

(107) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.1121 of 2017 (O&M)
in CWP No.10159 of 2013
Date of decision: 19.01.2018

State of Haryana and others

.... Appellants

Versus

Om Parkash Uda

..... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL.
HON'BLE MR. JUSTICE B.S. WALIA.**

Present: Mr. Ravi Dutt Sharma, DAG, Haryana.

B.S. WALIA, J.,

[1] Prayer in this intra-court appeal is for setting aside judgment dated 25.04.2016 passed by the learned Single Judge, whereby the appellants-respondents were directed to pass a fresh order promoting the petitioner to the post of Joint Director and release all consequential benefits to him within a period of one month from the date of receipt of certified copy of the order.

[2] Brief facts of the case leading to the filing of the intra-Court appeal are that the petitioner was selected and appointed as District Public Relations Officer on 31.03.1992. Thereafter, he was promoted as Deputy Director on 23.06.2003. Next promotional post is that of Joint Director to be filled up from amongst persons fulfilling the following qualifications in terms of the Haryana Public Relations Departmental (Group-A) Service Rules, 1982:-

“Four years experience as Deputy Director, Radio and Press Liaison Officer, or Divisional Campaign Officer.”

[3] Grievance of the writ petitioner was that despite the post of Joint Director having become available in the department on 01.10.2011, he was

not promoted. In the circumstances, the writ petitioner moved representation for promotion to the post of Joint Director on 04.10.2011 (Annexure P5) whereupon his case was forwarded by the Director General, Information, Public Relation and Cultural Affairs Department to the Government (respondent No.3) vide letter dated 07.10.2011 (Annexure P7). In response thereto, the Government vide letter dated 17.10.2011 (Annexure P8) directed the Director General, Information, Public Relation and Cultural Affairs Department (respondent No.3) to send promotion agenda to the Government within two days for convening of Departmental Promotion Committee (hereinafter referred to as - 'DPC'). In response thereto, Director General, Information, Public Relation and Cultural Affairs Department (respondent No.3) sent the promotion agenda to the Government vide letter dated 19.10.2011 (Annexure P9) but no action was taken on the same and in the meantime, the writ petitioner retired on 31.10.2011.

[4] In the aforementioned background, the petitioner filed a writ petition seeking directions to the appellants-respondents to promote him on the post of Joint Director with effect from 01.10.2011 and to grant him all consequential benefits on the ground that as per Government instruction's dated 20.05.2010 (Annexure P6), panel of anticipated vacancies for promotion quota upto 31st December of next year was to be prepared by November every year and further that DPC was required to meet within the first quarter of each calendar year to prepare a list of all persons eligible for promotion against vacancies likely to arise during the course of the year so that promotion could be made without any loss of time on the vacancy arising. However, due to inaction of the appellants-respondents to prepare the panel by convening DPC in accordance with the instructions, the writ petitioner was put to prejudice as in the meantime, he retired on 31.10.2011.

Resultantly he suffered loss of financial benefits, besides, recurring loss of pension. The writ petitioner made representations dated 30.12.2011 and 29.06.2012 (Annexure P12) claiming promotion to the post of Joint Director and in response thereto was informed that he could not be promoted prior to the date of his retirement as meeting of the DPC could not be convened on account of certain administrative reasons.

[5] Grievance of the writ petitioner further is that after he retired on 31.10.2011, DPC was held on 27.12.2011 (Annexure P14) in which one Ashok Kumar, Deputy Director was recommended for officiating as Joint Director despite his being two steps lower than the petitioner in the seniority list of Deputy Directors. Said Ashok Kumar was given officiating charge as Joint Director as one Satish Kumar Joshi was facing disciplinary proceedings. However, Satish Kumar Joshi was exonerated of the charges vide order dated 19.06.2012 (Annexure P15) whereupon DPC was convened immediately and he was promoted as Joint Director vide order dated 16/18.07.2012 (Annexure P16) i.e. 13 days prior to the date of his retirement on 31.07.2012. Similarly, one Ram Bhagat Sharma, Deputy Director was promoted as Joint Director vide order dated 13.02.2013 (Annexure P19) prior to the date of his retirement on 31.03.2013. Similarly, one R.K. Rathi was given the benefit of upgrading of the post of Administrative Officer to the post of Deputy Director (Admn.) vide order dated 04.06.2008 (Annexure P20) and who but for the upgradation would have retired as Administrative Officer. Similarly one Bhal Singh, Project Director (CA) was given promotion as Additional Director (Art, Language & Cultural Affairs) by upgrading his post as a measure personal to him and without convening DPC vide order dated 16.09.2010 (Annexure P21). In the aforementioned

background, it was contended before the writ Court that the action of the

department in not promoting the writ petitioner before the date of his retirement to the post of Joint Director, allegedly on account of inability to convene DPC on account of administrative reasons was unjustified.

[6] Factual position as referred to above was not denied by the appellants-respondents and the only plea was that the petitioner could not be promoted prior to his retirement on account of inability to convene the meeting of the DPC prior to 31.10.2011.

[7] Reference was also made by the writ petitioner to order dated 12.08.2014 whereby one Ashok Kumar was sanctioned up-gradation of the post of Joint Director as Additional Director as a measure personal to him in the Information and Public Relations Department whereas said Ashok Kumar was due to retire on 31.08.2014 and the order granting up-gradation was passed only 19 days prior to his retirement.

[8] The only plea of the learned State Counsel for not promoting the petitioner to the post of Joint Director was inability to convene the meeting of the DPC prior to his retirement on 31.10.2011 as there was only period of 31 days from the date the post of Joint Director became vacant on 01.10.2011. The petitioner retired on 31.10.2011, whereas agenda for promotion of the petitioner was sent on 19.10.2011 but the DPC could not be constituted due to shortage of time. It was further contended that the petitioner could not claim promotion as a matter of right but could only claim consideration.

