

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10647 of 2015
Date of Decision:- 30.03.2016

Vinod Kumar Datta

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

**Present: Mr. Sanjay Kaushal, Senior Advocate
with Mr. Anurag Goyal, Advocate
for the petitioner.**

Mr. Hitesh Pandit, Addl. A.G., Haryana.

**Mr. Naresh Prabhakar, Advocate
for respondent No.2.**

RITU BAHRI, J. (Oral)

Petitioner by way of present petition seeking quashing of
impugned order dated 08.05.2015 (Annexure P-22).

Pursuant to advertisement issued in the year 1993 by the Haryana
Roadways Engineering Corporation, the petitioner was appointed as Foreman
in the pay scale of ₹1640-2900, vide appointment letter dated 27.08.1993.

Thereafter, he was promoted to the post of Works Manager on 23.06.1999.

Similar controversy came into consideration before this Court in the year 1987 and the Draft Rules of the Corporation were prepared in the year 1988. The petitioner is claiming for promotion to the post of General Manager, which is being denied to him by making promotion by way of transfer from the Transport Department. The Commissioner of Transport Department of Haryana works as Managing Director of the Corporation. The Corporation is governed under the service rules applicable to the employees of the Transport Department, Haryana as per the decision taken on 04.12.1987 (Annexure P-1).

Under the above-said Rules, the Group 'A' employees of the Corporation governed under the Rules of Transport Department, Haryana. As per Rules 7, 9(I) (1) and appendix thereto, the eligibility for promotion to the post of Manager has been laid as under: -

“No person shall be appointed to any post in the Service unless he is in possession of qualifications and experience specified in column 3 of Appendix to these rules in the case of direct recruitment and those specified in column 4 of the aforesaid Appendix in the case of appointment other than by direct recruitment:

XX XX XX

9. (1) Recruitment to the Service shall be made:-

XX XX XX

(j) in the case of Deputy Transport Controller (Planning and Development), -

- (i) by promotion from amongst Statistical Officer, or
- (ii) by transfer or deputation of an officer already in the service of any State Government or the Government of India;

(k) XX XX XX

(I) In the case of General Manager and Secretary, Regional Transport Authority, --

- (i) by promotion from amongst Works Manager, Service Engineer, Stores Purchase Officer or Traffic Manager, or
- (ii) by transfer from Haryana Civil Service (Executive Branch) Cadre,

XX XX XX

APPENDIX 'B'

<i>Sr. No.</i>	<i>Designation of post</i>	<i>Academic qualification and experience, if any, for direct recruitment.</i>	<i>Academic qualifications and experience, if any, for appointment other than by direct recruitment</i>
	General Manager	XXX	Diploma in Automobile or Mechanical Engineering with five years experience as Works Manager, Service Engineer, Stores Purchase Officer, or Graduate with five years experience as Traffic Manager.

The petitioner is having the qualification of diploma in Mechanical Engineering and is eligible for promotion to the post of General Manager since June 2004. Initially, one Joginder Singh, who was working as Works Manager at Sirsa was transferred as Officiating General Manager in the Corporation against vacant post which was challenged by the petitioner by way of CWP No.10164 of 2008. During the pendency of this writ petition, Joginder Singh was sent back to the Haryana Roadways as General Manager. Thereafter, one N.K. Garg, who was working as Works Manager in the Transport Department, was ordered to be given the officiating charge of the General Manager of the Corporation. The said writ petition wherein the challenge was to the appointment of Joginder Singh was withdrawn by the petitioner with the liberty to challenge the appointment of N.K. Garg, vide order dated 19.03.2009. Thereafter, before the petitioner could challenge the appointment of N.K. Garg, as officiating General Manager, a new order was passed on 07.08.2009 (Annexure P-9) whereby one Rajiv Nagpal, who was working as Purchase Officer in the Transport Department, was ordered to be promoted to the post of Deputy Transport Controller w.e.f. 11.12.2008 and by way of same order he was also given posting as General Manager in the

respondent Corporation. Petitioner challenged the order (Annexure P-9) by way of CWP No.19921 of 2009. In the written statement, the respondents have denying the promotion on the ground by applying Draft Rules. The said writ petition was disposed of by making reference to the case of **Union of India Vs. Puranjit Singh and another** (CWP No.18535 of 2007, decided on **14.12.2007**) and giving directions to the respondents to consider the case of the petitioner for promotion to the post of General Manager. The case of the petitioner was rejected by the Corporation, vide order dated 23.11.2011 (Annexure P-11). This order was challenged by means of CWP No.3674 of 2012. In this writ petition, the respondent filed written statement (Annexure P-19) (colly.) and finally it was disposed of on 09.03.2015 (Annexure P-21) by giving the following observations: -

“In view of this binding precedent even the third argument raised by learned counsel for the respondents is rejected. In these circumstances, the petition is allowed and the impugned orders are set aside. The respondents are directed to consider the case of the petitioner for promotion after accepting his eligibility. Seeing the long struggle and multiple litigation which the petitioner has had to endure for this promotion, it is directed that necessary consideration be made as per law within a period of one month from the date of receipt of a certified copy of this order.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.”

