

LPA no. 1221 of 2017 (O&M) 1

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

LPA no. 1221 of 2017 (O&M)

Date of Decision : 12.07.2017

The Managing Director, Dakshin Haryana Bijli Vitran Nigam, Hisar and
another

....Appellant(s)

Versus

P.D.Kaushik and another

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE RAJ SHEKHAR ATTRI**

Present : Mr.R.D.Bawa, Advocate for the appellants

MAHESH GROVER, J.(ORAL)

This appeal is directed against the judgment of the learned Single Judge dated 29.11.2016 accepting the writ petitioner's claim for promotion with effect from the date when his juniors were promoted. It is not in dispute that number of persons who were senior to the writ petitioner in the tentative seniority list issued on 24.2.2010 were promoted. Subsequently when the final seniority list came into existence in December, 2012 the writ petitioner was shown senior to the such incumbents but the promotion was denied to him from the date when his juniors in the final seniority list were promoted in the year 2010.

Learned Single Judge accepted the plea and mandated consideration to the writ petitioner from the date when his juniors were promoted as Assistant Engineers w.e.f 31.3.2010.

Prior to this the writ petitioner had been given the current duty charge of the said post w.e.f 9.12.2006 and the learned Single Judge accepted his plea for salary of the said post with effect from the said date.

Learned counsel for the appellants contends that the findings recorded by the learned Single Judge are erroneous and such consideration could not have been granted to the writ petitioner. He further contends that the benefit of the salary for the post of Assistant Engineer held by the writ petitioner on current duty charge basis would not entitle him to any monetary consequences as mandated by the learned Single Judge. In this regard, he placed reliance on case titled as **State of Haryana vs. R.K.Aggarwal** reported as 1997 AIR (SC) 3601.

After hearing learned counsel for the appellants, we are of the opinion that no interference is warranted in the impugned judgment for the simple reason that it is not in dispute that the writ petitioner was senior in the final seniority list and his juniors have been promoted on the basis of tentative seniority list w.e.f 31.3.2010 which would clearly entitle the writ petitioner to a similar benefit subject to his being found fit, which is also the direction given by the learned Single Judge. In so far as the second plea of salary for the post of Assistant Engineer made admissible to the writ petitioner w.e.f 9.12.2006 is concerned, we would also disagree with the learned counsel for the appellants in view of the fact that it is a settled law that if a person had discharged duty of a higher post on current duty charge, he would be entitled to monetary consequences even though the attending benefits of holding the higher post etc would not be admissible to him. Judgment relied upon by the learned counsel for the appellants, to our minds, is not attracted to the facts of the instant case.

Learned counsel for the appellants towards the end raises a submission that the writ petitioner could not be promoted as directed by the learned Single Judge in view of the fact that he was charge-sheeted on 22.3.2011.

We are of the opinion that this argument would cut no ice for the simple reason that promotion took place in the year 2010 and the subsequent charge-sheet of 2011 would be inconsequential considering the fact that claim of the writ petitioner for promotion would be with effect from the date when his juniors were promoted i.e 31.3.2010.

No ground to interfere is made out. Hence, instant appeal is hereby dismissed.

That apart, instant appeal is also barred by delay of 149 days in filing the appeal, which we do not intend to condone in the absence of any justifiable explanation.

(Mahesh Grover)
Judge

(Raj Shekhar Attri)
Judge

12.07.2017

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No