

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.10103 of 2015(O&M)
Date of Decision: 29.09.2017

Rajinder Kumar

--Petitioner

Versus

Financial Commissioner & Secretary
to Govt. of Punjab & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. G.S. Nagra, Advocate for the petitioner.

Mr. T.P.S. Chawla, D.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

Challenge in the instant petition is to the order dated 13.12.2014 (Annexure P-10), passed by the Financial Commissioner to Govt. of Punjab, Department of Forest and Wildlife Preservation and in terms of which the claim of the petitioner seeking promotion to the post of Deputy Director (Establishment-cum-Accounts), has been declined.

Brief facts that may be noticed are that the petitioner joined the respondent Forest Department, State of Punjab as Clerk in the year 1977. Petitioner, thereafter, earned promotions to the post of Senior Assistant in the year 1987, as Superintendent Grade-II in the year 2000 and thereafter as Administrative Officer on 22.12.2003.

It so transpires that a post of Deputy Director (Establishment-cum-Accounts) in the pay scale of Rs.10,025-15,100/- was created in the Forest Department under the J.B.I.C Assisted Punjab Aforestation Project in the year 2003. Upon the creation of such post under the project afore-mentioned, one Sh. K.L. Malhotra, who was already working in the Department as Establishment-cum-Accounts Officer, was deployed against such post.

Sh. K.L. Malhotra retired on 31.1.2011 upon attaining the age of superannuation.

It is upon retirement of Sh. K.L. Malhotra that the petitioner staked his claim to be promoted to the post of Deputy Director (Establishment-cum-Accounts). Petitioner earlier approached this Court in terms of filing CWP No.20841 of 2014 and which was disposed of by a Coordinate Bench of this Court in the light of the order dated 9.10.2014, wherein directions were issued to consider his claim and to take a final decision on a legal notice that had been served.

It is in purported compliance of the directions issued by this Court that the impugned order dated 13.12.2014 (Annexure P-10) has been passed.

Counsel for the parties have been heard at length.

It has gone uncontroverted that earlier the Punjab Forest (Group A) Ministerial Service Rules, 2004 were in operation. The Group A posts which were covered under such statutory rules were defined in Appendix 'B'. The post in question i.e. Deputy Director (Establishment-cum-Accounts) was not covered under the 2004 Rules.

After the J.B.I.C Assisted Punjab Aforestation Project closed on 28.2.2010 the exercise of restructuring of the Forest Department was undertaken. Upon approval by the Council of Ministers a notification was issued on 12.3.2012 and it is for the first time that two posts of Deputy Director, Administration/Planning and Budget/Accounts were created. The Punjab Forest (Group A) Ministerial Service Rules, 2016 have also been promulgated and in which the post of Deputy Director, Administration/Planning and Budget/Accounts is reflected in Appendix 'B'.

Claim of the petitioner is founded on the premise that an agenda for holding a D.P.C to consider the name of the petitioner for promotion to the post of Deputy Director (Establishment-cum-Accounts) had been circulated on 17.11.2011 itself upon retirement of Sh. K.L. Malhotra, yet, no promotion fructified in pursuance to such agenda having been circulated.

It would require notice that at the relevant point of time i.e. in the year 2011 when the petitioner is staking his claim to the post of Deputy Director (Establishment-cum-Accounts) there was no such cadre post in existence. The post in fact came into creation only vide notification dated 12.3.2012.

Even otherwise, against the post of Deputy Director (Establishment-cum-Accounts) under the afore-noticed project, Sh. K.L. Malhotra while working as Establishment-cum-Accounts Officer had not been promoted in pursuance to any regular D.P.C proceedings but in fact had only been deployed. This is precisely for the reason that there was no cadre post of Deputy Director (Establishment-cum-Accounts) in existence in the department. Even the deployment of Sh. K.L. Malhotra as Deputy Director (Establishment-cum-Accounts) was on the condition that he will continue on the post till the project survives and that he would retain his lien on the post that he was working i.e. Establishment-cum-Accounts Officer and upon the project being terminated or the post itself ceasing to exist, he would automatically occupy the original post of Establishment-cum-Accounts Officer.

Under such circumstances, the petitioner could have asserted his right only for deployment and not for regular promotion to the post of Deputy Director (Establishment-cum-Accounts). It is being so observed for the reason that in January, 2011 the post in question was not even in existence and had been created only by virtue of notification issued on 12.3.2012 in pursuance to an exercise of restructuring in the department.

It is by now well settled that it is the prerogative of the employer to initiate the process of promotion as regards a cadre post and to fill up the post keeping in view the administrative exigencies of service. At the same time the employer/State Govt. would also not have the license to act arbitrarily and keep the post vacant for extraneous considerations.

In the facts of the present case the stand taken in the impugned order is that after creation of the post of Deputy Director (Establishment-cum-Accounts) in the year 2012, there were no statutory rules governing such post. Admittedly, the statutory rules came to be promulgated vide notification dated 4.3.2016 i.e. the Punjab Forest (Group A) Ministerial Service Rules, 2016. This is precisely the basis on account of which the petitioner could not have been so promoted. Petitioner himself stands superannuated on 31.10.2014.

In a nutshell claim of the petitioner was not of a fair consideration for promotion to a regular cadre post but was seeking adjustment/deployment against the post of Deputy Director (Establishment-cum-Accounts) i.e. a post created under a project which itself has terminated in the year 2010.

No infirmity, as such, is found in the impugned order.

Petition, accordingly, is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

29.09.2017

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No