

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH.**

CWP-7312-2020 (O&M)

Date of Decision: May 21, 2020

(Heard through Video Conferencing)

Som Pal Singh

...Petitioner

Versus

Food Corporation of India and others

... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vishal Gupta, Advocate
for the petitioner.

Mr. K.K. Gupta, Advocate
for the respondents.

JAISHREE THAKUR, J. (Oral)

1. The petitioner herein is seeking to challenge the impugned orders i.e. Annexures P-15, P-16 and P-17 whereby the promotion given to him as far back as 2012 and 2015 stands cancelled.

2. Mr. Vishal Gupta, learned counsel for the petitioner herein submits that while passing the impugned orders, the detailed reply filed by the petitioner has not been taken into consideration. It is contended that the petitioner has been reverted from the post of Manager Technical to the post of TA-1 and further from the post of TA-1 to the post of TA-2 while withdrawing his promotional orders. It is contended that the impugned orders are liable to be set aside as the petitioner could not have been reverted without following the due process as per the regulations applicable to the service of the petitioner.

3. Per contra, Mr. K.K. Gupta learned counsel appearing on behalf of the respondent-Corporation submits that the petitioner has been reverted on

account of the fact that he was wrongly promoted. The petitioner was facing criminal prosecution and the matter is pending before the CBI Court and, therefore, could not have been promoted during the pendency of those proceedings. It was on account of a communication gap regarding the pendency of the CBI case against the petitioner that the Zonal Promotion Committee was not made aware about the pendency of the cases. Further reliance has been placed upon the judgments to argue that it is not necessary to give any reasonable opportunity of hearing when the recruitment rules for promotion to a higher post have not been adhered to, as in the instant case.

4. I have heard learned counsel for the parties and have perused the paper book. Admittedly, the petitioner herein had been promoted to the post of TA-1 vide an order dated 20.10.2012 and subsequently promoted to the post of Manager (Technical) on 30.03.2015. Subsequent to his promotions, the General Manager came to know that there were criminal cases pending against the petitioner and, therefore, he could not be promoted. The General Manager sought for an explanation from the petitioner while giving him an opportunity to submit his reply within ten days on receipt of the show cause notice. Admittedly, the show cause notice dated 28th January, 2020 came to be served upon the petitioner on 03.03.2020 by the Divisional Office. The petitioner herein filed his detailed reply and submitted the same on 09.03.2020 in the office of the Divisional Manager, FCI, Kurukshetra, which reply has not been taken into account before passing the impugned orders. The reason for not considering the reply is available at page 109 of the paperbook. A reading of the written statement clearly reflects that “ *no reply to the said show-cause notice was received by the Zonal office from the petitioner till the expiry of the stipulated period of ten days i.e. 12.03.2020 or even up to the passing of the orders on 19.03.2020*”

5. A perusal of the show cause notice clearly reflects that the petitioner had been given time to file a reply and the said show-cause notice was served upon him only on 03.03.2020. The paper-book would reveal that a reply had been furnished on 09.03.2020 but the same had been served upon the office serving him with the show cause notice and not directly with the Zonal office. Be that as it may, the reply had been furnished within a period of ten days as allowed by the show cause notice, which has not been taken into consideration. Even if the reply had been furnished with the Divisional Office, the same could have been forwarded to the Zonal Office for consideration and further action.
6. The contention raised by learned counsel for the respondent-Corporation that there is no need to take any reply into consideration while relying upon the judgments as cited by him, would have no bearing in view of the fact that the petitioner had been given an opportunity to furnish his reply to the show-cause notice. Once an opportunity has been given to him, the reply furnished should have been taken into consideration.
7. Consequently, the operation of the impugned orders i.e. orders dated 19.03.2020 (P/15), 19.03.2020 (P/16) and 31.03.2020 (P/17) are kept in abeyance till such time fresh orders by the competent authority are passed, after taking into account the reply, as furnished by the petitioner. Needless to say that the competent authorities are always at liberty to pass fresh orders.
8. The writ petition stands disposed of accordingly.

May 21, 2020.
seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No