

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

LPA No.1161 of 2015 (O&M)

Date of decision: May 25, 2017

The Haryana Financial Corporation

----Appellant

Versus

Pawan Kumar Jain and others

----Respondents

**Coram: Hon'ble Mr. Justice Ajay Kumar Mittal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.Namit Kumar, Advocate
for the appellant.

Mr.Gaurav Chopra, Advocate
for the respondents.

HARINDER SINGH SIDHU, J.

Challenge in this Letters Patent Appeal is to the judgment dated 20.2.2015 in CWP No.15751 of 1995 filed by Pawan Kumar Jain - respondent No.1, whereby, he has been directed to be promoted to the post of Additional General Manager and General Manager w.e.f., the date when his juniors were promoted with all consequential benefits and further held entitled to interest on arrears of salary @ 9% per annum from the date it became due till the date of actual payment. The other direction in the judgment for granting him the Good Performance Award has not been impugned.

Respondent No.1 joined the appellant - corporation as Technical Officer Mechanical on 14.8.1974. He was confirmed on the said post on 14.8.1975. On 1.4.1979, he was promoted as Technical Manager, a post, which is equivalent to Assistant General Manager. On 2.6.1980, his

services were terminated with immediate effect under Haryana Financial Corporation Staff Regulation No.19 (2)(a), by offering three months' pay in lieu of notice. CWP No.677 of 1981 filed by him against the said order was dismissed on 20.2.1981. However, the SLP filed by him was allowed on 2.5.1991. The termination order was set aside, and he was held entitled to reinstatement with full back-wages. He was reinstated in service on 27.5.1991.

Mr. R. Chhibber (Respondent No.2) a junior of respondent No.1 was promoted as Deputy General Manager w.e.f. 1.4.1985 and further promoted as Additional General Manager on 9.2.1993 and as General Manager on 17.1.1995. Respondent No.1 however, was not so promoted on the ground that he did not secure the requisite 55 marks out of 100, to be considered suitable for promotion.

Aggrieved, he filed the writ petition, which has been allowed.

The promotional channel in the appellant corporation is from Technical Manager/ Assistant General Manager to the post of Deputy General Manager then to Additional General Manager and later as General Manager. The promotion/up-gradation from the level of Assistant Manager upwards is to be done on the basis of an interview by the Selection Committee.

On 9.2.1993, the Selection Committee interviewed three candidates R.Chhibbar (respondent No.2), B.R.Goyal (respondent No.3.) and P.K.Jain (respondent No.1) for selection/ promotion to the post of Additional General Manager. The criteria for selection as laid down by the the Board and adopted by the Selection committee was : 70 marks for

ACRs, 10 marks for higher qualifications, 5 marks for seniority and 15 marks for interview.

The 70% marks for ACRs for the last five years were to be awarded on the following pattern:-

For Outstanding ACR	14 marks
For very good ACR	12 marks
For Good ACR	9 marks
For average ACR	6 marks
For below average	0 marks

On the basis of the above formula, the marks awarded to the candidates were as follows:-

S. No.	Name S/Shri	Marks for ACRs	Seniority	Interview	Higher qualifications	Total
1.	R.Chhibar	62	2	10	-	74
2.	B.R.Goyal	57	2	12	-	71
3.	P.K.Jain	45	2	4	-	51

R.Chibbar and B.R.Goyal were recommended to be promoted to the post of Addl. General Manager. Respondent No.1 was not so recommended as he did not meet the minimum bench mark of 55 marks.

It is clear that none of the candidates were awarded any marks for higher qualifications. The details of the marks for ACRs as awarded to respondent No.1 was as under:

<u>For the year</u>	<u>Grade Given</u>	<u>Marks allotted</u>
1991-92	Very good	12
1979-80	Good	9
1978-79	Good	9
1977-78	Good	9
1976-77	Average	6
		45

The case of respondent No.1 before the Ld. Single Judge was that he was wrongly not given the additional marks for higher qualifications. It was urged that he possessed a 'Post Graduate Diploma in Business Management' (for short 'Post Graduate Diploma') before joining service, which was recognized by the Corporation itself as higher qualification and he had been given the benefit of one advance increment for that at the time of joining the Corporation. It was urged that having recognized the said diploma as higher qualification, the appellant had erred in denying him 10 marks for higher qualification. Further, the appellant had wrongly taken into consideration the ACR for the year 1976-77, which on being degraded to 'average' from 'good' was never communicated to him.

