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

LPA No.1308 of 2016

Date of decision: July 04, 2018

Vinod Kumar Datta

.....Appellant

Versus

State of Haryana and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Sanjay Kaushal, Senior Advocate with
Mr. Anurag Goyal, Advocate for the appellant.

Ms. Tanisha Peshawaria, DAG Haryana.

Mr. Naresh Prabhakar, Advocate for respondent No.2.

A.B. CHAUDHARI, J

This intra-court appeal, at the behest of the original petitioner, the appellant herein, is directed against the judgment dated 30.03.2016 in CWP No.10647 of 2015, by which the appellant-original petitioner's claim for promotion to the post of General Manager of the Haryana Roadways Engineering Corporation Ltd. (for short 'Corporation') was declined and his writ petition was dismissed by the learned Single Judge.

FACTS

The appellant-original petitioner was initially appointed as Foreman with respondent No.2-Corporation, on 27.08.1993 and was promoted to the post of Works Manager on 23.06.1999. He possesses the qualification of Diploma in Mechanical Engineering. The relevant

Recruitment Rules 9(1)(l)(i) provides for appointment to the post of General Manager by promotion from amongst Works Manager etc. and the qualification is Diploma in Automobile and Mechanical Engineering with five years experience as Works Manager. The appellant clearly satisfied the said requirement and as such, upon completion of experience of five years, he became eligible for promotion to the post of General Manager, in June 2004. But his case was never considered for promotion to the post of General Manager. The appellant had filed representation dated 10.05.2005, 15.05.2007, but to no effect.

One Shri Joginder Sharma who was working as Works Manager at Sirsa Depot under Transport Department was transferred as officiating General Manager in the Corporation against the vacant post of General Manager in the year 2008, which was put to challenge by the appellant by filing CWP No.10164 of 2008 before this Court, but during the pendency of the said writ petition, Joginder Singh was sent back to Haryana Roadways as General Manager. Thereafter, Shri N.K. Garg, who was working as Works Manager in the Transport Department was ordered to be given officiating charge of the General Manager of the Corporation vide order dated 11.08.2008. Aggrieved against the same, the appellant left with no other option, withdrew the said writ petition with liberty to challenge the appointment of Shri N.K. Garg. But before, appellant could challenge the said appointment, one more order was passed on 07.08.2009, by which one Sh. Rajiv Nagpal who was working as a Purchase Officer was promoted to the post of Deputy Transport Controller

w.e.f. 11.12.2008 and was given posting as General Manager in the respondent-Corporation. The appellant again challenged the said action by filing writ petition bearing CWP No.19921 of 2009 in this Court with a prayer to consider his case for promotion to the post of General Manager w.e.f. 08.05.2008 or 11.05.2008. The said writ petition was decided on 18.03.2011 and again this Court directed the respondents to consider the case of the appellant with further observation that respondent No.2 was blowing hot and cold and taking contradictory stand only in the case of the appellant. Pursuant to the said order to consider the appellant for promotion, respondent No.2-Corporation passed one more order on 23.11.2011, wherein, it was stated that the Board of Directors on 16.03.2011 decided that the post of General Manager should be filled up through deputation from the Transport Department and the said resolution was approved. The appellant again challenged the said order dated 23.11.2011 in CWP No.3674 of 2012 before this Court and the same was decided on 09.03.2015. This Court rejected all the contentions raised by respondent No.2-Corporation and gave directions to consider the case of the appellant for promotion after accepting eligibility, within one month. Ignoring the said direction, the respondent-Corporation passed another order dated 06.05.2015 changing the stand that the post of General Manager shall be filled up by way of deputation from the Transport Department, Haryana. The appellant filed CWP No.10647 of 2015 before this Court against the said order dated 06.05.2015. The learned Single Judge decided the same vide impugned judgment dated 30.03.2016.

Hence, this appeal.

