

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

CWP No.84 of 2016

Date of decision: 27.02.2016

Dalip Singh

...Petitioner

versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Malik, Senior Advocate,
with Mr. Mandeep Singh, Advocate,
for the petitioner.

Mr. Keshav Gupta, AAG, Haryana.

RITU BAHRI, J.

The petitioner is seeking to quash the order dated 30.12.2015/01.01.2016 (Annexure P-2), vide which, charge of Director, Prosecution, has been given to a person junior to the petitioner. A further direction is being sought to be issued to the respondents to consider the claim of the petitioner for promotion to the post of Director, Prosecution.

The petitioner was appointed as Deputy District Attorney on 13.09.1990 and was promoted as District Attorney on 12.09.1997. He was further promoted as Additional Director on 18.12.2013 and joined as such on 31.12.2013. On the other hand, Narsher Singh-respondent No.2 was appointed as District Attorney by way of direct recruitment on 02.11.2000. As per the seniority list, as on 01.01.2014, name of the petitioner has been shown at serial No.1 and that of respondent No.2 at serial No.2.

Mr. Mahender Singh Sihag, Director Prosecution has retired on 31.12.2015. As per the information (Annexure P-1) received under the Right to Information Act, 2005, the claim of the petitioner for promotion as

Director, Prosecution, has been ignored on the ground that disciplinary proceedings were under contemplation. Thereafter, vide letter dated 30.12.2015/01.01.2016 (Annexure P-2), additional charge of Director, Prosecution, has been given to respondent No.2 without considering the claim of the petitioner, who is senior to him.

Mr. R.K. Malik, learned senior counsel, while referring to the judgment passed by the Hon'ble Supreme Court in Union of India Vs. K.V. Jankiraman, 1991 (5) SLR 602, has argued that since no charge sheet has been issued to the petitioner, therefore, respondent No.2 could not have been given the current duty charge. He has further referred to a decision given by the Division Bench of this Court in Shingara Chand and others Vs. Punjab Water Supply & Sewerage Board and others, 2000 (2) SCT 195 on the proposition that even current duty charge of higher post to a junior officer ignoring the claim of the senior was violative of the doctrine of equality enshrined under Articles 14 and 16 of the Constitution.

In the written statement, the stand of the respondents is that as per Rule 9 (1) (a) of the Haryana State Prosecution Department Legal Service (Group A) Rules, 2013, promotion to the post of Director is made from amongst the Additional Directors and District Attorneys with concurrence of Hon'ble the Chief Justice of Punjab and Haryana High Court in terms of Section 25 A of the Code of Criminal Procedure. Accordingly, a panel of three officers i.e. Sh. Dalip Singh (petitioner), Sh. Narsher Singh, Addl. Director, Prosecution and Sh. Ashok Kumar Mittal, District Attorney was prepared and referred to the Government for consideration vide letter dated 03.12.2015. Thereafter, the matter was examined by the Government and it was observed that the petitioner was the senior most among the above said

three officers. However, a complaint had been received against him from the Deputy Commissioner, Hisar regarding tendering wrong opinion by him in a matter while working as District Attorney, Hisar. The said matter was under consideration with the Government. Another matter regarding commission of grave irregularities and misleading senior officers by not providing required information at the time of recommending the name of one Bijender Singh, Stenographer-cum-Librarian for appointment to the post of HCS was also pending against him. Till a final decision was taken to fill up the post of Director, Prosecution, as an interim measure, charge of the post of Director Prosecution was given to the next senior most officer Sh. Narsher Singh, Additional Director, vide impugned order dated 30.12.2015, issued on 01.01.2016 (Annexure P-2).

Learned counsel for the respondents has informed the Court that a charge sheet under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 has been issued against the petitioner on 23.02.2016.

Heard, counsel for the parties. The ratio of the judgments passed in **K.V. Jankiraman** and **Shingara Chand's** case (supra) is that the junior should not be allowed to continue on current duty charge of higher post for a long period. Giving of current duty charge is to tide over the crises situation for a few days or weeks and the order of giving current duty charge cannot be justified to sustain for a long period of time.

In the present case, the petitioner has been issued a charge sheet on 23.02.2016. The post fell vacant on 01.01.2016. Although the petitioner was the senior most to be considered for promotion, yet he could not claim that he had a vested right to be promoted even if the post becomes available.

The Hon'ble Supreme Court has been consistent in its views that even if, a

vacant post is available for promotion, a direction cannot be sought to be issued to the department to fill up the said post. In service jurisprudence, the State is not bound to fill up the vacancy nor there is any corresponding right vested in an eligible employee to demand that such post be filled up. The decision to fill up a vacancy or not vests with the employer who for good reasons, be it administrative, economical or policy, can decide not to fill up such post(s). In **Shingara Chand's** case (supra), a Division Bench of this Court observed as under:-

“7.One may not take serious exception to the giving of current-duty charge to a junior person for a few days or weeks in order to tide over the crisis situation, but, the practice of giving current-duty charge of the higher post to the juniors for months and years together cannot be legally justified or approved.”

In the present case, under Rule 9 (1) (a) of the Haryana State Prosecution Department Legal Service (Group A) Rules, 2013, a panel of three officers was sent for consideration. The case of the petitioner was examined by the Government, however, in view of two complaints against him, it did not take any final decision. As a stop gap arrangement, additional charge of the post of Director, Prosecution, has been given to the next senior most officer, namely Sh. Narsher Singh-respondent No.2 vide order dated 30.12.2015/01.01.2016 (Annexure P-2). During the pendency of this petition, a charge sheet dated 23.02.2016 has been issued to the petitioner.

Since a charge sheet has already been issued to the petitioner, at this stage, no ground is made out to interfere in the impugned order.

Dismissed.

27.02.2016
ajp

(RITU BAHRI)
JUDGE