

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

CWP No. 10159 of 2013

Date of Decision:- 25.04.2016

Om Parkash Uda

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. Subhash Ahuja, Advocate
for the petitioner.**

Mr. Hitesh Pandti, Additional Advocate General, Haryana.

RITU BAHRI, J. (Oral)

Petitioner by way of present petition is seeking directions to the respondents to promote him on the post of Joint Director w.e.f. 01.10.2011 and grant him all the consequential benefits.

Petitioner while serving as an Assistant in respondent's department, was selected and appointed as District Public Relation Officer on 31.03.1992. He worked as Public Relations Officer and got various appreciation letters (Annexures P-1 to P-3). Thereafter, he was promoted as Deputy Director on 23.06.2003 on the basis of his seniority-cum-merit, vide order dated 20.06.2003 (Annexure P-4). The next promotional post from the post of Deputy Director was Joint Director and necessary

qualifications as per Haryana Public Relations Departmental (Group A) Service Rules, 1982 is as under: -

“Four years experience as Deputy Director, Radio and Press Liaison Officer, OR Divisional Campaign Officer.”

A post of Joint Director became available in the department on 01.10.2011 but petitioner was not promoted. Thereafter, he moved an application for his promotion dated 04.10.2011 (Annexure P-5) and his case was sent by respondent No.3 i.e. Director General, Information, Public Relations & Cultural Affairs Department to the Government, vide letter dated 07.10.2011 (Annexure P-7). The Government vide letter dated 17.10.2011 (Annexure P-8) directed respondent No.3 to send promotion agenda to the Government within two days for convening of Departmental Promotion Committee (for short 'DPC'). On the very next day office of respondent No.3 sent the promotion agenda to Government vide letter dated 19.10.2011 (Annexure P-9). The petitioner thereafter retired on 31.10.2011.

The grievance of the petitioner is that as per government instructions dated 20.05.2010 (Annexure P-6) the panel of all anticipated vacancies for promotion quota up to 31st December of next year in November every year by convening the meeting of DPC i.e. before 31.03.2011, so that the promotion was to be made without any loss of time. Despite the recommendation being made for promotion on 19.10.2011 (Annexure P-9), the petitioner was made to retire on 31.10.2011 and on this account he suffered financial benefits and recurring loss of pension. The petitioner made two more representations dated 30.12.2011 and 29.06.2012 (Annexure P-12), claiming his promotion to the post of Joint Director. In

response to which, he has been informed vide letter dated 02.04.2013 (Annexure P-13) by the office of respondent No.2 that he could not be promoted prior to the date of his retirement as meeting of the DPC could not be convened on account of certain administrative reasons. The grievance of the petitioner further is that after he retired on 31.10.2011, the DPC was held on 27.12.2011, in which, name of one Mr. Ashok Kumar, Deputy Director, was recommended to officiate as Joint Director, who was two steps down in seniority list of Deputy Directors. Ashok Kumar was given the charge of officiating as Joint Director as one Satish Kumar Joshi is facing disciplinary proceedings. Thereafter, Mr. Satish Kumar Joshi, was exonerated from the charges vide order dated 19.06.2012 (Annexure P-15) and DPC was called immediately and he was promoted as Joint Director, vide order dated 16/18.07.2012 (Annexure P-16) i.e. 13 days prior to the date of retirement of Satish Kumar Joshi on 31.07.2012. Thereafter, Ashok Kumar was regularly promoted, vide order dated 31.10.2012 (Annexure P-17). One Ram Bhagat Sharma, Deputy Director, has been promoted as Joint Director by upgrading to the post of Joint Director to that of Additional Director, vide order dated 13.02.2013 (Annexure P-19) and that too before the date of his retirement on 31.03.2013. One R.K. Rathi, was given the benefit by upgrading the post of Administrative Officer to the post of Deputy Director (Admn.), vide order dated 04.06.2008 (Annexure P-20), who otherwise should have retired as Administrative Officer. In the same manner, Bhal Singh, Projected Director (CA), was granted promotion as Additional Director (Art, Language & Cultural Affairs) by upgrading to the post as a personal measure and without calling

for any DPC incumbent, vide order dated 16.09.2010 (Annexure P-21). Similarly, the post of Joint Director (Press) was upgraded to the post of Additional Director, vide order dated 09.03.2011 (Annexure P-22), by giving promotion to Rajiv Khosal as a personal measure to him.

Mr. Subhash Ahuja, learned counsel for the petitioner, has vehemently argued that the department has arbitrarily not promoting the petitioner before the date of his retirement to the post of Joint Director and the explanation given in the written statement that DPC could not be held on account of administrative reasons cannot be accepted as Ashok Kumar was given charge to officiating Joint Director on 27.12.2011 by the DPC. Similarly, some posts have been upgraded to give benefits to employee before they had retired and had promoted as matter of personal measure to them.