ARGUMENTS

In support of the appeal, learned Senior counsel for the appellant vehemently argued that by the impugned judgment made by the learned Single Judge, the effect of all the earlier judgments in favour of the appellant has been nullified which is a substantial error of law and contrary to the principle that the judgments are required to be implemented unless set aside by the higher Court. According to him, learned Single Judge has ignored all the earlier judgments and directions issued at the behest of the appellant in this Court in various writ petitions so also the findings and observations made therein and self-contradictory stand has been taken by the Corporation only with a view to deprive the appellant of his legal rights. According to him, findings and observations and the judgments having become final earlier, learned Single Judge could not have gone behind those judgments and found that the appellant was given some post and therefore, he should be satisfied with the same rather than agitating about it. This, according to the learned Senior counsel, is wholly impermissible as the learned Single Judge could not have put the appellant in jeopardy by nullifying all the judgments in his favour earlier. Learned Senior counsel pointed out various contradictory stands as well as findings recorded by this Court earlier, with which we will deal in a later part of the judgment. Learned Senior counsel then submitted that the learned Single Judge fell in error in dismissing the writ petition filed by the appellant and that has caused miscarriage of justice to him. According

to him, Mr. Nagpal was given a show-cause notice by this Court in the present appeal and the suitable action needs to be taken. He further submitted that the appellant has been put to undergo a harrowing experience right after 2008, though, was entitled to the relief claimed by him. He, therefore, prayed for allowing the appeal.

Per contra, learned counsel for the respondents vehemently opposed the appeal and submitted that the learned Single Judge clearly found that the appellant was given the post to which he was entitled to, namely, Deputy General Manager (Production) in the scale of ₹9300-34800 plus grade pay of ₹4800, which amounts to promotion for all intents and purposes and therefore, the learned Single Judge was right in declining to interfere with the rejection order dated 06.05.2015. According to them, learned Single Judge was right in holding that the appellant did not have any right to claim promotion to the post of General Manager, particularly after the approval of the draft rules, which was the subject matter of debate in all the earlier writ petitions filed by the appellant-original petitioner. He submitted that the appellant cannot be granted any relief and therefore, the present appeal needs to be dismissed.

CONSIDERATION

We have heard the learned counsel for the rival parties at length. We have perused the entire record including the judgment rendered by the learned Single Judge under challenge in the present appeal. It is not necessary for us to turn to the entire history in the present matter and cite all the details thereof. As a matter of fact, all the necessary

details have been recorded by this Court in its order dated 05.07.2017. We think quotation thereof would subserve the purpose and the same reads thus:-

“The first writ petition that the petitioner filed was CWP No.19921 of 2009 wherein this Court passed the following order dated 18.03.2011:-

“Learned counsel for the petitioner has drawn my attention to averment made in the writ petition and also the Rules which are applicable for making promotion in the Corporation. As per the counsel, the petitioner is fully eligible for promotion, but has been denied his right to consideration only on the ground by applying Draft Rules. Counsel has also referred to that portion of the petition, where he has clearly made reference to earlier petition filed by another employees, in which the stand taken by the respondents was that Draft Rules would not be applicable and would apply for future promotions.

The respondent-Department cannot be allowed to take stand according to its convenience. Either the Draft Rules will govern the field or the Rules, which are applicable to the Corporation as has been stand of the respondents earlier. In my view, case of the petitioner for consideration is made. If he is found ineligible or unsuitable, it may be possible for the department to take a person on deputation. In this regard, the counsel for the petitioner has also made reference to the case of Union of India versus Puranjit Singh and another, (CWP No.18535 of 2007), decided on 14.12.2007.

Faced with this situation, counsel for the respondents says that the Corporation has decided to take a person on deputation. This, has been done without considering the claim of the petitioner. That may not be legally proper. Let the claim of the petitioner for promotion be considered and appropriate decision taken in accordance with law. The respondents will intimate to the petitioner whether his case has been considered under the Draft Rules or under the Rules, which are applicable for Transport Department. The petitioner would be at liberty to challenge the decision if any communicated to him and if it is adverse to his interest.

The writ petition, is accordingly, disposed of in the light of above observations.”