The case of the petitioner was again rejected, vide order dated 08.05.2015 (Annexure P-22). The rejection was based upon rules which are yet to be notified though approved Haryana Roadways Engineering Corporation Employees Service Rules (Annexure P-23).

Learned counsel for the petitioner has vehemently argued that as per detailed judgment given by this Court vide order dated 09.03.2015 (Annexure P-21), the respondents could not rely upon the Draft Service Rules,

to reject the legitimate claim of the petitioner for promotion to the post of General Manager. The petitioner had been appointed as Foreman and thereafter he promoted as Works Manager as per Rules of the Transport Department. In the absence of any approval of the Draft Rules by the Board, the Corporation could not resort to only resolution of the Board of Directors to make appointment of the post of General Manager by way of deputation/transfer. This stand of the respondent was rejected by making reference to the judgment of Hon'ble Division Bench of this Court in the matter of **Union of India and others Vs. Puranjit Singh and another, 2008 (2) RSJ 196**. He further argued that as per the clarification given by All India Council For Technical Education the petitioner being an ex-serviceman and was having a diploma with 10 years experience it shall be treated as a degree as a special provision meant for Ex-serviceman by the Government. This legal issue has also been attained finality in the judgment passed by the Division Bench of this Court in **LPA No.1493 of 2011** titled **HVPNL Vs. Sant Kumar and others, decided on 27.09.2011**, where the following observations were made: -

“5. On the other hand, while supporting the order of the learned Single Judge, it has been contended by the learned counsel for the petitioner-respondents, that after joining the armed forces, they acquired the Diploma in Engineering in the appropriate discipline and after acquiring the diploma they had more than 10 years of technical experience in the appropriate field. As such, their diplomas are to be recognized equivalent to degree making them eligible for being promoted as Assistant Engineer against their prescribed quota.

6. For better appreciation of the matter, the Memo is reproduced below:-

“No. F16-19/75/T-2 Ministry of Education & Social Welfare, (Department of Education Technical) New Delhi-110001

Dated: 26 May, 1977

Sub: Recognition of Technical Professional qualification.

On the recommendation of the Board of Assessment for Education

Qualifications and recommendation of Defence Director (Tech.), the Government of India have decided to recognize a Diploma in Engineering in appropriate discipline plus total ten years of technical experience in the appropriate fields is recognized as equivalent to degree in Engineering. It is considered valid for the purpose of selection to Gazette posts and services under the Central Government or State Government.”

7. A perusal of the Memo shows that Diploma in Engineering in the appropriate discipline is to be recognized equivalent to degree in LPA No. 1493 of 2011 and connected appeals 5 Engineering, provided that after acquiring the diploma the concerned candidate is required to acquire 10 years of technical experience in the appropriate field. It has nowhere been provided that the 'Diploma in Engineering' should have been possessed by the candidate at the time of entry into the service. The same could have been acquired even during the service. It is evident from the communication received from the armed authorities that all the petitioner-respondents have been awarded diploma in different disciplines. Thereafter they have also acquired 10 years technical experience in the appropriate field. The communication so received was not challenged by the appellants either before the learned Single Judge or in these appeals. Therefore, the learned Single Judge rightly observed that the diplomas so acquired by the petitioner-respondents were to be recognized as equivalent to degree in Engineering, making them eligible for promotion to the post of Assistant Engineer.”

The SLP against the said decision has been dismissed by the Supreme Court, vide order dated 12.03.2012.

The Corporation in the case of one Arun Sharma, who was working as Junior Auditor in the Corporation was seeking promotion to the post of Superintendent on the basis of draft rules on the ground that draft Rules were applicable as they have been framed and he is eligible for promotion to the post of Superintendent. He had filed CWP No.4555 of 2000, which has been disposed of with the directions to the respondents to decide the legal notice. His claim for promotion to the post of Office Superintendent was rejected on the ground that the draft rules for the employees of the Corporation have been framed and have been sent to the Government for

approval, till date the approval of the Government has not been granted. As such these rules have no force of law and cannot be made applicable, vide order dated 25.10.2000 (Annexure P-4). The said rejection order was challenged by Arun Sharma by way of CWP No.2885 of 2001, which was dismissed by this Court on 11.11.2003 (Annexure P-5). Despite the above stand taken by the respondent in the case of the petitioner since 2004 he is being denied promotion to the post of General Manager.