The details of promotion of Ashok Kumar and other employees have been given in paragraph 12 of the writ petition. In response to this the stand taken in the written statement filed by official respondents is that they have not denied the said orders, however, it has only been reiterated that the DPC was not called specially to give promotions to these officers and the only explanation given in the written statement is that on account of administrative reasons the promotion could not be given to the petitioner and he cannot claim as a matter of right that he should be promoted to the post of Joint Director before this retirement on 31.10.2011.

The petitioner in his replication has placed on record the minutes of meeting of the DPC held on 08.10.2012 (Annexure P-23). In this meeting, Ashok Kumar was promoted to the single post of Joint

Director on regular basis and even Satish Kumar Joshi had been promoted just 13 days before the date of his retirement i.e. 31.07.2012, vide order dated 18.07.2012 (Annexure P-16).

Mr. Ahuja has also referred to an order dated 12.08.2014 (Annexure P-25) where Ashok Kumar with the Government has been sanctioned up-gradation to the post of Joint Director as Additional Director, there holding Ashok Kumar to the post of Additional Director as a personal measure in the Information and Public Relations Department. Ashok Kumar due to retire on 31.08.2014 and this order has been passed on 12.08.2014 i.e. just before 19 days prior to his retirement.

The petitioner in the present case despite the fact that the post of Joint Director had become available on 01.10.2011 and immediately thereafter his case has been recommended for promotion for convening the DPC on 17.10.2011 (Annexure P-8). Respondent No.3 has sent the promotion agenda to the Government on 19.10.2011 (Annexure P-9) i.e. 13 days prior to his retirement. Ashok Kumar, who was junior to the petitioner, has been given officiating charge on 27.12.2011 (Annexure P-14).

The stand taken by the respondents that the DPC could not be held on account of administrative reasons is not made out and the post which became vacant was filled on 27.12.2011 and Ashok Kumar was officiated as Joint Director. Moreover, as per the details given in paragraph 12 of the writ petition, a number of persons were granted promotions or the posts were upgraded before their retirement to extend them benefit of promotion and these orders had not been disputed by the department.

Similar controversy came before this Court in the case of Gian Chand Vs. State of Haryana and others, in CWP No. 657 of 2010, decided on 01.03.2011. In that case the petitioner was due to retire on 31.10.2008 and before this date on 19.09.2008 the DPC conducted its proceedings and recommended the name of the petitioner for promotion. It was the official respondents who did not approve the proceedings of DPC and in the meantime, the petitioner retired on the basis of same recommendations and the government approved the promotions of other persons, which was considered by the DPC and they were promoted as Superintendent (District Level). Consequently, the writ petition was allowed on the ground that once the DPC had recommended the name of the petitioner, there was no occasion to withhold such promotion from him.

In the present case, the promotion agenda was sent to the Government, vide letter dated 19.10.2011 (Annexure P-9) i.e. 13 days prior to the retirement of the petitioner and no explanation has been given what administrative reasons were there for not holding the DPC whereas one Ram Bhagat Sharma, Deputy Director, who was promoted as Joint Director without being any vacancy, vide order dated 28.03.2010 (Annexure P-18). Ram Bhagat Sharma, was given another promotion to the post of Additional Director, vide order dated 13.02.2013 (Annexure P-19) before the date of his retirement on 31.03.2013. Even in the case of Ashok Kumar, vide order dated 18.08.2014, he was promoted to the post of Additional Director whereas he was due to retire on 31.08.2014 and even this order has been passed 14 days before his retirement. Further the petitioner has placed on record minutes of meeting of the DPC held on 05.02.2010

(Annexure P-24) whereas Ram Bhagat Sharma, Deputy Director, was promoted to the post of Joint Director by upgrading the post where the DPC without any recommendation promoted Ram Bhagat Sharma against an anticipated vacancy of Joint Director w.e.f. 01.05.2010. Orders (Annexure P-24 and P-25) make abundantly clear that only reason for depriving the petitioner to be promoted on the post of Joint Director that the DPC could not be held on account of administrative reasons whereas as per minutes of meeting held on 05.02.2010 (Annexure P-24) even suo motu decision of DPC to promote Ram Bhagat Sharma to the post of Joint Director in anticipation vacancy of Joint Director. In the case of the petitioner, the vacancy became available before this retirement. It is not the case of the respondents that the petitioner was having any adverse entry which could be a cause for not to promote him to the post of Joint Director.

In view of above facts, the present writ petition is allowed and the direction to the respondents to pass a fresh order promoting the petitioner to the post of Joint Director and release all the consequential benefits to him thereafter, within a period of one month, from the date of receipt of certified copy of this order.

April 25, 2016
naresh.k

(**RITU BAHRI**)
JUDGE