

Before M.M. Kumar & Rakesh Kumar Jain, JJ.

UNION OF INDIA & OTHERS,—Petitioners

versus

PURANJIT SINGH AND OTHERS,—Respondents

C.W.P. NO. 18535 OF 2007

4th December, 2007

Constitution of India, 1950—Art. 226—Claim for consideration for promotion from the date when vacancy had occurred—Tribunal ordering applicant-respondent deemed to be promoted from date when vacancy fell vacant—Vacancy became available on dismissal of an employee—Respondent senior—most employee entitled to be considered for promotion—Claim of respondent cannot be ignored on the basis that a person on deputation was given charge—Tribunal confining relief to notional re-fixation of pay—Petition dismissed being misconceived.

Held, that when a senior most departmental employee is available then it would be wholly unwarranted to call another person on deputation unless there are any compelling reasons like the pendency of criminal or disciplinary proceedings. In the absence of any such facts, the non consideration of the respondent No. 1 for promotion to the post of Chief Engineer after it became available on the dismissal of Shri K.K. Jerath, respondent No. 1 was entitled to be considered notwithstanding the fact that he was on deputation with the Municipal Corporation, Chandigarh. In any case, the Tribunal has not granted the relief of arrears of pay but has confined the relief to notional re-fixation of pay and then release of retiral benefits on that basis. Therefore, we do not find any room warranting interference of this Court in the well reasoned order of the Tribunal.

(Para 3)

P. S. Dhaliwal, Advocate for the petitioners.

M.M. KUMAR, J.

(1) This petition filed under Articles 226/227 of the Constitution prays for quashing order dated 18th October, 2006 (Annexure P.3) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity 'the Tribunal') allowing Original Application filed by respondent No. 1. The Tribunal has issued a direction to the Administration that respondent No. 1 be deemed to be promoted to the post of Chief Engineer with effect from 24th November, 1997 when the afore-mentioned vacancy fell vacant in the Union Territory Administration and fix his pay notionally. The applicant-respondent No. 1 has been held entitled to the benefit of all the retiral benefits on the basis of notional fixation of pay but no arrears of salary.

(2) Brief facts of the case are that respondent No. 1 retired on 30th September, 2003 on attaining the age of superannuation. He was granted retiral benefits viz. the pension, gratuity, leave encashment etc. permissible to him as Chief Engineer only with effect from 23rd August, 2001. He filed Original Application before the Tribunal claiming that he was entitled to be considered and promoted as Chief Engineer with effect from 24th November, 1997 when the vacancy of Chief Engineer had fallen vacant. The basis of his claim was that one Shri K.K. Jerath who till that date was working as Chief Engineer Union Territory, Chandigarh was dismissed from service,—vide order dated 8th March, 1999 with retrospective effect from 24th November, 1997. He claimed that vacancy has arisen with effect from 24th November, 1997 instead of 23rd August, 2001 when he was promoted as Chief Engineer. He further claimed that one Shri R. K. Jain who was given the charge of the post of Chief Engineer on 24th November, 1997, was a deputationist from the department of PWD (B&R), Haryana and claimed that Mr. Jain did not enjoy any right to hold the post of Chief Engineer as the respondent No. 1 was available being the senior-most U.T. cadre employee. In that regard the respondent No. 1 had made a representation to the Union Territory i.e. Chandigarh Administration for consideration of his case as Chief Engineer with effect from 24th November, 1997. It has also come on record that the respondent No. 1 was working in the Municipal Corporation as Chief Engineer. The Tribunal while placing reliance on its earlier judgment in the case of K.K. Jerath versus Union

of India and another OA No. 639 CH of 1990 decided on 6th May, 1991, held as under :—

“...In our considered view, merely because applicant was working on deputation as a Chief Engineer in the Municipal Corporation, Chandigarh, on an equivalent post, his right of consideration for promotion to the post of Chief Engineer in his parent cadre, to which he was eligible according to the rules, could not be denied to him. Further, in a number of cases this Tribunal has held that it is illegal and arbitrary to appoint persons on deputation in case eligible persons are available in the feeder cadre. A deputationist has moorings in the parent cadre and is not a part of the cadre of the borrowing department. It is only after absorption that he becomes a member of the cadre. When an eligible person is available for promotion in the cadre itself, his claim cannot be ignored just on the basis that a person on deputation was already working with the respondents and, being the seniormost, was given the charge of the post of Chief Engineer. It is not the case of the respondents that applicant was considered for promotion and having been found ineligible or unsuitable, a deputationist, nor belonging to the feeder cadre, had to be posted as Chief Engineer. Such action is rather suggestive of mala fide action on the part of respondents not to consider the case of the applicant for promotion at the appropriate time. That besides, it unfair and unjust. Manifest injustice has resulted to the applicant by posting a deputationist on the post of Chief Engineer when, in fact, applicant was available for consideration for promotion. He has been denied the benefit of the increments earned by him on ex-cadre posts of Chief Engineer on reversion to his parent cadre and subsequent promotion as a Chief Engineer.”

(3) We have heard the learned counsel for the Union Territory Administration at a considerable length and find that there is no error in the view taken by the Tribunal. It is well settled that when a senior most departmental employee is available then it would be wholly unwarranted to call another person on deputation unless there are any compelling reasons like the pendency of criminal or disciplinary proceedings. In the absence

of any such facts, the non consideration of the respondent No. 1 for promotion to the post of Chief Engineer after it became available on the dismissal of Shri K.K. Jerath, respondent No. 1 was entitled to be considered notwithstanding that fact that he was on deputation with the Municipal Corporation, Chandigarh. In any case, the Tribunal has not granted the relief of arrears of pay but has confined the relief to notional refixation of pay and then release of retiral benefit on that basis. Therefore, we do not find any room warranting interference of this Court in the well reasoned order of the Tribunal. The writ petition is mis-conceived and the same is accordingly dismissed.

R.N.R.

Before Mehtab S. Gill & Rakesh Kumar Jain, JJ

KAMALJIT KAUR,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. NO. 19607 OF 2007

7th January, 2008

Constitution of India, 1950—Arts. 226 & 311(2)(b)—Punjab Police Rules, 1934—Rl.16.2(2)—Dismissal from service of a Head Constable by invoking provisions of Art. 311(2)(b) challenged—High Court quashing dismissal order while granting liberty to respondents to proceed against petitioner in accordance with law—Regular inquiry held—Enquiry Officer finding petitioner guilty of charges—Petitioner also convicted and sentenced in a criminal case—Provisions of Rl.16.2(2) provide that where an enrolled police officer is sentenced judicially to rigorous imprisonment exceeding one month or to any other punishment not less severe, shall if such sentence is not quashed on appeal or revision be dismissed—Petitioner sentenced for a period of 2 years—Merely because a revision is pending in High Court does not entitle petitioner to be reinstated in service by nullifying order of dismissal—Petition dismissed.