

CWP(T) No. 2861/2008

30.07.2010

Present: Mr. Ranjan Sharma, Advocate, for the petitioner.

Mr. R. K. Sharma, Sr. Addl. A.G. with Mr. Rajesh Mandhotra, Dy. A. G. for respondents No.1 to 3.

In the year 1977, petitioner was promoted as Assistant in the office of the Divisional Commissioner, Mandi. On 6.10.1986 he was promoted as Supdt. Grade-II (Annexure A-1). His promotion was in due compliance of the Rules and after recommendation of his name by the duly constituted Departmental Promotion Committee.

2. For the promotion of next higher post i.e. Supdt. Grade-I, the State of Himachal Pradesh has framed Rules known as the 'Himachal Pradesh Deputy Commissioners offices Superintendent Grade-I (Class-I Gazetted) Recruitment and Promotion Rules, 1993' (for short known as 'Rules'). Perusal of the rules shows that the said post is a non-selection post and is to be filled up 100% by promotion from amongst Supdt. Grade-II/Class III Non-Gazetted working in the office of the Deputy Commissioner. The relevant provision of the Rules is reproduced herein as under:-

5. Whether selection post or non-selection post	Non-selection post
10. Method of recruitment whether by direct recruitment or by promotions, deputations/transfers and the percentage of vacancies to be filled in by various methods:	100% by promotion failing which by transfer/deputation.
11. In case of recruitment by promotion, deputation/transfer, grades from which promotion/ deputation/transfer is to be made.	By promotion from amongst Superintendents Grade-II, (Class-III, Non-Gazetted), working in the office of Deputy Commissioners/ their subordinate offices in Himachal

	Pradesh with at least 3 years regular service or regular combined with continuous adhoc (rendered upto 31-3-1991, if any) service, in the grade, failing which by transfer/ deputation from amongst the incumbents working in identical pay scale/post from other Government Departments."
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3. There is no dispute that private respondent No.4 was junior to the petitioner. There is also no dispute that petitioner's services were regularized as Supdt. Grade-II w.e.f. 25.6.1988. There is also no dispute that private respondent No.4 was promoted as Supdt. Grade-I w.e.f. 20.1.1989 in terms of order dated 8.1.1990. There is also no dispute that at the time of the promotion of private respondent No.4, petitioner was not considered.

4. Now evidently, petitioner is otherwise eligible for promotion to the post of Supdt. Grade-I as he has minimum qualifying service of at least 3 years as stipulated in Rule 11 reproduced hereinabove.

5. The question is as to whether petitioner's adhoc service rendered prior to 1988 is to be considered for the purposes of promotion to Supdt. Grade-I. The rules are evidently clear. There is no ambiguity in the same. Petitioner admittedly was senior to respondent No.4. Hence, keeping in view the provision of Note -1 of Rule 11, petitioner ought to have been considered for promotion at the relevant time. This also is the understanding of the Department as they have interpreted rules in this manner. This is evident from Annexure A-7 dated 13.5.1999 whereby services of the employees stand regularized from the date of their adhoc promotion as Supdt. Grade-II.

6. In this view of the matter, the present petition needs to be allowed.

7. Mr. Ranjan Sharma, learned counsel for the petitioner has also invited my attention to the ratio of law laid down by the Apex Court in *Direct Recruit Class-II Engineering Officers' Association and Others Vs. State Of Maharashtra and Others* (1990) 2 SCC 715, wherein the Apex Court has held as under:

"A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

8. For the aforesaid reasons, the petition is allowed. The respondents are directed to consider the case of the petitioner for promotion to the post of Supdt. Grade-I from the date when his junior was promoted to the said post (Annexure A-5). Consequential action be also taken by the respondents-State.

9. Needful be positively done within a period of 3 months from the date of receipt of the certified copy of the order. It is clarified that if the order is not implemented within the aforesaid

period and the dues, if any, are not paid to the petitioner within the said period, thereafter petitioner shall be entitled to interest @6% per annum.

**(Sanjay Karol),
Judge.**

**July 30, 2010
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