Thereafter, the claim of the appellant was rejected on 23.11.2011 by the Haryana Roadways Engineering Corporation Limited, Chandigarh, the relevant portion of the order is extracted as under:-

“Keeping in view the abovesaid reasons, the post of General Manager in Haryana Roadways Engineering Corporation Limited, Gurgaon is to be held on deputation from Transport Department, Haryana, as per the draft rules of HREC as approved by Board of Directors and there is no provision of promotion to the post of General Manager in HREC from the post of Works Manager as claimed by Shri V.K.Dutta. Hence, the claim of the petitioner is rejected.” The petitioner once again approached this Court by way of CWP No.3674 of 2012. Reply in the said writ petition was filed by Sh. Rajiv Nagpal, General Manager, Haryana Roadways Engineering Corporation Limited, Gurgaon and relevant para 8 of the same is extracted here below:-

“That in reply to para No.8 it is submitted that the Draft Service Rules of the Corporation are totally different and distinct of the transport department. In fact, the eligibility criteria under the Haryana Roadways Engineering Corporation Limited, Rules is as follows:-

	A	B	C	D
Sr. No	Name of post	By Direct Recruitment	By promotion	Method of recruitment
1	General Manager (Tech)	Degree in Mech/Automobile Engg. with 10 years experience in Bus Body Fabrication	Degree in Mech/Automobile Engg. with 10 years experience as Works Manager	i) Direct Recruitment ii) On deputation from State Govt. or any Public Undertaking iii) Promotion from Works Manager, Works Manager (quality control) and Store Purchase Officer

Since, the petitioner was appointed under draft rules and was promoted under draft rules and as such he is barred by his own act and conduct from stating that the rule of Transport Department be made applicable in the case of petitioner”

This Court vide order dated 09.03.2015, while disposing of CWP No.3674 of 2012 negated the stand of the corporation by holding the appellant eligible to mandate i.e. case be considered as per law within a period of one month from the date of receipt of a certified copy of the order. We may extract the relevant portion of the said order here below:-

“In view of this binding precedent even the third argument raised by learned counsel for the respondents is rejected. In these circumstances, the petition is allowed and the impugned orders are set aside. The respondents are directed to consider the case of the

petitioner for promotion after accepting his eligibility. Seeing the long struggle and multiple litigation which the petitioner has had to endure for this promotion, it is directed that necessary consideration be made as per law within a period of one month from the date of receipt of a certified copy of this order.”

Subsequent to the aforesaid mandate, the respondents once again rejected the claim of the appellant vide Office Order dated 08.05.2017 which is extracted as under:-

“Now as per directions of the Hon'ble Court, the claim of the petitioners is to be considered as per law. It will not be out of place to mention here that while filing the Civil Misc. Application dated 03.07.2014, it was within the knowledge of the petitioner that the draft rules of HREC titled as Haryana Roadways Engineering Corporation Employees Service Rules were approved by the Board in its 103rd Meeting held on 14.06.2013 with the concurrence of Haryana Bureau of Public Enterprises (fD) obtained vide U.O.No.20/1/2013/Actt/HBPE (FD) dated 23.04.2013 and circulated vide letter No.251/FC/HREC dated 11.07.2013. These Rules were also placed on the website of Transport Department, Haryana i.e. www.hartrans.gov.in. It appears that the petitioner concealed this fact while filing the Civil Misc. Application No.7648/2012 on 03.07.2014 before the Hon'ble High Court. Presently, the Haryana Roadways Engineering Corporation Employees Service Rules as approved by the competent authority are applicable to decide the claim of the petitioner.

As per Appendix B of the rules dated 11.07.2013, the post of General Manager (Technical), is to be filled up by way of following mode:-

General Manager (Tech):-

“Deputation post to be filled up from Transport Deptt., Haryana. Incumbent should have a degree in Mechanical/Automobile from a recognized University/Institute and holding analogous post. He will get his salary in his own pay scale.”

In this way, as per existing Service Rules of HREC, the post of General Manager, HREC is to be filled up by the mode of deputation only and not in any other manner. The fulfilling of the required qualification by the petitioner or having higher education does not have any force with regard to his claim for the promotion of the post of General Manager in view of the afore-stated Service Rules.”

Apropos the above discussion, we find that the Rules were

approved by the resolution of the Board of Directors of the Corporation. But when the claim of the appellant was rejected, on 23.11.2011, it was stated by the Corporation that the post of General Manager was required to be filled in on deputation from the Transport Department, Haryana, as per the draft Rules as approved by the Board of Directors. That clearly shows that in the year 2011, there was no approval by the Board of Directors to the draft Rules, which as earlier stated, was granted only on 14.06.2013. This fact was never brought to the notice of the learned Single Judge which decided CWP No.3674 of 2012, on 09.03.2015. Thus, in our opinion, the concerned officers of the Corporation and in particular Mr. Nagpal clearly played a game of hide and seek by placing contradictory stand before this Court with only intention to somehow douse the claim of the appellant. That appears to have been deliberately done by him with a view to somehow thwart the eligibility claim of the appellant by hook or crook. We, therefore, find that the rejection of the claim of the appellant on 23.11.2011 was on a wrong premise and totally illegal and *mala-fide*.