[9] We have considered the submissions made by the learned State counsel and are of the considered view that for the reasons as are recorded hereunder, the appeal is bereft of merit, therefore is liable to be dismissed in limine.

[10] Admittedly, the post of Joint Director fell vacant on 01.10.2011. As per instructions dated 20.05.2010 (Annexure P6) issued in furtherance of instructions dated July 1, 1997, a panel of all anticipated vacancies of promotion quota upto 31st December of the next year is to be prepared in November every year. Besides vide instructions dated 20.05.2010 (Annexure P6) it had been decided that DPC should meet within first quarter of each calendar year and list of all eligible persons for promotion against vacancies likely to arise during the course of the year should be prepared by it so that promotion could be made without any loss of time on vacancy arising.

[11] Once the instructions are categoric and the factual position is admitted inasmuch as the vacancy for the post of Joint Director fell vacant on 01.10.2011, the appellants-respondents were required to take action in accordance with the instructions to fill up the vacancies at the earliest possible without wastage of any time. In fact as per the instructions (Annexure P6) as referred to above, a panel of all anticipated vacancies for promotion to the post falling vacant upto 31.12.2011 was to be prepared by November, 2010 and further DPC was required to meet within first quarter of calendar year 2011 and was to prepare a list of all eligible persons for promotion against vacancies likely to arise during the course of the year 2011 so that promotion could be made without any loss of time on vacancy arising.

[12] Accordingly, as per above-stated instructions (Annexure P6), DPC was required to meet within the first quarter of the year 2011 and list of all eligible persons for promotion against vacancies likely to arise during the course of the year 2011 was to be prepared. Admittedly it was known that the vacancy would arise on 01.10.2011. Therefore, DPC was required to meet in the first quarter of the year 2011 so that promotion could be made

without any loss of time on the vacancy arising i.e. on 01.10.2011. Thus, the appellants-respondents defaulted in not adhering to the instructions (Annexure P6) by not preparing a panel in November 2010 for vacancies which were to arise upto December, 2011 besides by not convening the meeting of the DPC in the first quarter of the year 2011 for filling up the vacancies to arise during the course of the year as the vacancy in this case was to arise on 01.10.2011. Instead, the appellants-respondents i.e. Director General, Information, Public Relation and Cultural Affairs Department to the Government (respondent No.3) forwarded the case of the petitioner for promotion to the post of Joint Director on 07.10.2011 (Annexure P7), in response to which the Government vide letter dated 17.10.2011 (Annexure P8) directed the Director General, Information, Public Relation and Cultural Affairs Department (respondent No.3) to send promotion agenda to the Government within two days for convening of DPC. The agenda was sent on the very next day i.e. on 19.10.2011 (Annexure P9) but meeting was not convened.

[13] The facts of the case go to show beyond an iota of doubt that inaction in considering the claim of the writ petitioner for promotion to the post of Joint Director in time as per the instructions applicable is exclusively attributable to the appellants-respondents. The instructions (Annexure P6) as applicable and as referred to above were flouted with impunity and in the end the stand taken up was that although the agenda had been sent for promotion of the petitioner to the post of Joint Director, yet the petitioner could not be promoted due to inability to convene the meeting of DPC due to shortage of time as the post had fallen vacant on 01.10.2011 and agenda was sent on 19.10.2011 (Annexure P9) while the petitioner retired on 31.10.2011.

[14] Had the appellants-respondents adhered to the instructions (Annexure P6) issued by the Government, no difficulty whatsoever would have arisen since the panel would have been prepared for vacancies which were to arise upto 31.12.2011 in November 2010 and meeting of the DPC would have been convened in the first quarter i.e. upto 31.03.2011 for preparing a panel of candidates for promotion which were to fall vacant during the year 2011. The appellants-respondents have also not been able to controvert the plea of the petitioner, of promotions/upgradations as referred to above in paragraph Nos. 5 & 7 above having been made of officers a few days prior to their retirement. Accordingly, we find no merit in the appeal.

[15] Along with challenge to judgment dated 25.04.2016, in this intra court appeal, application has also been filed praying for condonation of 341 days in late filing of the appeal. A perusal of the application reveals that pursuant to receipt of impugned judgment on 25.04.2016, request was made to the office of the Advocate General, Haryana as well as L.Rs. Haryana vide letter dated 19.05.2016 to seek legal opinion as to whether the case was fit for filing of LPA. The Advocate General, Haryana, vide memo dated 21.09.2016 informed for filing of LPA in the matter. L.R. Haryana also concurred with the view of the Advocate General, Haryana and accordingly issued directions to the Advocate General, Haryana to file the LPA in the matter vide memo dated 30.09.2016. Thereafter, the appellants remained in correspondence with the office of the Advocate General for filing LPA and the same was filed on 01.05.2017 and after removal of objections the same was refilled on 08.05.2017. Stand also is that the dealing assistant had proceeded on leave and the case was being handled by another Senior Assistant and due to delay in filing of the instant LPA, concerned Dealing

Assistant in the office of respondent No.3 has been stated to have been

charge sheeted under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules 1987, vide memo dated 18.04.2017. Accordingly, for the reasons as given in the application for condonation of delay, delay of 341 days in late filing of the appeal is condoned.

[16] However, in the light of the position as noted above, we are of the considered view that no case whatsoever is made out for interfering with the well-reasoned order dated 25.04.2016, passed by the learned writ Court.

[17] Accordingly, finding no merit in the appeal, the same is dismissed in limine.

(Rajesh Bindal)
Judge

(B.S. Walia)
Judge

19.01.2018
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1. Whether the order is reasoned/speaking : Yes/No.
2. Whether the order is reportable : Yes/No.