

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 20430 OF 2013 (O&M)

Date of Decision: 27.2.2015

Krishan Kumar

....Petitioner

Versus

Haryana State Industrial and Infrastructure Development Corporation
Limited and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. R.K.Malik, Sr. Advocate with
Ms. Rimpi Soni Kadyan, Advocate
for the petitioner.

Mr. Dheeraj Chawla, Advocate
for respondent No.1.

None for respondent No. 2.

RAMESHWAR SINGH MALIK J. (Oral)

Feeling aggrieved against the impugned communication dated 5.8.2013 (Annexure P-8), whereby petitioner was informed that he has not secured minimum 60 marks, i.e. the benchmark required for promotion, petitioner has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari. Petitioner also seeks a writ

in the nature of Mandamus, directing the respondent authorities to promote the petitioner with effect from the date when his junior, i.e. respondent No.2, has been promoted to the post of Senior Manager (IA).

Notice of motion was issued and pursuant thereto, written statement was filed on behalf of respondent No.1. However, despite service, neither anybody has appeared on behalf of respondent No.2 nor any written statement has been filed on his behalf.

Learned senior counsel for the petitioner submits that the petitioner was entitled for due weightage for his higher qualification of degree of AMIE in Civil Engineering as well as MBA. He refers to the qualification prescribed for this very post by way of direct recruitment, which is a degree in Civil Engineering preferably with MBA as an additional qualification. He further submits that eligibility of the petitioner was also not in dispute. Petitioner worked as Manager (civil) in the respondent-corporation for more than five years. Once the petitioner had acquired higher qualification of AMIE degree in Civil Engineering as an additional qualification and has also passed MBA, respondent authorities were under legal obligation to award the earmarked scores for the additional qualification to the petitioner, at the time of considering him for promotion to the post of Senior Manager (IA). Relying upon the criteria for selection to the post in question, he submits that, had the respondent authorities granted five marks to the petitioner either on his acquiring additional qualification of AMIE degree or degree of MBA, he would have secured total 62 marks, whereas the minimum required marks for achieving the

benchmark were 60 and the petitioner would have been promoted. Since the respondent authorities have proceeded on an arbitrary approach, while not awarding five marks to the petitioner for his higher qualification, action of the respondent authorities was patently illegal. He prays for setting aside the impugned order, by allowing the present writ petition.

Per contra, learned counsel for the respondent-corporation submits that once the petitioner had already been granted due weightage for his additional qualification of degree of AMIE during the period when he was Sales Manager (utility) in the year 2007, he was not entitled for the same benefit again. He further submits that so far as degree of MBA was concerned, that was only a preferential qualification and that too, only in the case of direct recruitment. He concluded by submitting that the petitioner was not entitled for the benefit of additional qualification either of AMIE degree or degree of MBA, for promotion to the post in question. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after going through the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given facts and circumstances of the case, instant writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

It has gone undisputed on record that as per the prescribed criteria for promotion by way of selection for the post in question, five

marks were earmarked for higher qualification. It is also not in dispute that the petitioner had acquired higher qualification, i.e. degree of AMIE. Acquiring of degree of MBA by the petitioner is also a matter of record. Degree of MBA has been prescribed as preferential qualification for the post in question, when it was to be filled by direct recruitment. It is also not in dispute that the post in question, i.e. Senior Manager (IA) was a selection post. Additional qualification acquired by the petitioner was in the same line. The AMIE degree in Civil Engineering had already been recognised by the respondent-corporation, while giving due weightage to the petitioner for this very qualification, at the time of his earlier promotion to the post of Manager (utility).

It is also a matter of record that, had the respondent authorities granted five marks to the petitioner which were earmarked for higher qualification, petitioner would have achieved the benchmark by securing total 62 marks, because the minimum required marks were 60. Having said that, this Court feels no hesitation that the respondent authorities proceeded on a factually incorrect and legally misconceived approach, while finalising the selection proceedings vide Annexure P-9, whereby the petitioner was illegally denied five marks for his additional qualification of AMIE degree in Civil Engineering as well as MBA.