He has referred to the judgments of the Supreme Court in **Gujarat Housing Board Engineers Association Vs. State of Gujarat, 1994 (1) S.C.T. 528** and in **Chandigarh Administration Vs. K.K. Jerath, 1995(1) S.C.T. 11**, to contend that in a rule where there is a provision for appointment by way of deputation/transfer, the deputation/transfer appointment cannot be made on promotional basis unless an eligible candidate is available in the cadre itself. The department is bound to consider a person in the cadre first and in case he is found unsuitable only in that situation promotion by way of deputation/transfer can be made. The petitioner has never been found unsuitable for promotion to the post of General Manager and in case has only been rejected on the ground that the Board of Directors has decided by way of resolution to make appointment promotion on the post of General Manager by way of transfer.

Upon notice, written statement has been filed on behalf of respondent Nos.1 and 2. The stand taken by answering respondents that the Board of Directors in its 103rd Meeting held on 14.05.2013 with the concurrence of Haryana Bureau of Public Enterprises (FD) and Haryana Roadways Engineering Corporation Employees Service Rules have been approved and these rules were placed on the website of Transport Department,

Haryana i.e. www.hartrans.gov.in. As per Appendix B of the said Rules dated 11.07.2013, the post of General Manager (Technical), is to be filled by way of deputation from the Transport Department.

Keeping in view the above provisions of the said Rules, the claim of the petitioner for promotion to the post of General Manager has been rejected, vide order dated 08.05.2015 (Annexure P-22).

Further, as per Appendix B of Employee Service Rules of 2013 of HREC, the petitioner has already been promoted to the post of Deputy General Manager (Production) in the pay scale of ₹9300-34800+GP-4800/- and the petitioner has been communicated the same. But the petitioner has neither joined nor conveyed his non-acceptance of the said promotion. It has been further submitted that Arun Sharma was promoted as Superintendent as per draft rules dated 08.10.2008, subject to the approval of Haryana Bureau of Public Enterprises. His promotion was not approved by the competent authority and he was reverted to the post of Junior Auditor and subsequently promoted as Assistant Personnel Officer in the pay band of ₹9300-34800+4000/-, vide order dated 21.09.2015 (Annexure R-2). While approving the employee service rules of HREC, 2013, a post of Deputy General Manager (Production) was created to open up the promotional avenues for the persons like the petitioner, vide order dated 14.07.2015 and he has now promoted to the said post. It has been further submitted that N.K. Garg, Joginder Singh and Rajiv Nagpal, were posted as per the draft service rules and the petitioner has not challenged the draft service rules 2013 in the present writ petition. As per opinion given by the Legal Remembrancer and Law Secretary to the Government of Haryana, vide Annexure R-4, the draft rules are not required to be notified once they are not approved by the Board of Directors. After the

said letter was received by the Corporation on 17.06.2013, the rules were approved in the 103rd BOD meeting of HREC.

After hearing the learned counsel for the parties and at the outset in view of opinion given by Law & Legislative Department on 10.06.2013 (Annexure R-4), the employee service rules were approved on 17.06.2013. As per opinion given, vide rules (Annexure R-4) the Corporation had not been constituted under any Article of the Constitution of India nor had been constituted under any Section of an Act. The draft Rules are of administrative nature and the concerned department should take the future necessary action at its own level. As per opinion (Annexure R-4), the Board of Directors of the Corporation at its own level could approve the draft rules and implement them thereafter. In the present case, the stand of the respondent has laid down as stated in Para No.2 of the written statement is that the Draft service rules of HREC titled as Haryana Roadways Engineering Corporation Employees Service Rules, after its approval by the Board of Directors in its 103rd meeting held on 14.06.2013 were placed on the website of the Transport Department, Haryana i.e. www.hartrans.gov.in. As per 'Appendix B' of the said Rules, the post of General Manager (Technical) was to be filled up by way of deputation from Transport Department, Haryana. Hence, after 14.06.2013, the petitioner had no right to be appointed as General Manager as this post was to be filled by way of deputation by the Corporation. The respondent(s) at the same time was created another post of Deputy General Manager (Production) to open up the promotional avenues and the petitioner has since been promoted as per his eligibility to the said post on 14.07.2015. In the same manner, one Arun Sharma, who was earlier promoted as Superintendent as per draft rules, was reverted to the post of Junior Auditor and subsequently promoted as Assistant