The Ld. Single Judge accepted both the grounds. Regarding the qualification of Post Graduate Diploma, the Ld. Single Judge referred to paragraph 15(iv)(e) of the written statement of the appellant, wherein, it was stated that the weightage on account of Post Graduate Diploma was granted at the time of entry into service but the same benefit could not be given again and again. From this, the Ld. Single Judge concluded that the Corporation had indirectly admitted the qualification of Post Graduate Diploma to be a higher qualification. Accordingly, it was held that the Corporation could not be permitted to deny the benefit of 10 marks on account of this higher qualification. Regarding the ACRs, Ld. Single Judge held that if the ACR for the year 1976-77, which was initially recorded as 'good', and was later downgraded as 'satisfactory', but which remained non-communicated to the respondent, is excluded from consideration, the respondent would still make the benchmark of 55 marks even without the

additional 10 marks for higher qualifications. For one 'very good' ACR, the respondent would get 12 marks, for three 'good' reports, he would get 27 marks (9 for each year), totalling 39 marks. Taking the average thereof, he would get another 10 marks for the 5th year, making a total of 49 marks for ACRs. Adding 2 marks for seniority and 4 marks for interview, he would get the 55 marks needed for promotion. With the addition of 10 marks for higher qualification, he would get 65 marks. In either situation, he was entitled for promotion from the date, his juniors were promoted.

Ld. Counsel for the appellant Corporation has contended that the Ld. Single Judge has erred in considering the Post Graduate Diploma as higher qualification. He argued that the higher qualification would mean a higher qualification in the same line as the basic qualification of respondent No.1. As he possessed a 'Bachelor's Degree in Engineering', only a Master's Degree in Engineering' could be treated as higher qualification. The 'Post Graduate Diploma in Business Management' could only be considered as an additional qualification, for which, he could not be given additional marks. He argued that the averment in the written statement that respondent No.1 could not be given the benefit of his qualification again and again, was incorrect. In fact, respondent No.1 was not given the benefit of that qualification at the time of his joining the service but was given the benefit only on account of his long experience. In view of this assertion of Ld. Counsel for the appellant, the Corporation was directed to file a specific affidavit explaining the basis of grant of advance increment to respondent No.1 at the time of his initial appointment. In response thereto, an affidavit dated 15.3.2017 of Sh. Jagtar Singh Manager, Haryana

Financial Corporation has been filed. Along with the same, Agenda Item No.20 (approved by the 57th meeting of the Board of Directors held on 9.10.1974), whereby, respondent No.1 was granted one advance increment has been annexed. The relevant part thereof reads as under:-

“MEMORANDUM FOR THE BOARD

Approval of appointment of Technical Officers, Financial Appraisers and reappointment of Shri J.P.Pareek.

The Board in its meeting held on 29th November, 1973 had created 3 posts of Technical Officers and 3 Financial Appraisers in Class-A service of the Corporation. Further a vacancy of Technical Officer had fallen vacant on the termination of the services of Shri R.C.Modi, Technical Officer (Mech.) with effect from 2nd March, 1974. The posts were advertised in different news papers where it was mentioned that deserving candidates with higher academic qualifications and long experience would be given the benefit of advance increments and in response number of applications were received. After scrutinizing them, letters of interview were issued to the suitable candidates. A Committee consisting of the Managing Director, Secretary, Additional Secretary of the Corporation and Technical Advisor of the Haryana State Industrial Development Corporation (being special invitee) interviewed the candidates on the 29th of July, 1974. Sarv-Shri P.K.Jain and A.Vashishth were selected as Technical Officer (Mech.), Shri Rajinder Chhibber was selected Technical Officer (Chemical) and Shri S.D.Chuggani, Technical Officer (Textile). All these appointments of Technical Officers have been made in the pay scale of Rs.700-50-1000/50-1250. Shri P.K.Jain, who is B.E.(Mech.) and having qualified Post Graduate Diploma in Business Administration and had seven years and 9 months experience in different reputed manufacturing concerns was given the benefit of one advance

increment of Rs.50/-...”

From this, it is clear that in the advertisement for the post of Technical Officers published in different newspapers, it was mentioned that the deserving candidates with higher qualification and long experience, could be given the benefit of advance increments. With regard to respondent No.1 it is recorded that he is B.E.(Mechanical) and has qualified Post Graduate Diploma in Business Management and has 7 years 9 months experience in different reputed manufacturing concerns and hence, he was given one advance increment of Rs.50/-.

A reading of the above reveals that the possession of the qualification of Post Graduate Diploma in Business Management along with his experience by respondent No.1 was recorded as reason for granting him the advance increment. If the Post Graduate Diploma had not been treated as higher qualification it would not have been mentioned as a reason for the grant of advance increment. Accordingly, we are not convinced with the argument of Ld. Counsel for the appellant that the Post Graduate Diploma was not treated as higher qualification for the grant of advance increment at the time of initial appointment. Thus, we fully agree with the view of the Ld. Single Judge that the appellant having treated the Post Graduate Diploma as higher qualification at the time of initial appointment could not take a different view later, at the time of consideration of respondent No.1 for promotion.

Further, Ld. Counsel for the appellant was not able to refute the argument that if the ACR for the year 1976-77 where the assessment of the performance of respondent No.1 had been down graded to 'average' from

`good' is left out of consideration, as it was not communicated to him, then even without granting him the benefit of additional mark for higher qualification, he still makes the benchmark of 55 marks and, thus, was entitled for promotion.

Thus, we find no merit in the present appeal and the same is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 25, 2017

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Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No