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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 15.10.2019

+ W.P.(C) 4550/2018

JYOTSNA MISHRA

..... Petitioner

Through Mr.R.S.Mishra, Mr.Anand Mishra
and Mr.A.K.Pandey, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr.Arun Bhardwaj, Advocate
for R-1.
Mr.Aman Yadav, Advocate for
Mr.Digvijay Rai, Advocate
for R-2 to R-5.

**CORAM:
HON'BLE MR. JUSTICE A.K.CHAWLA**

J U D G M E N T

A.K. CHAWLA, J. (ORAL)

By the instant petition, the petitioner, in effect, seeks issuance of a writ of mandamus to the respondents for grant of promotion to the post of Assistant Manager (Official Language) with effect from 01.07.2014 instead of 01.10.2016.

2. Concisely, the facts relevant to the subject matter are that the petitioner joined the respondent-Airport Authority of India in short 'AAI', as Junior Executive (Official Language) on 27.04.2011. On the recommendation of the Departmental Promotion Committee, the competent authority approved the promotion of four (4) Junior Executives (OL) to the post of Asstt.Manager (OL) and a communication to that effect was issued vide F.No.A.32013/146/2014-DPC dated 31/08/2015. This promotion order included the petitioner and in terms thereof, she was to assume the charge of new post by 18.09.2015, failing which, refusal was to be presumed and they were to be debarred for a period of two years without any further intimation w.e.f.the date of the issue of the order.

3. It is the case of the petitioner that she was never officially served with the said communication nor the said communication was ever sent to her present unit i.e. E.M.O. SAP, New Delhi in spite of her various visits to the HR Department of E.M.O., Safdarjung Airport, Delhi, when she visited to know regarding her promotion posting and for being relieved to proceed for her promotion to her new unit i.e. RHO/SR.

4. It transpires that w.e.f.01.10.2016, the petitioner has been promoted to the post of Assistant Manager (OL). By the instant petition, she however, seeks to be promoted on notional basis w.e.f.01.07.2014 as provided for in the initial promotion order dated 31.08.2015, which benefit, her batchmates have come to be granted. According to her, no fault could be attributed to her in non compliance of the promotion order dated 31.08.2015, as, it was never served upon her officially. The respondent-AAI refutes the allegations of the petitioner being not duly served or communicated with the promotion

order dated 31.08.2015. In doing so, it comes to be pointed out that on 02.09.2015, the petitioner had made a representation to the Member (HR) of AAI for being retained in her post at Delhi and such communication by itself proceeded under the heading 'Promotion to the Post of Assistant Manager (OL)'. In the counter affidavit filed, the respondent also adverts to a letter dated 07.09.2015 issued by an ex-MLA of Delhi to the Hon'ble Minister of State, Ministry of Civil Aviation, to show that the petitioner was fully aware of the subject promotion order but was not inclined to join at the place of transfer on promotion. Thus, according to AAI, the petitioner was even guilty of suppression of facts from the court. The petition is thus sought to be dismissed with heavy costs.

5. In the submissions of Mr.Mishra, learned counsel for the petitioner, in the absence of the petitioner being served officially with the promotion/transfer order dated 31.08.2015 and being relieved by the concerned authority, where she was posted at the relevant point of time, she could not be visited with any action as provided for under the subject communication dated 31.08.2015.

6. The respondent-AAI in its counter affidavit has specifically stated that the subject promotion / transfer order dated 31.08.2015 was also uploaded on the website of AAI on 31.08.2015 and in response thereto, the petitioner had made a representation to Member (HR) of AAI on 02.09.2015, does not find any specific denial in the rejoinder filed. There is also no denial of the fact that an ex-MLA had taken up her cause vide his letter dated 07.09.2015, a copy whereof forms part of the counter affidavit as Annexure R-4 (colly). In the given undisputed factual conspectus, the contention raised by the

learned counsel for the petitioner that the petitioner was not officially served with the promotion / transfer order, on the face of it, is wholly unmerited. More so, when nothing comes to be pointed out that on account of absence of any physical service of such promotion / transfer order, assuming, it be so, the petitioner was prejudiced in any manner. The contention raised to the contrary is therefore wholly misconceived and deserves outright rejection.

7. Mr.Mishra, learned counsel for the petitioner, also contended that the refusal contemplated in the order dated 31.08.2015 could not be construed by any implications inasmuch as the refusal was required to be made by the petitioner. Lest, an adverse observation follows, the submission made is outrightly rejected. Facts can be deduced unless it comes to be provided otherwise in any rule, regulation or the law, which, the learned counsel for the petitioner, miserably fails to point out.

8. In pursuance of the directions given by the court, when the petitioner had approached this court earlier, the respondents have passed a speaking order dated 16.04.2018 on the representation made by the petitioner and rejected her claim, with the observations as under:

"3. In your representation dated 21.2.2017, you have categorically mentioned that said promotion order dated 31.08.2015 was published in social media and said order was not served to you officially. It appears that you have seen the said order dated 31.08.2015 on same day i.e. publishing in social media. In your representation, you have also mentioned that several visits were made to HR Department for relieving her on promotion posting.

In spite of not receiving promotion order and ignoring by parent department, you have not made any written communication with parent department, you have not made any written communication with parent department or CHQ which is within 1 k.m. away from EMO Office to submit your claim. between the period from 1st promotion order dated 31.08.2015 to next promotion order dated 3.8.2016 in which you were transferred to RHQ (Southern Region) on promotion transfer, you have not made any communication regarding debarring you for promotion for two years. To evade the transfer from EMO, Safdarjung Airport to RHQ (Southern Region), you have not submitted any representation during this period.

4. In view of above, since you were failed to take over the charge of Assistant Manager (OL) within specified date mentioned in para 2 of promotion order dated 31.08.2015, you were debarred for promotion of Asstt. Manager (OL) for a period of two years.

5. On completion of debarred period, you were promoted to the post of Asstt.Manager (OL) and posted to RHQ (SR) vide order No.A.32013/146/2016-DPC dated 3.8.2016. However, on your representation to change of place of posting, competent authority has changed your posting from RHQ (SR) to Amritsar Airport vide order No.A.22012/01/2014-EM dated 12.09.2016.

6. In view of above facts and circumstances and as per laid down procedure of Airports Authority of India, your claim for grant of promotion w.e.f. 1.7.2014 does not have merit and cannot be agreed to."

9. Taking note of the foregoing observations in the impugned order dated 16.04.2018 and the fact that transfer and posting is an incident of service, the prerogative of an employer in that regard cannot be questioned. Thus, a promotion, which is coupled with transfer, cannot be questioned by an employee, unless, it comes to be shown that it was with any malice or penal in nature. Any of such factors being absent and the other persons similarly placed having even not objected to the subject promotion / transfer order, the court does not find any merit in the instant petition to exercise its extraordinary jurisdiction.

10. For the forgoing reasons, the writ petition is dismissed. No order as to cost.

A.K. CHAWLA, J.

OCTOBER 15, 2019/dm

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