

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23697-2014 (O&M)

Date of Decision:-28.11.2017.

Phool Kanwar

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Pritam Saini, Advocate for the petitioner.

Mr. Nitin Thatai, Advocate for respondent Nos.2 to 4.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has challenged the validity of orders dated 7.8.2014 and 30.06.2011 (Annexures P-9 and P-10, respectively).

Petitioner is stated to have joined service as a Development Officer in the respondent-Corporation. The respondents proceeded to promote amongst others and petitioner to the post of Assistant Branch Manager (Sales). He was promoted on 8.3.2011 and posted to Narnaul. Posting him at Narnaul as an Assistant Branch Manager (Sales) on promotion was not convenient to him. Consequently, he made a representation on 15.03.2011. Since the petitioner failed to obey the order of promotion dated 8.3.2011 and not reported for duty on the promotional post, consequently, once again the respondents-Corporation considered

name of the petitioner for promotion to the post of Assistant Branch Manager (Sales) on 25.05.2011 and he was promoted and posted to Narnaul. Once again petitioner was not happy with the posting at Narnaul and he keep on making representation to the respondents-Corporation. Since the respondents failed to consider his representation he has approached this Court. This Court directed the respondents to decide the petitioner's representation dated 22.5.2014. Pursuant to the directions of this Court respondents have considered the petitioner's representation and rejected on 7.8.2014. Hence, the present petition in challenging the communication and office order dated 7.8.2014 and 30.06.2011 respectively.

Learned counsel for the petitioner submitted that petitioner even though promoted on two occasions to the post of Assistant Branch Manager (Sales) and posted at Narnaul, before cancellation of promotion order petitioner has not been heard. Thus, there is a violation of principal of natural justice. Consequently, the communication and office order dated 7.8.2014 and 30.06.2011 are liable to be set aside.

Per contra learned counsel for the respondents submitted that order of promotion is a crystal clear that postings within division shall be decided by the Senior Divisional Manager and promotions shall take effect from the date of taking over charge of the new assignment and further condition was imposed that all the officers must take charge of promotion on or before 30.05.2011. Despite these specific directions, petitioner failed to comply the same. In effect, promotion to the post of Assistant Branch Manager (Sales) insofar as petitioner is concerned it is yet to take a shape since he has not entered the promotional cadre. Therefore, question of cancellation without notice to the petitioner do not arise. Thus, the

petitioner has not made out a case so as to interfere with the communication and office order dated 7.8.2014 and 30.06.2011. It was further submitted that petitioner was aware of office order dated 30.06.2011 relating to cancellation of promotion vide Annexure P-10. He had cause of action in the year 2011. He has failed to challenge the office order dated 30.06.2011 in the year 2011. Thus, on the ground of delay office order dated 30.06.2011 cannot be interfered.

At this stage, learned counsel for the petitioner submitted that office order dated 30.06.2011 was not communicated among the officers including the petitioner. Learned counsel for the respondents-Corporation submitted that it was notified in the website. Therefore, it need not be communicated personally to each and every officer.

Heard learned counsel for the parties.

Cancellation of promotion and rejection of the petitioner's representation are subject matter in the present petition. Petitioner was promoted to the post of Assistant Branch Manager (Sales) on 2 occasions, namely, 8.3.2011 and 25.05.2011. On both the occasions, petitioner was posted from Gohana to Narnaul and he failed to report or obey the order of promotion. On the other hand he keep on making representations to consider his posting nearby Gohana. Order of promotion is very specific to the extent "FURTHER POSTINGS WITHIN DIVISION SHALL BE DECIDED BY THE RESPECTIVE SR. DIVISIONAL MANAGERS. PROMOTIONS SHALL TAKE EFFECT FROM THE DATE OF TAKING OVER CHARGE OF THE NEW ASSIGNMENT. ALL THE OFFICERS MUST TAKE CHARGE ON PROMOTION ON OR BEFORE

promotion, it is crystal clear that promotion would take effect as and when officer reported against the promotional post and if he takes charge of the promotional post. Undisputedly, petitioner never reported to the promotional post and place and has also not taken charge of the new assignment. Consequently, order of promotion has not been given effect in respect of the petitioner due to his own conduct. Therefore, question of cancellation of promotion do not arise. Even assuming that cancellation of promotion order has been passed on 30.06.2011, the petitioner has failed to challenge the order of cancellation dated 30.06.2011 within reasonable time, however he filed this petition only in the year 2014. Supreme Court in the case of **P.S. Sadasivaswamy Vs. The State Of Tamil Nadu 1975 SCC (1) 152** held that insofar as challenge to promotion and seniority if any should be at the earliest. Thus, there is no infirmity in the communication dated 7.8.2014 so also the office order dated 30.06.2011. Accordingly, petitioner has not made out a case.

Hence, petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

November 28, 2017.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.