posts of AD(NM) before resorting to direct recruitment. The direction has been issued in the facts of the case and shall not be treated as precedent. Since respondents No.1 to 3 have retired during the pendency of litigation, therefore, we direct the petitioner (in CWP

No.2893 of 2016) to complete the entire exercise in accordance with law within a period of four weeks from today. The writ petitions, therefore, are devoid of any merit and are dismissed alongwith pending miscellaneous application(s), if any.