It is significant to note that the aforesaid judgment and the findings recorded by this Court in the earlier writ petitions could not have been ignored by the learned Single Judge under the impugned judgment. Similarly, the learned Single Judge could not have ignored the fact that the post of General Manager was available first when the Corporation itself posted Shri Joginder Singh as officiating General Manager as the post was vacant w.e.f. 08.05.2008. Admittedly, the appellant was agitating his claim right after 2004 on the ground that he had experience of five years

so also the required qualifications, and therefore, he was required to be promoted to the post of General Manager. But then, the crucial date was 08.05.2008 when the Corporation decided to fill up the post of General Manager when it posted Shri Joginder Singh w.e.f. 08.05.2008. To say in other words, it was the appellant who was entitled to be appointed to the post of General Manager of the Corporation instead of Shri Joginder Singh w.e.f. 08.05.2008 as the channel of promotion was available and the appellant had qualification and experience required and further that employer Corporation wanted to fill up the post of General Manager w.e.f. 08.05.2008. Not only that, the appellant was the candidate available in the Department itself. It clearly appears to us that in order to defeat the claim of the appellant who was the eligible qualified candidate for promotion to the post of General Manager as per the promotion channel available by way of sinister decision, Joginder Singh was brought from some other Department i.e. Transport Department and was made officiating General Manager. This mischief was clearly played with a view to deny the legitimate claim of the appellant. What is surprising is that higher-ups in the Corporation tacitly and rather casually supported these actions on behalf of the Corporation in indulging in the aforesaid unwarranted and uncalled activities of misleading the Court and taking contradictory stand. It is really unfortunate that the higher-ups in the Corporation either were mislead or were party to the entire events, which have taken place for so many years. It is not the case of the respondent-Corporation that the appellant had any bad service record or that he was not efficient or that he

was not fit to be promoted to the post of General Manager, on merits. It is regrettable that the appellant has been fighting for his right since 2008 and now after 10 years, he is reaching the age of superannuation, as submitted by the learned Senior counsel for the appellant. The Hobson's choice, the post of Deputy General Manager given by the Corporation and accepted by the learned Single Judge, is really an eye-wash.

It is seen from the record that this Court had on all occasions directed the Corporation to consider the appellant's case for promotion and every time, the Corporation took undue advantage of the word "consider" and rejected his claim, and in this process, the appellant lost 10 valuable years to occupy the post of General Manager. Now, this Court has realised that it is no use directing the respondent-Corporation to consider his promotion and therefore, this Court is inclined to pass affirmative order as the appellant will attain the age of superannuation in the near future. The appellant would also be entitled to costs from the respondents since the respondents have been troubling him for the last so many years. We think, costs in the sum of ₹1 lakh payable to the appellant would subserve the interest of justice. To sum up, the present Letters Patent Appeal must succeed. In the result, we make the following order:-

ORDER

- (i) **LPA No.1308 of 2016** is allowed;
- (ii) The impugned judgment dated 30.03.2016 passed by the learned Single Judge, in CWP No.10647 of 2015 is set aside;
- (iii) Respondent No.2-Corporation is directed to appoint the appellant, by promotion to the post of General Manager,

Haryana Roadways Engineering Corporation Ltd., Gurugram and giving effect to his promotion w.e.f. 08.05.2008, with continuity of service, arrears of salary and all other monetary benefits, till the date of his superannuation;

- (iv) The order of promotion of the appellant shall be made to the post of General Manager, Haryana Roadways Engineering Corporation Ltd., Gurugram on or before 20.08.2018;
- (v) Respondent No.2 shall pay costs in the sum of ₹1 lakh to the appellant, within a period of 8 weeks from the date of receipt of certified copy of this order;
- (vi) Respondent No.2 is at liberty to recover the cost from the officials responsible;
- (vii) List on 21.08.2018 for compliance;
- (viii) A copy of this order be given to the learned counsel for respondent No.2 under the signatures of the Bench Secretary.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

July 04, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No