

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 25.07.2024

Pronounced on: 02.08.2024

WP(C) No.1485/2021

MOHAMMAD ABDULLAH CHOWDHARY ... PETITIONER(S)

*Through: - Mr. Z. A. Shah, Sr. Adv. with
Mr. Hanan, Advocate.*

Vs.

**J&K SMALL SCALE INDUSTRIES DEV.
CORPORATION AND OTHERS ...RESPONDENT(S)**

Through: - Ms. Rekha Wangnoo, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The reliefs prayed by the petitioner through the medium of the present writ petition are reproduced as under:

"It is accordingly prayed that by an appropriate writ direction or order including a writ in the nature of certiorari Order No: 48-Admn of 2021 dated 14.07.2021 be quashed and by writ of mandamus respondents be directed to correct their records and treat the petitioner to have retired from the service of the respondent Corporation as Managing Director on the analogy of R. L. Tikoo or at least as Senior General Manager on 30.06.2010. The respondents, as a part of consequential relief be directed to promote the petitioner retrospectively by placing in appropriate pay scales as per due date of promotion and pay arrears of pay to the petitioner and also provide post retiral benefits to the petitioner based on the Pay scale of Managing Director 37400-67000 with grade pay of Rs. 8700/- or at least in the pay scale of 15600-39100 with Grade Pay of Rs. 7400/- (Senior General Manager) which the petitioner was deemed to be holding as on 30.06.2010.

It is further prayed that the previous service rendered by the petitioner in Food Corporation of India be directed to be

included for calculating post retiral benefits on the analogy of similarly placed namely, V. K. Gupta, Rajesh Thakur and Dewan Chand, who were working in different departments but subsequently appointed in SICOP, their previous rendered service was included for calculation of retiral benefits whereas same has not been done in the case of petitioner.

It is further prayed that the respondent corporation be directed to re-fix the pay correctly/properly of the petitioner on the analogy of V. K. Gupta, Rajesh Thakur and Dewan Chand etc. Their pay was fixed correctly and also protected and difference of arrears was released and paid to them. Though wrongly, pay of the petitioner was also protected but not fixed correctly arbitrarily difference of arrears were denied to the petitioner. Therefore, the petitioner was treated differently with the similarly situated officers with open discrimination.

It is further prayed that higher pay scale of the post against which the petitioner worked with effect from 16.10.1984 to 26.01.1988 may kindly be directed to be granted in the admissible pay scale of the higher post as already upheld by the Hon'ble Supreme Court as well as High Court and Administrative Tribunals respectively by catena of judgments.

It is further prayed that the respondent corporation may be directed to release the Annual Increment to the retiree of 30th June which is usually released on first of July uniformly. As the petitioner retired on 30th of June after rendering service and completing one full year from 1st July, 2009 to 30th June, 2010. Thus the earned increment is due and payable as also are granted by the Hon'ble Supreme Court, High Courts and Central Administrative Tribunals. On the analogy of these judgments the Annual Increment may kindly be granted to the petitioner retiree of 30th June, 2010.

It is further prayed that the respondent corporation be directed to release the full arrears of 6th Pay Commission without making any deductions of any allowances which are otherwise payable."

2) As per case of the petitioner he was initially appointed in Food Corporation of India on 17.09.1976 as Assistant Grade-III (Depot) whereafter he came to be appointed in J&K Small Scale Industries Development Corporation

Limited (hereinafter referred to as “the SICOP”) as Senior Assistant on 08.07.1980. The petitioner was promoted as Storekeeper on 20.04.1981 and in October 1984, he was posted as Incharge Depot Katra which is a higher post than that of Storekeeper. On 27.01.1998, the petitioner was promoted as District Manager.

3) According to the petitioner he was superseded on 01.01.1986 and on 26.09.1995 when one Shri Ratan Lal Tickoo stole a march over him even though Shri Tickoo was appointed as Assistant Typist in the SICOP on 24.01.1983 after the appointment of the petitioner. It has been submitted that Shri Rattan Lal Tickoo was promoted as Storekeeper on 01.01.1986 while the petitioner was holding the said post since 20.04.1981. Shri Tickoo was promoted as District Manager on 27.01.1988 along with the petitioner. As per the seniority list, the petitioner was figuring at serial No.1 whereas Shri Tickoo was placed at serial No.3. On 26.09.1995, Shri R. L. Tickoo was promoted as Manager in the pay scale of Rs.2000-3800/.

