

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.3762 of 2016
Date of Decision: 14.09.2018

Raghubir KaushishPetitioner
Vs.
Haryana Urban Development AuthorityRespondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Devender Punia, Advocate, for the petitioner.

Ms.Supriya Garg, Advocate, for the respondent.

RITU BAHRI, J. (ORAL)

Petitioner is seeking quashing the decision dated 04.07.2012 taken in agenda item No.PC(27) (not communicated to the petitioner) in the meeting of the Personnel Committee of the respondent Authority (Annexure P-7) vide which the petitioner has been given notional promotion to the post of Senior Accounts Officer w.e.f. 28.07.2008 and further directing the respondent Authority to grant the deemed promotion w.e.f. 28.07.2008 from the date when his juniors have been promoted.

Petitioner had joined the service of the respondent i.e. Haryana Urban Development Authority as Assistant on 18.01.1979 and in the year 1986, he was promoted to the post of the Accountant and in the year 2002, he was promoted to the post of Accounts Officer w.e.f. 2000. In the year 2007, petitioner was charge sheeted under Rule 7 of the Haryana Civil Services (Punishment and Appeal) rules with regard to auction of commercial sites held on 25.02.2002. In the year 2008, the respondent

promotion but petitioner was ignored for the promotion on the ground of pendency of charge-sheet under Rule 7 and one Sh.Radhey Sham Goel who was junior to the petitioner was promoted to the post of Senior Accounts Officer and one post was kept reserved for the petitioner vide agenda item No.PC(7) dated 27.06.2008 (Annexure P-1). Promotion Order of Sh.Radhey Sham Goel was passed on 28.07.2008 (Annexure P-2). The proceedings initiated against the petitioner under rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules were dropped by the respondent-Authority vide order dated 25.06.2009 (Annexure P-3). Thereafter, petitioner has filed various representation to the respondent-authority for his promotion at par with his junior Sh.Radhey Sham Goel to the post of Senior Accounts Officer. Petitioner was going to retire on 31.03.2010, vide order dated 21.08.2009 (Annexure P-4), the respondent-authority has given the current duty charge of the post of Senior Accounts Officer to the petitioner. In the year 2009, another charge-sheet was issued to the petitioner and the regular departmental enquiry was initiated under rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987. So, the petitioner was again deprived from promotion because of pending enquiry. In the meantime, petitioner retired from service on attaining the age of superannuation on 31.03.2010. Ultimately, the petitioner was acquitted from the charges by the competent authority vide order dated 30.03.2011 (Annexure P-5). Thereafter, on an application made under RTI Act, 2005 the petitioner was supplied the copy of the minutes of meeting of the Personnel Committee held on 04.07.2012 (Annexure P-7) in which the case of promotion of the petitioner was considered and the petitioner was given notional promotion from the date when his junior was promoted to the post of Senior Accounts

Officer on 28.07.2008 till his superannuation i.e. 31.03.2010 and hence the present writ petition.

Learned counsel for the petitioner has argued that on the date of superannuation of the petitioner, he was having CDC charge of the post of Senior Accounts Officer as per order dated 21.08.2009. Learned counsel for the petitioner has referred to the order dated 21.08.2009 (Annexure P-4) and contends that from 24.08.2009, he has been granted charge to the post of Senior Account Officer for a stop gap arrangement in his own pay scale of Accounts Officer and till the date of his superannuation he has discharged his duty for the post of Senior Accounts Officer and once the charge-sheet filed against him and inquiry was finally dropped against him, he has a right to be given regular promotion instead of notional promotion from the date when his juniors were promoted.

The learned counsel for the respondents submitted in his reply that petitioner was given current duty charge as Senior Accounts Officer. However, another disciplinary proceeding was initiated against the petitioner when a charge sheet was issued to him on 09.12.2009 for acts of omission and commission committed by him while calculating the extension fee in respect of the Industrial Plot No.69, Sector-59 Faridabad. The petitioner was given an opportunity to submit his reply, however, he did not submit any reply. The enquiry officer was appointed on 15.01.2010 to conduct regular departmental inquiry against the petitioner. The reply was given by the petitioner on 19.01.2010. The enquiry officer submitted his enquiry report on 22.03.2010 and charges were proved against the petitioner. The copy of enquiry report was sent to the petitioner on 27.04.2010 against

personnel committee held its meeting on 04.10.2010 for decision and agreeing with the enquiry report, decided to issue a show cause notice to the petitioner for cut in pension. The show cause notice was issued to the petitioner on 02.11.2010. The Personnel Committee considered the reply of the petitioner given by him on 17.11.2010 and decided to file the show cause notice dated 02.11.2010 issued to him for 10% cut in pension and this order was conveyed on 30.03.2011. Thereafter, Personnel Committee of HUDA while it its meeting on 04.07.2012, approved the proposal and held the petitioner entitled for notional promotion to the post of Senior Accounts Officer from the date when his junior was promoted to the post of Senior Accounts Officer on 28.07.2008 till his superannuation i.e. 31.03.2010. it was also decided by the Committee that due to notional promotion the pay will be fixed notionally and nothing will be given to him actually on account of promotion and pension will be fixed on the basis of the actual drawn pay and not on the basis of notional pay. It is submitted in the reply that the petitioner having not worked on the post of Senior Accounts Officer as such, he cannot be allowed financial benefits. At the time of notional promotion, 40% of the pay was fixed notionally and no other benefit was granted to him and finally as per advice given by the Financial Department as per Rule 6.24(4) of CSR Vol.II, the pensionary benefits of the petitioner were to be calculated on the basis of emoluments actually drawn by him. Thereafter, difference of DCRG and Leave Encasement of the retired officer was released vide order dated 25.08.2015. As per instruction dated 31.05.2006 (Annexure R-1) the case of the petitioner for promotion can be considered after punishment awarded to him becomes ineffective as he could not be promoted as he was facing a disciplinary proceedings when his juniors have

been promoted.

After hearing counsel for the both the parties and going through the materials on record, learned counsel for the petitioner has referred to the Division Bench of this Court in the case of **Surinder Kumar and others Vs. State of Haryana and others 2002(4) SCT 424**, wherein, it has been held that a person appointed to hold full charge of duties of a higher post in addition to duties of his own post has to be allowed pay admissible to him as if he was appointed to officiate in higher post. In the referred case, no reasons recorded by competent authority to for denying higher scales to the petitioner as condition stated in the letter of appointment that they would discharge functions of higher post in their own pay scale is of no consequence. It has further referred to the full Bench judgment to this Court in the case of **Subhash Chander Vs. State of Haryana and others passed in CWP No.21358 of 2008 decided on 20.12.2011** wherein, it has been observed that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade.

Accordingly, in the present case petitioner is held entitled to the higher pay scale from the date he has assumed the charge of the post of Senior Accounts Officer with all consequential benefits including promotion. His pay may be re-fixed and the arrears of his pay shall be calculated from the date when he has been officiating on the post of Senior Accounts officer. The payment of arrears shall be made within three months from the date of receipt of a certified copy of this order will all consequential benefits.

Accordingly, the present writ petition is allowed in the above terms.

(RITU BAHRI)
JUDGE

14.09.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No