

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP No. 17023 of 2015

Date of Decision: 21.02.2018

Jaidev

...Petitioner

Vs.

Commissioner Ambala Divn. and others

...Respondents

2. CWP No. 17052 of 2015

Vijay Kumari Sharma

...Petitioner

Vs.

Commissioner Ambala Divn. and others

...Respondents

**CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Chirag Wadhwa, Advocate  
for the petitioner.

Mr. Harish Rathee, Senior DAG Haryana.

Mr. Karan Singh, Advocate  
for respondent No.5.

**RAJIV NARAIN RAINA, J. (Oral)**

When the petitioner's turn came for promotion as Assistant in the office of the Deputy Commissioner, Yamuna Nagar, the he wrote letter dated 29.12.2014 to the Department foregoing his promotion. However, he changed his mind by letter dated 18.02.2015 withdrawing his earlier application claiming promotion from Clerk to Assistant. The Commissioner, Ambala Division being the competent authority dismissed the application by his order dated 20.03.2015 (Annex. P-2) citing Government letter No. 2/21/92-2 G.S. dated 02.11.1992.

This order is impugned seeking directions for quashing the order on the ground that it was passed without notice and hearing which infirmity renders the order illegal and invalid. On 30.05.2015, persons junior to the petitioner were promoted as Assistant in the DC Office. The petitioner prays for directions other than quashing the impugned order that he deserves to be considered for promotion as Assistant from the date his junior was promoted on 30.05.2015.

I have heard learned counsel for the parties and find that the impugned order is cryptic and non-speaking and completely overlooks the second letter dated 18.02.2015 withdrawing the first letter dated 29.12.2014 after the petitioner has changed his mind. The order makes no reference to such an important fact which could have altered the decision

After the petitioner shot off the letter dated 29.12.2014 no person junior to him was promoted during the period till 18.02.2015 and much later. If the petitioner had in the heat of the moment given up his right to promotion it cannot be seen as having given up the chance forever. In his saner moments, he withdrew the letter which should have been looked into by the Commissioner, Ambala Division while making the order dated 25.03.2015 and considered the request dated 18.02.2015 withdrawing the first letter and could have restored the petitioner to his original position to be considered for promotion on a non-selection post as per turn on his seniority.

The withdrawal of the letter would not be prejudicial to the interest of persons admittedly junior to the petitioner who had not been promoted by the time the earlier letter was withdrawn. Nor would the fundamental rights of juniors be affected, if the petitioner is returned and restored to his right of consideration for promotion to the higher post.

As a result of the above discussion, the petition is allowed and the impugned order is set aside as arbitrary and passed without full application of mind without any thought paid to the letter dated 18.02.2015. The respondents are directed to pass a fresh order considering the petitioner for promotion from the date the junior was promoted on 13.05.2002.

While the court was considering granting consequential benefits upon setting aside of the order, Mr. Rathee, rose to resist such a direction for the reason that the State cannot be blamed for the petitioner foregoing promotion and then withdrawing it or in declining the request based on an earlier action of the petitioner waiving his right to promotion.

There appears some merit in this submission that the financial burden of arrears of difference of pay should not fall on the public exchequer and, therefore, the consequential benefits should be confined and made to run notionally.

Ordered accordingly.

This order will apply to the connected case *mutatis mutandis*.

21.02.2018  
kv

(RAJIV NARAIN RAINA)  
JUDGE

*Whether speaking/reasoned* : *Yes*  
*Whether reportable* : *No*

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...Petitioner

Vs.

Commissioner Ambala Divn. and others

...Respondents

**CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Chirag Wadhwa, Advocate  
for the petitioner.

Mr. Harish Rathee, Senior DAG Haryana.

Mr. Karan Singh, Advocate  
for respondent No.5.

**RAJIV NARAIN RAINA, J. (Oral)**

For detailed order, see order of even date in CWP No.

17023 of 2015, Jaidev Vs. Commissioner Ambala Division and others.

**(RAJIV NARAIN RAINA)  
JUDGE**

**21.02.2018**

kv

*Whether speaking/reasoned* : Yes

*Whether reportable* : No