4) The petitioner is stated to have filed a writ petition bearing SWP No.896/1995 seeking promotion under Reservation Rules after being aggrieved of the promotion of

Shri R. L. Tickoo. The said writ petition was disposed of by this Court on 14.07.2000, in the following terms:

“This petition is also disposed of with a direction that the aforementioned grievance of the petitioner be looked into. The petitioner may, if so advised, prefer a concise representation before the respondents, in this regard also. In case the representation is filed, that be also examined. This would be done within a period of four months from the date of filing thereof. If a representation is filed before the respondents, then the petitioner's claim for all consequential benefit including monetary benefits be also gone into. In case it is ultimately found that the petitioner is entitled to monetary and those are not given to him within the aforesaid period, then he would be entitled to interest at 12% p.a. which will be payable by the person on whose count his claim is found to be wrongly ignored.”

5) The petitioner is stated to have made a representation with the respondents on 27.07.2000, claiming relief regarding his promotion to the post of Manager with effect from 27.01.1988 but the same was rejected by the respondents on 20.11.2000. The petitioner is stated to have filed another writ petition bearing SWP No.1898/2001 challenging the aforesaid action of the respondents but the same was withdrawn by him on 26.02.2007.

6) In the meantime, Shri R. L. Tickoo was promoted as Divisional Manager on 29.10.2005 and the petitioner was again superseded. On 28.03.2007, the petitioner was promoted as Manager though he was entitled to the said promotion with effect from 26.09.1995 when Shri R. L. Tickoo was promoted to the said post. It has been averred

in the writ petition that Shri R. L. Tickoo got another promotion to the post of General Manager on 15.04.2008.

7) In December 2009, the petitioner is stated to have made a representation to the Chairman SICOP and thereafter the petitioner was promoted to the post of Deputy General Manager. In May 2010, Shri R. L. Tickoo was again promoted as Senior General Manager and at this time also, the petitioner was superseded. On 30.06.2010, the petitioner superannuated from service as Deputy General Manager whereas after his retirement, Shri R. L. Tickoo was promoted as Managing Director of the SICOP on 05.01.2012.

8) Thus, according to the petitioner he was superseded firstly on 01.01.1986, then on 26.09.1995, thereafter on 29.10.2005, then again on 15.04.1988 and lastly in May, 2010. The grievance of the petitioner is that Shri R. L. Tickoo, who was junior to him, rose to the rank of Managing Director by superseding him whereas he superannuated at a much lower rank of Deputy General Manager.

9) The petitioner is stated to have made a number of representations even after his superannuation before the respondents including two representations on 08.02.2010, a representation in the year 2013, a representation in June

2015, another representation on 14.07.2016, a representation on 06.07.2017, another representation in July 2018, a representation on 18.08.2019 and another representation on 22.01.2020.

10) Ultimately, the petitioner is stated to have approached the Lieutenant Governor on 09.01.2020. On the said representation, a detailed report was called from the Industries & Commerce Department. On 19.03.2020, the Managing Director SICOP, submitted his report to the Government recommending case of the petitioner for his promotion upto the General Manager level. On 23.11.2020, the Government asked the Managing Director of SICOP to settle the issue at the level of Corporation and if need be, to place the seniority and promotion case of the petitioner before the Board for settlement. The Managing Director, SICOP, submitted his report dated 14.01.2021, in which the claim of the petitioner upto the level of General Manager was accepted on certain conditions. The said report was forwarded by the office of Lieutenant Governor to the Commissioner/Secretary to the Government, Industries & Commerce Department but nothing tangible came out of it, which compelled the petitioner to make another representation on 13.06.2021.

11) Thereafter, the respondent Corporation issued impugned order bearing No.48-Adm of 2021 dated 14.07.2021, whereby claim of the petitioner has been settled. As per the impugned order, the petitioner is deemed to have superannuated as Divisional Manager and it has been provided that his promotion shall be notional as on 30.06.2010. The impugned order further provides that the petitioner shall not be entitled to any monetary benefits/arrears and that the petitioner shall file an affidavit surrendering his claim to pay, grade and arrears. It further provides that the proposal will not disturb the seniority position of the Corporation.

12) The petitioner has challenged the impugned order, primarily, on the grounds that he was wrongly superseded on 01.01.1986, then again on 26.09.1995, thereafter on 29.10.2005, then on 15.04.2008 and lastly in May, 2010. According to the petitioner, he was entitled to be promoted to the post of General Manager on 15.04.2008 and as Senior General Manager in May, 2010. It has been further contended that the petitioner is also entitled to consequential monetary benefits.

