

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

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**RSA-5408-2015 (O&M)
Date of decision: 29.09.2016**

Managing Director, Food Corporation of India and others

.... Appellants

Versus

Ishwar Dass Mangla

.... Respondent

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. K.K.Gupta, Advocate for the appellants.

Respondent in person.

P.B. Bajanthri, J. (Oral)

In the instant appeal, the appellants have questioned the validity of appellate court order dated 20.12.2013 as well as trial Court order dated 11.09.2012.

2. The respondent-Ishwar Dass Mangla was working in the appellant-Corporation. He attained age of superannuation and retired from service on 30.04.2006. His claim relating to promotion to the cadre of Assistant General Manager on 30.09.2005 was not considered for the reasons that he was facing disciplinary proceedings which was concluded on 24.04.2006 by imposing the penalty of recovery of loss caused to the appellant-Corporation. These, factual aspects has not been taken note of by the trial Court while decreeing the suit.

3. Learned counsel for the appellant submitted that the employee's promotion can be deferred if he is facing disciplinary proceedings like

issuance of charge sheet. In the present case, as on 30.09.2005 the date on which respondent was entitled to be promoted to the post of Assistant General Manager, he was facing disciplinary proceedings and it was ended in imposing the penalty on 24.04.2006. Therefore he has been given notional promotion on 24.07.2007 on the score that imposition of penalty in a departmental enquiry is a minor penalty. In such circumstances, employee is entitled for notional promotion. Therefore, the trial Court has erred in decreeing the suit of the respondent.

4. Respondent appeared in person submitted that the appellant had initiated disciplinary proceedings in the year 1993 and it was concluded. Thereafter, once again the matter was reopened by the appellants and imposed the penalty of recovery of loss caused to the appellant-Association. Due to inordinate delay in concluding the disciplinary proceedings, he is entitled for promotion to the post of Assistant General Manager as and when it was due to him namely 30.09.2005 and not notionally. Thus, there is no error committed by the trial Court so also appellate Court in deciding the matter in favour of the respondent.

5. Heard learned counsel for the appellant and respondent in person.

6. Short question for consideration is whether respondent's name was deferred for the post of Assistant General Manager on 30.09.2005 is in order or not. Admittedly, disciplinary proceedings were pending against the respondent as on 30.09.2005 and it was ended in imposing the penalty of recovery of loss caused to the appellant-Association on 24.04.2006. Thus, notional promotion has been granted. It is to be noted that respondent has failed to question the validity of reopening of enquiry and he has also

admitted that disciplinary authority has imposed the penalty of loss caused to the Corporation on 24.04.2006 while the respondent was in service. The employee's promotion can be deferred if he is facing disciplinary proceedings by means of issuing charge sheet. In the present case, as on 30.09.2005 charge sheet was already filed and it was pending consideration. Therefore, there is no infirmity in the appellant's decision. Consequently, trial court has committed error in granting relief to the respondent that he is entitled to promotion to the post of Assistant General Manager w.e.f. 30.09.2005. Accordingly, appeal is allowed. Orders of the trial Court as well as appellate court are set aside.

7. At this juncture, respondent appeared in person submitted that reopening of enquiry dated 29.09.2005 is the subject matter before the appellate authority and the appellate authority is yet to finalize his appeal. If the appellate authority feels that reopening of enquiry dated 29.09.2005 is not in order and is to be set aside, in such circumstances, the respondent is at liberty to approach this court to seek review of this order.

29.09.2016

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons Yes/No

Whether Reportable: Yes/No