Once the respondent authorities themselves rightly recognised the additional qualification acquired by the petitioner, i.e. AMIE degree in Civil Engineering and granted him benefit thereof, at the time of his earlier promotion to the post of Manager (Utility), the

respondent authorities were duty bound to consider the same qualification for the post in question by granting earmarked five marks for additional qualification, at the time of selection for the post in question, i.e. Senior Manager (IA). It is so said, because the petitioner had acquired higher qualification in the same line, which had already been rightly recognised by the respondent authorities themselves.

During the course of hearing, when the learned counsel for the respondent-corporation was asked to show any bar for granting the benefit of said higher qualification to the petitioner at the time of second promotion, he had no answer and rightly so, because it was a matter of record. Further, the petitioner had also acquired a degree of MBA, which was admittedly a preferential qualification for this very post, when it is to be filled by way of direct recruitment. However, the respondent authorities have illegally ignored both the degrees acquired by the petitioner, i.e. degrees of MBA and AMIE at the time of selection for the post in question, which was a patently illegal exercise carried out by the respondent authorities. Under these circumstances, it can be safely concluded that the petitioner was entitled for promotion by granting him five marks, which were earmarked for higher qualification. Once the petitioner gets five marks, he would make the benchmark scoring total 62 marks and would become entitled for promotion to the post of Senior Manager (IA).

The abovesaid view taken by this Court also finds support from the judgment dated 20.2.2015 passed by this Court in CWP No.

15751 of 1995 (Pawan Kumar Jain Vs. The Haryana Financial Corporation and others), wherein an identical issue fell for consideration before this Court and the same was decided, observing as under:-

“A bare reading of the above said averment taken on behalf of the respondent-Corporation would show that plea raised by the petitioner in this regard has been indirectly admitted. His qualification of Post Graduate Diploma in Business Management was duly recognized, giving due weightage to the petitioner at the time of his entry into service, followed by granting the benefit of one advance increment at the time of his initial appointment. This is the reason that the respondent-Corporation has stated that the petitioner cannot be given benefit again and again for his qualification.

Had the post of Additional General Manager not been a selection post, there would have been no dispute in this regard. However, admittedly the post of Additional General Manager was to be filled up by way of selection and the respondent-Corporation itself has laid-down the selection criteria, wherein 10 marks were earmarked for higher qualification. It is also not in dispute that the petitioner was not granted 10

marks for his above said higher qualification because of which he secured total 51 marks whereas the bench-mark was 55 marks. Having said that, this Court feels no hesitation to conclude that once the respondent-Corporation has itself recognized the above said qualification of the petitioner as higher qualification and granted him the benefit of one advance increment, respondent-Corporation cannot be permitted to turn around and say at later point of time that the petitioner was not entitled for 10 marks for the same qualification at the time of consideration for promotion to the post in question. Thus, impugned order annexure P-11 cannot be sustained. It is again a matter of record and not in dispute that one Annual Confidential Report of the petitioner was recorded as good, but was down-graded by the higher authority as satisfactory, however, it was never communicated to the petitioner. Out of total 5 Annual Confidential Reports, if this uncommunicated satisfactory Annual Confidential Report is excluded, the petitioner would still make the bench-mark getting 55 marks. Applying the principle of aggregate, the petitioner would get 49 marks for his Annual Confidential Reports. One Annual Confidential

Report of the petitioner was very good and 3 were good. For these four Annual confidential Reports, the petitioner would get 39 marks and taking the average thereof, he will get another 10 marks, total being 49 marks.

The petitioner had already been granted 2 marks for seniority and 4 marks in the interview. Thus, adding these 6 marks to 49, he would get 55 marks and would achieve the bench-mark. In this manner, testing the case of the petitioner on both the above said counts, he would be entitled for awarding 55 marks on the basis of his Annual Confidential Reports. When granted 10 marks more for his higher qualification, he would get 65 marks. In either of the situations, the petitioner was entitled for promotion with effect from the same date when his juniors were promoted.”

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned communications dated 5.8.2013 (Annexure P-8) and 8.9.2013 (Annexure P-9) have been found to be patently illegal, the same cannot be sustained and are hereby set aside. Petitioner is declared entitled for five marks for acquiring higher qualification of AMIE and MBA.

Consequently, the respondent authorities are directed to reconsider the claim of the petitioner for promotion to the post of Senior Manager (IA) granting him five marks for his additional qualification. Let the needful be done within a period of six weeks from the date of receipt of a certified copy of this order.

Resultantly, instant writ petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

27.2.2015
AK Sharma