

CWP No.28489 of 2017

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

CWP No.28489 of 2017

Date of Decision: 14.12.2017

Bijender Singh

...Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Surender Kumar Sharma, Advocate,
for the petitioners.

Amol Rattan Singh, J.

By this petition, the petitioner seeks the quashing of the order dated 07.11.2017 (Annexure P-8), by which his plea for promotion to the post of a Deputy Director, Employment Exchange, has been rejected. He naturally seeks a further writ of mandamus directing the respondents to promote him to the aforesaid post from the date that it became due him, or in the alternate from the date that he made a representation on 20.04.2017.

2. The facts are that the petitioner, who is working as a Divisional Employment Officer at the Employment Exchange, Rohtak, contends that he is fully eligible and within the zone of consideration for promotion as a Deputy Director, but allegedly his claim was not being decided because he was to retire on 31.07.2017. He therefore earlier filed CWP no.16903 of 2017 in this Court, which was disposed of on 02.08.2017 with a direction given to the respondents therein to take a decision on the representation of the petitioner by passing a speaking order within a period of three months.

Thus, it is in compliance of the aforesaid order that the order

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impugned in the present writ petition has been passed on 07.11.2017.

3. As per the said order, the petitioner was, in fact, ordered to be promoted to the post of a Deputy Director on 06.01.2015 against a vacant post, but he did not join the post citing unavoidable family circumstances, vide a letter dated 07.12.2015, a copy of which has been annexed with the present writ of petition as Annexure P-3.

A perusal thereof shows that the petitioner has very clearly stated that having been promoted as a Deputy Director, he is not in a “condition to join” on the aforesaid post, as his mother, aged 80 years, lives in Rohtak and is unable to walk due to a fracture in her thigh bone. As such, he was not able to leave Rohtak to take up his assignment on the higher post, at Panchkula.

He, in fact, also tendered his apology for not taking up the assignment, vide the aforesaid letter.

4. It has also been stated in the impugned order that the Director, vide a letter dated 18.12.2015, asked him to give a specific time when he would be able to assume charge of the post, upon which he again wrote a letter dated 01.02.2016 (Annexure P-5 with the petition), stating that his mothers' condition did not allow him to take up the assignment and therefore he may be granted permission to forgo his promotion from the date that it was ordered, i.e. 06.10.2015.

However, he also stated in that letter that he would intimate the department immediately, upon his family issue getting resolved.

5. Yet, on 09.02.2016, Government vide its memo ordered that instructions be issued to the petitioner to assume charge on the post of a Deputy Director within 15 days of receipt of such notice to him, failing which he would be reverted to the post of an Assistant Director/Divisional

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Employment Officer and that no further opportunity would be given to him to avail of a promotion.

6. Thereafter, the petitioner represented on 20.04.2017 that he was willing to join the post of a Deputy Director (more than one year after the offer had been withdrawn vide the aforesaid letter/notice dated 09.02.2016).

The representation given by the petitioner was put up to Government, which rejected the representation on the ground that since he was not willing to join on the promoted post when he was asked to do so and in fact had stated that he wanted to forgo the promotion, and despite having been asked to mention a specific time till when he wanted to forgo it no such time was specified by him; therefore, three months short of his retirement, he obviously wanted to get promoted only to get higher financial benefits without actually working in the department as a Deputy Director and contributing in that capacity.

Hence, as per Government, granting a promotion at that stage was against public interest.

7. On the aforesaid grounds, the claim of the petitioner has been rejected vide the impugned order, passed by respondent no.2, i.e. the Director, Employment, Government of Haryana.

8. Mr. S.K.Sharma, learned counsel for the petitioner has submitted that the action of the Government in rejecting the petitioners' request for promotion after his family circumstances had improved, is wholly arbitrary and unsustainable, and therefore the impugned order deserves to be quashed and the petitioner, though he has now retired, is entitled to a proforma promotion from the date that he asked for the promotion, i.e. 20.04.2017 at least, with all consequential benefits flowing to him thereafter.

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It is also contended in the petition that a similar request of one Sukhbir Singh Dhanda was earlier accepted by the respondents on 20.08.2015, for promotion to the post of a Superintendent from that of a Deputy Superintendent, even one day prior to his superannuation on 29.10.2015.

Similarly, it has also been stated in the petition that one Smt. Nirmal Verma, Divisional Employment Officer, was also promoted to the post of a Deputy Director, Employment, vide an order dated 23.07.2013, even though she was to superannuate on 31.07.2013.

10. Though the aforesaid two instances have been noticed by this Court from the pleadings only after pronouncing dismissal of the petition, however, having considered the aforesaid also, though undoubtedly in the case of Smt. Nirmal Verma, her promotion is shown to have been ordered only 8 days prior to her retirement and therefore, the rationale applied by the Government in the petitioners' case, to the effect that he was seeking promotion at a belated stage for higher financial benefits, with no contribution made on the higher post, would be a reasoning that would fall on its face, what cannot be overlooked is that it is not stated anywhere in the petition that the aforesaid Smt. Nirmal Verma had ever refused promotion earlier.

The petitioner having categorically foregone promotion, therefore in fact, though there are instructions of the Government that after refusal an employee can be considered for promotion again upon one year having elapsed, the petitioner would not, in my opinion, be covered by those instructions also (which have not been annexed with the petition but were brought to the notice of this Court in another petition).

The Government was thereafter within its right to refuse him

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promotion three months short of his superannuation, on the grounds stated in the speaking order, to the effect that his request for such promotion at that stage, was obviously only to claim higher financial benefits and not to actually make any contribution on the higher post, which he had earlier specially refused to join.

10. Consequently, this petition is dismissed in *limine*, but with no order as to costs.

December 14, 2017
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(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No