Personnel Officer, vide order dated 21.09.2015 (Annexure R-2) in the pay band of ₹9300-34800+4000/-. Perusal of the order (Annexure R-2) further shows that as Haryana Bureau of Public Enterprises (FD) did not agree with the proposal and the decision of the HBPE was thereupon put up in the 89th meeting of the Board of Directors of HREC held on 14.12.2009 and the Board decided that the decision of HBPE be conveyed to the official concerned. Thereafter, the matter for creation of one post of Section Officer and one post of Assistant Personnel Officer was approved in the 94th meeting of HREC held on 13.03.2011. Thereafter, Arun Sharma was given an opportunity of personal hearing and after creation of the post of Assistant Personnel Officer Arun Sharma was given this promotion which was accepted by him on 25.06.2015. He was after reverting back to the post of Junior Auditor he was promoted to Assistant Personnel Officer in the pay scale of ₹9300-34800+4000(GP). After perusing the order dated 21.09.2015 (Annexure R-2) it is cleared that Arun Sharma has accepted the promotion on the post of Assistant Personnel Officer, which was created on the advised given by HBPE.

Similarly, in the case of the petitioner in 'Appendix B', there is no provision for appointment to the post of General Manager is only by way of deputation. Hence, after creation of a post of Deputy General Manager (Production), he has been promoted on the said post on 14.07.2015. The petitioner after notifying the rules cannot seek promotion to the post of General Manager. The petitioner has been held eligible for appointment to the post of General Manager as per his qualification. Hence, at this stage, there is no occasion to give a finding that he being an Ex-serviceman and having a diploma with 10 years experience is to be treated as equivalent to a degree in

engineering. Even though the Court cannot lose sight that the petitioner has been agitating his claim for promotion as General Manager by filing CWPs No.10164 of 2008, 19921 of 2009 and 3674 of 2012.

Perusal of the judgments in the above three writ petitions shows that petitioner was eligible as per his qualification for qua promotion to the post of General Manager. However, his claim was resisted by the respondents by taking the stand that it should be filled by deputation from transport department. While disposing of the writ petition on 09.03.2015, this Court has observed that mainly passing of resolution of the Board, the draft rules could not be implemented to deny promotion to the petitioner. However, when this writ petition was disposed on 09.03.2015, the Legal Remembrancer and Law Secretary to the Government of Haryana had given an advised vide rules dated 12.06.2013 (Annexure R-4) to the Corporation that notifying the draft rules was an administrative function and the concerned department could take the future necessary action at its own level. The Corporation had not been constituted under any Article of the Constitution of India nor any Section of Act. With this clarification the draft rules were approved by the Board of Directors on 17.06.2013. Hence, on the date this writ petition was disposed of on 09.03.2015, the draft rules had been approved and after approval from the Board of Directors, the Corporation was bound to act in terms of the notified Rules (Annexure R-2) and make promotion accordingly. Pursuant to the notification, the department reverted Mr. Arun Sharma vide (Annexure R-2) from the post of Superintendent and subsequently promoted him on the post of Assistant Personnel Officer. In the order (Annexure R-2) it has been observed that a new post of Assistant Personnel Officer was created on the advised given by the Haryana Bureau of Public Enterprises (FD) in the service rules

and thereafter Arun Sharma accepted the offer of promotion to the post of Assistant Personnel Officer. 'Appendix B' of the service rules shows that the appointment to the post of Superintendent is to be made by way of transfer/deputation of officer already in service in any State Government, Government of India, Board or Corporation from Assistant Personnel Officer and simultaneously one step below to the post of Assistant Personnel Officer there is a provision for appointment by way of promotion from Assistant, Accountant and Junior Engineer. Hence, after the rules were notified Arun Sharma, who was working as Junior Engineer, has rightly accepted the post of Assistant Personnel Officer. It is further being clarified that pay scale of Superintendent and Assistant Personnel Officer are as under:

“Superintendent:-	₹9300-34800+4200/-
Assistant Personal Officer:-	₹9300-34800+4000”

Now considering the case of the petitioner he was working as Works Manager in the grade pay of ₹9300-34800+4600. He has now been appointed Deputy General Manager (Production) in the grade pay of ₹9300-34800+4800 . Hence, it amounts to promotion for all intents and purposes and no case is made out to interfere in the rejection order (Annexure P-22), as after approval of the draft rules the petitioner had no right to claim promotion on the post of General Manager. Accordingly, the present writ petition is without any merit and the same is hereby dismissed as such.

March 30, 2016
naresh.k

(**RITU BAHRI**)
JUDGE