13) The respondents have contested the writ petition by filing their reply to the same. In the reply, it has been

contended by the respondents that the writ petition is hit by delay and laches as the petitioner is seeking reliefs that were available to him when he was in service and at this belated stage, no relief can be granted in his favour. It has been contended that the writ petition is not maintainable because the petitioner is seeking parity with some of his colleagues without impleading them as parties to the writ petition, as such, there is mis-joinder and non-joinder of the parties. According to the respondents, mere filing of representations by the petitioner before different authorities from time to time does not mean that his claim for promotion at various stages of his service career is alive.

14) On merits, the respondents have submitted that initially the petitioner filed a writ petition bearing SWP No.869/1994, which came to be disposed of by this Court in terms of order dated 14.07.2000, with a direction that the grievance of the petitioner be looked into. Pursuant to the said direction, the petitioner submitted a representation before the respondents and the same was disposed of by them in terms of order dated 20.11.2000. According to the respondents once the representation of the petitioner was rejected, he filled another writ petition bearing SWP No.1898/2000 challenging action of the respondents but the same was withdrawn by him on 26.02.2007. Thus,

according to the respondents, the petitioner has no cause of action to challenge these actions of the respondents at this stage once he has abandoned and waived his right to challenge these actions of the respondents.

15) It has been submitted that Shri R. L. Tickoo was promoted as Managing Director in the year 2012 and by that time, the petitioner had already superannuated from service in the year 2010. The respondents have denied that the petitioner was superseded in the year 1986 or in the year 1995 or in the year 2008 or in the year 2010. It has been claimed that the rules relating to reservation in promotion were never made applicable to the respondent Corporation and because of this, the representation of the petitioner was rejected in terms of order dated 20.11.2000. It has been submitted that the respondents have, in order to settle the issue of promotion of the petitioner, given him notional promotion as Divisional Manager as on the date of his superannuation i.e. 30.06.2010 vide the impugned order dated 14.07.2021 and that there is no justification for granting him promotion to a higher post.

16) I have heard learned counsel for the parties and perused the record of the case.

17) From the pleadings of the parties, it is clear that way back in the year 1995, the petitioner had filed SWP No.

869/1995 challenging the action of respondents relating to his supersession and according to him, he had sought promotion on the basis of Reservation Rules. The said writ petition was disposed of by this Court in terms of order dated 14th of July, 2000, by directing the respondents to consider the claim of the petitioner who was asked to make a representation to the respondents in this regard. The respondent, rightly or wrongly, rejected the representation of petitioner in terms of decision dated 20th of November, 2000. The said decision of the respondents was challenged by the petitioner by way of another writ petition bearing SWP No.1898/2001. The petitioner withdrew the said writ petition on 26th of February, 2007, meaning thereby that he abandoned the challenge to the action of respondents, whereby claim of petitioner regarding his supersession had been rejected and his claim that he is entitled to reservation in promotion was also declined.

18) It has been claimed by the petitioner that he withdrew the writ petition on the assurance of the respondents that his grievance will be settled, but the respondents have emphatically denied having given any assurance to the petitioner. Copy of order dated 26th of February, 2007, passed in SWP No.1898/2001 has not been placed on record by the petitioner to support his assertion that an

assurance was given by the respondents to him. In these circumstances, it has to be presumed that the petitioner abandoned his challenge to the action of the respondents without any condition. Thus, he has acquiesced in the action of the respondents and accepted his supersession as well as non-consideration of his case for promotion under Reservation Rules.

19) The statement of law regarding acquiescence has been summarised in the *Halsbury's Laws of England* para 911 page 395 in the following manner:

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

- (i) acquiescence on the claimant's part; and*
- (ii) any change of position that has occurred on the defendant's part;*

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

20) In the instant case, as already noted, the petitioner gave up the challenge to his supersession and non-consideration of his case for promotion under Reservation Rules and by his conduct, he has waived his right which he

is claiming by way of the present writ petition. By his conduct, the petitioner has allowed the respondents to perpetuate his supersession and to grant promotion to his other colleagues with whom, he is claiming parity. Shri R. L. Tickoo, who according to the petitioner had superseded him, has been further promoted to higher echelons of service, as such, his seniority vis-à-vis the petitioner cannot be reviewed at this stage when the petitioner has already superannuated from service fourteen years ago.

21) Learned Senior Counsel appearing for the petitioner has submitted that the petitioner has been agitating his rights before the respondents and several other authorities by making repeated representations throughout his service career and even after his retirement. It is being submitted that all these representations were under active consideration of the competent authorities and, in fact, by virtue of the impugned order, which has been passed in the in the year 2021, a part of the grievance of the petitioner has been settled by the respondents by giving him notional promotion as Divisional Manager. Therefore, the claim of the petitioner is live and it cannot be stated that the same has become stale with the passage of time. In fact, learned Senior Counsel has argued that passing of the impugned order has given a fresh cause of action to the petitioner.

