

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

**CWP No. 23758 of 2014 (O&M)
DATE OF DECISION :- September 23, 2015.**

Surinder Kumar

...Petitioner

Versus

Union of India and others.

...Respondents

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Mr. Dinesh Kumar, Advocate for the petitioner.

Mr. Rajesh Garg, Senior Advocate
with Mr. Sandeep Kumar, Advocate for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

C.M. No. 12498 of 2015

Heard.

The application is allowed subject to all just exceptions and the applicant is permitted to place on record Annexures P11 to P18.

CWP No. 23758 of 2014

1. The petitioner was appointed as an Assistant Accounts Officer on 17.5.2007. Thereafter, Departmental Promotion Committee (DPC) in its meeting held on 17.11.2012 recommended him for

promotion to the post of Accounts Officer. The 2nd respondent herein approved the above recommendation made by the DPC in favour of the petitioner but the recommendation made by the DPC and the approval granted by the 2nd respondent were kept in a sealed cover on the ground that a complaint has been made with regard to the initial appointment of the petitioner. The petitioner has sought a direction to promote him by opening the sealed cover in terms of the approval given by the 2nd respondent. It was contended by the petitioner that no departmental or criminal proceedings are pending as against him and, therefore, his promotion cannot be withheld by consigning the recommendation made by DPC to a sealed cover.

2. It was contended by the 2nd respondent that based on a complaint received as against the petitioner that he lacked essential qualification/eligibility criteria, it was decided to keep the DPC recommendation in a sealed cover and to initiate an enquiry as against him qua his eligibility.

3. Heard the submissions made on either side.

4. Learned counsel appearing for the petitioner would submit that the petitioner who belongs to a downtrodden section is being humiliated by the 2nd respondent by consigning the recommendation made by the DPC to a sealed cover and initiating departmental action as against him for no fault he committed at the time of his original appointment as an Assistant Accounts Officer.

5. Per contra, learned counsel appearing for the 2nd respondent would vehemently contend that the petitioner had not

acquired two years' experience in accounts in a reputed institution at the time when he applied for the post and, therefore, departmental action has been initiated.

6. We directed the 2nd respondent to produce the file relating to the appointment of the petitioner as an Assistant Accounts Officer. In deference to the orders passed by this Court, the entire file was produced before us for scrutiny. After thoroughly perusing the same, we find that the petitioner who had acquired the qualification of M.Com. and one year's teaching experience in accountancy in a school, applied for the post of Assistant Accounts Officer, despite the prescription of two year's experience in accounts in a reputed institution in the advertisement for the post of Assistant Accounts Officer. The Screening Committee thoroughly evaluated the qualification, experience and the performance of the petitioner in the interview conducted and came to a conclusion that he was eligible for appointment to the post of Assistant Accounts Officer. It is to be noted that the Screening Committee had consciously noted the fact that the petitioner had not acquired the experience of two years in accounts in a reputed institution as required for the post of Assistant Accounts Officer. It may be a case where the Screening Committee having found that the petitioner was the only eligible Scheduled Caste candidate, relaxed the above requirement of experience and recommended him for appointment as an Assistant Accounts Officer.

7. It is an unfortunate case where the department has now proposed to initiate action as against him as though he had suppressed

the 2 year's experience required in accounts or he had played fraud upon the 2nd respondent in securing the appointment by total misrepresentation. A conscious decision was taken by the Screening Committee having noted specifically the fact that the petitioner had not acquired two year's experience in accounts to appoint him as an Assistant Accounts Officer. After all, the petitioner had taken a chance by applying for the post of Assistant Accounts Officer, despite having only one year experience, that too in teaching in accounts subject. He had been transparent in projecting his experience at the time when he applied for the above post. The Screening Committee also took a well informed decision, noting specifically his lack of experience as required.

8. In the above facts and circumstances, we are at a loss to understand the heinous crime that has been committed by the petitioner while securing the post of Assistant Accounts Officer, necessitating the department to pounce on the petitioner with departmental proceedings.

9. It is really paining to note that in spite of our direction in RA No. 418 of 2013 (O&M) decided on 29.10.2013 (Annexure A-11) to the Authorities concerned to give due consideration for the impending promotion of the applicant, promotion was not given as per recommendation made by the DPC and the approval accorded by the 2nd respondent.

10. In our view, the departmental proceedings initiated as against the petitioner, for no fault apparently committed by him, cannot be a ground to withhold his promotion by consigning the

recommendation of DPC to the sealed cover. Though he had entered service with lack of experience, at the time when he was recommended for promotion by DPC, he had already completed five years' experience. Had he put in unsatisfactory service, no such favourable recommendation would have been made by the DPC and an approval accorded thereon by the 2nd respondent.

11. We are of the view that if an employee is directed to face a departmental enquiry for no fault he committed, a wrong signal will reach the employees which may not be in the interest of a Welfare State. Therefore, the departmental proceedings initiated as against the petitioner shall be revisited by the department in the above observations made by this Court.

12. In the result, the order passed by the learned Tribunal is set aside and the Writ Petition is allowed with a direction to the 2nd respondent to open the sealed cover wherein the recommendation by DPC and the approval accorded by the 2nd respondent had been consigned and his case for promotion be positively considered with effect from the date when the other eligible employees had been promoted based on the recommendation of the DPC held on 17.11.2012.

**(M. JEYAPPAUL)
JUDGE**

**(DARSHAN SINGH)
JUDGE**

September 23, 2015

p. singh