

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

LPA No.731 of 2014 (O&M)
Date of decision: **07.05.2015**

Devi Ram Punia

...Appellant

Versus

State of Haryana and others

...Respondents

**Coram: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.S.S.Shekhawat, Advocate
for the appellant.

Mr.Lokesh Sinhal, Addl. A.G., Haryana.

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 24.2.2014 passed by the Learned Single Judge, whereby, CWP No.12161 of 2011 filed by the appellant seeking directions to quash the order dated 8.6.2011 (Annexure P-12) passed by respondent No.3, rejecting his representation for promotion to the post of Deputy Director from the date when his juniors were promoted, was dismissed.

The appellant was appointed as Assistant Employment Officer on 31.8.1981 in the Department of Employment, Haryana. He was promoted as District Employment Officer on 20.8.1992. One FIR dated 12.10.1999 under Sections 420/468/471 IPC and Sections

7 and 13(1)(c)(d) of the Prevention of Corruption Act, 1988 was registered against him at Police Station, State Vigilance Bureau, Hisar. Simultaneously, departmental proceedings were initiated and a charge-sheet dated 20.2.2002 for punishment under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for short 'the Service Rules') was served upon him. He was acquitted in the criminal case vide judgment dated 21.2.2009. The departmental proceedings were dropped on 7.7.2009. However, before the departmental proceedings were dropped, the appellant had been awarded punishment of stoppage of one increment without cumulative effect, vide order 28.9.2005. in respect of an earlier charge-sheet dated 20.11.2001 under Rule 7 of the Service Rules, Still another charge-sheet dated 28.2.2006 was served on the appellant. In this charge-sheet, punishment of stoppage of two increments without cumulative, was imposed upon him vide order dated 26.6.2008.

Meanwhile, a meeting of Departmental Promotion Committee (DPC) was held on 16.11.2005 for considering cases for promotion to the post of Assistant Director/ Divisional Employment Officer from District Employment Officers. The appellant was not considered for promotion because of the pendency of the charge-sheets, but six officers were promoted to the post of Divisional Employment Officers vide order dated 16.12.2005. Subsequently also, juniors of the appellant were promoted to the post of Divisional Employment Officers vide orders dated 3.7.2006, 28.8.2008 and

21.1.2010.

After his acquittal in the criminal case, the appellant represented that he be considered for promotion to the post of Divisional Employment Officer w.e.f. 16.12.2005 when his juniors were so promoted. The appellant was promoted to the post Divisional Employment Officer w.e.f. 14.12.2010, but his plea to promote him w.e.f. 16.12.2005 was rejected vide order dated 8.6.2011 (Annexure P-12), which was impugned by him through the writ petition.

The Learned Single Judge dismissed the writ petition holding that on each of the occasions when the juniors of the appellant were promoted, either the appellant was facing departmental proceedings or the punishment imposed upon him in the departmental proceedings was in operation and as such, his case for promotion could not have been considered.

While the Learned counsel for the appellant did not dispute that promotion could be withheld because of the pendency of departmental proceedings, he is aggrieved of the finding of the Learned Single Judge that the promotion could be withheld even during the currency of the punishment. The case of the Learned counsel for the appellant is that instructions to the effect that no promotion should be allowed to any employee during the currency of punishment or stoppage of his grade increments were issued by the State of Haryana on 31.5.2006, which is subsequent to the date of the holding of DPC i.e. 16.12.2005 and hence, these instructions would not aid the respondents in withholding his promotion during the

currency of the punishment of stoppage of increments without cumulative effect.

This argument has been duly considered and rightly rejected by the Learned Single Judge by holding that these instructions are based on the decision dated 28.2.1995 of the Hon'ble Supreme Court in the case of **State of Tamilnadu vs. K.S.Muragesan and others** , 1995(3) RSJ 271, wherein, it was held that in consideration for promotion the currency of punishment based on previous record stands as an impediment. The Learned Single Judge rightly held that though the instructions were issued subsequently, but the law in this regard is to be taken to be settled from the date of pronouncement of the judgment in the ***Muragesan's case*** i.e. 28.2.1995, which is before the date of holding of the meeting of DPC for consideration for promotion as Divisional Employment Officer.

Accordingly, there is no merit in this appeal and the same is dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

May 07, 2015
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