22) So far as the assertion of the petitioner that he has been making representations agitating his rights and claim before the respondents and other authorities is concerned, there cannot be any doubt about the same. The petitioner has placed or record documents to this effect and in fact, the respondents have also not denied the fact that the petitioner has been representing before them. The question arises as to whether mere submission of repeated representations with the authorities highlighting the grievances would refresh the cause of action which has otherwise become stale.

23) The aforesaid question came up for consideration before the Supreme Court in the case of **C. Jacob vs. Director of Geology and Mining**, (2008) 10 SCC 115. The Supreme Court in the said case, while dealing with the aforesaid aspect of the matter, observed as under:

“Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.”

24) From the aforesaid enunciation of law on the subject, it is clear that mere filing of representations relating to

matters which have become stale or barred by limitation would not furnish a fresh cause of action or revive a stale or dead claim even if the said representations are responded to by the competent authorities or even if the Court has directed consideration of such representations.

25) In the instant case, the petitioner through the medium of present writ petition is seeking to reopen the issue of his seniority vis-a-vis Mr. R. L. Tickoo and has claimed that he has been superseded initially in the year 1995 i.e. 26 years prior to filing of his writ petition. In fact, the petitioner, according to him, was repeatedly superseded by the respondents right up to his superannuation from service. As already stated, the petitioner abandoned his challenge to the aforesaid actions of the respondents. He cannot now, after a delay of decades together, ask this Court to reopen the issue of his seniority and alleged supersession.

26) The Supreme Court in the case of **Ghulam Rasool Lone vs. State of J&K**, (2009) 15 SCC 321, has held that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. Similarly, in the case of **P. S. Sadasivaswamy vs. State of Tamil Nadu**, (1975) 1 SCC 152, the Supreme Court has held as under:

“2. ... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.”

27) Relying upon the above referred judgments, the Supreme Court in the case of **State of Uttaranchal and another vs. Shiv Charan Singh Bhandari and others**, (2013) 12 SCC 179, while dealing with a case of seniority and promotion, observed as under:

“27. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. As we perceive neither the Tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion.

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the

concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court.

29. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, has it been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.”

28) From the foregoing analysis of law on the subject, it can safely be stated that a stale claim of getting promotional benefits cannot be agitated at a blated stage. Even though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution, yet the writ petition should ordinarily be filed within a reasonable time. In the instant case, twenty-six years after having been superseded, the petitioner’s challenge to the said action of the respondents cannot be entertained by way of present writ petition. As has been clearly laid down by the Supreme Court in **State of Uttaranchal vs. Shiv Charan Singh Bhandari** (supra), even the notional promotional benefits cannot be granted to the petitioner at this blated stage.

29) It is true that the respondents have been considerate enough to entertain the claim of the petitioner for his promotion when the same had become stale and when he had already abandoned his challenge to his supersession at various stages but their benevolent approach towards the petitioner cannot give him a license to claim promotion to the higher ranks and the consequential benefits at this belated stage, particularly when he has acquiesced in the action of the respondents for all these years during his service career and thereafter.

30) Not only this, the record produced by the respondent would show that the petitioner has sworn an affidavit on 02.06.2021 and submitted the same with the responders in which he has specifically undertaken that if his request for elevation to the next post is accepted/considered, he will not claim any monetary benefits except pension and GSI/ gratuity. In the said affidavit, the petitioner has requested that he may be promoted to the next higher post, which, obviously, is the post of Divisional Manager. The respondents have accepted the request of the petitioner and the undertaking given by him, whereafter they have acted upon the same and issued the impugned order thereby promoting the petitioner to the next higher post on notional basis. The petitioner cannot resile from the said

undertaking and claim not only promotions to the higher posts but also monetary benefits which he has sought to do by way of present writ petition. He is estopped from doing so once he has undertaken that he will accept promotion to the next higher post on notional basis. It is pertinent to mention here that the undertaking given by the petitioner can, by no stretch of imagination, be stated to have been given by him under undue influence because the petitioner has already superannuated from service and is no more an employee of the respondents. Therefore, it cannot be stated that the respondents were in a dominant position vis-à-vis the petitioner and because of their position, they have succeeded in extracting the aforesaid undertaking from him. The claim of the petitioner regarding his further promotion and consequential benefits is, therefore, liable to be rejected on this ground as well.

31) For the foregoing reasons, I find no merit in this petition. The same is dismissed accordingly.

32) The record be returned to learned counsel for the respondents.

(Sanjay Dhar)
Judge

Srinagar,
02.08.2024
“Bhat Altaf-Secy”

Whether the order is reportable:

Yes/No