

225

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Date of decision: 17.07.2024

(I) CWP-13082-2015

RAVINDER KUMAR AGGARWAL AND ANR.

...Petitioners

VERSUS

DAKSHIN HARYANA BIJLI VITRAN NIGAM LTD. AND ORS.

...Respondents

(II) CWP-11308-2023

BHUP SINGH

...Petitioner

VERSUS

MANAGING DIRECTOR, DAKSHIN HARYANA BIJLI VITRAN  
NIGAM LTD. AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

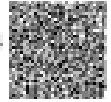
Present:- Mr. R. K. Malik, Senior Advocate with  
Mr. Sandeep Dhull, Advocate  
for the petitioners in CWP-13082-2015.

Mr. Sandeep Thakan, Advocate  
for the petitioner in CWP-11308-2023.

Mr. Daman Dhir, Advocate  
for respondents No.1 to 4 in CWP-13082-2015.

Mr. Ashwani Talwar, Advocate  
for respondents No.6, 7, 21, 22, 25, 36 and 42  
in CWP-13082-2015.

Mr. Anuj Y. Attri, Advocate and  
Ms. Anshul Agnihotri, Advocate  
for respondent No.11 in CWP-13082-2015.



Mr. Padamkant Dwivedi, Advocate  
for the respondents in CWP No.11308-2023.

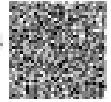
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**JASGURPREET SINGH PURI, J. (Oral)**

1. Both the writ petitions are being taken up together for final disposal with the consent of the learned counsels for the parties as the issue involved in both the cases is identical in nature.

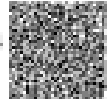
2. For the sake of convenience, the facts are being taken from CWP-13082-2015, titled as *Ravinder Kumar Aggarwal and another versus Dakshin Haryana Bijli Vitran Nigam Limited and others*.

3. Learned Senior Advocate appearing on behalf of the petitioners in CWP-13082-2015 and learned counsel for the petitioner in CWP-11308-2023 have submitted that it is a case where the juniors of the petitioners were granted promotion from the post of Junior Engineer to the post of SDO/AE on 31.03.2010. Thereafter, the petitioners of both the petitions were also promoted on 18.01.2014 to the aforesaid post by giving a deemed date of promotion w.e.f. 31.03.2010 i.e. the same date on which the juniors were promoted. They further submitted that in fact for the aforesaid purpose, petitioner No.1 had rather filed a writ petition before this Court bearing CWP-9767-2012, which was disposed of as having been rendered infructuous vide Annexure P-2 on 19.12.2014 because the petitioner was already granted deemed date of promotion. It was immediately thereafter that the petitioners were served with a show cause notice vide Annexure P-3 dated 13.04.2015 by taking up an issue that they were to be promoted in the available promotional quota and deemed date of promotion could not have been given on the prescribed quota of promotion. In the



aforesaid show cause notice it has been so stated that before taking the proposed action of changing the date of deemed date of promotion from 31.03.2010 to 01.04.2013, an opportunity is afforded to the petitioners to show cause within 15 days of the receipt of the communication as to why the proposed action should not be taken against them.

4. Learned Senior Advocate appearing on behalf of the petitioners in CWP-13082-2015 submitted that thereafter the petitioners filed their reply to the aforesaid show cause notice vide Annexure P-5 dated 17.04.2015 and Annexure P-6 dated 23.04.2015, in which they took up various grounds to satisfy the competent authority, who had issued the show cause notice that they were promoted within their prescribed promotional quota. However, surprisingly the impugned order dated 15.04.2015 (Annexure P-8) has been passed by the respondent-Nigam, which was just after two days of the issuance of the aforesaid show cause notice and even prior to the reply which has been filed by the petitioners to the aforesaid show cause notice. He further submitted that in the show cause notice it was specified that 15 days were granted but just after two days, the aforesaid impugned order has been passed by which the deemed date of promotion of the petitioners have now been changed from 31.03.2010 to 01.04.2013. He further submitted that the aforesaid order was passed in violation of the principles of natural justice because the aforesaid deemed date of promotion from the date when the juniors of the petitioners were promoted was a right which is vested in the petitioners and if any change was to be effected because of any reason whatsoever, then it would have visited with the petitioners with civil consequences and it affected the service career of



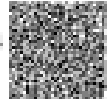
the petitioners. He further submitted that it is an autocratic attitude of the respondent-Nigam to have done the aforesaid and on this ground alone, the aforesaid impugned order is liable to be set aside.

5. On the other hand, Mr. Daman Dhir, learned counsel for respondents No.1 to 4-Nigam in CWP-13082-2015 submitted that so far as the aforesaid factual position that show cause notice was issued on 13.04.2015 and the impugned order has been passed on 15.04.2015 i.e. after two days of the issuance of aforesaid show cause notice is concerned, the same is matter of record. He further submitted that however on merits, the petitioners were not entitled for the deemed date of promotion from 31.03.2010 but they were entitled w.e.f. 01.04.2013 and a comparative seniority list has been maintained in this regard.

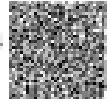
6. Mr. Ashwani Talwar, learned counsel for the private respondents in CWP-13082-2015 submitted that no useful purpose could have been served in case an opportunity of hearing was granted to the petitioners because the competent authority has decided the aforesaid on the basis of record and as per the orders of this Court.

7. Mr. Padamkant Dwivedi, learned counsel for the respondents in CWP-11308-2023 submitted that even if the impugned order was passed after two days of the issuance of show cause notice, the petitioner in CWP-11308-2023 was called upon by the respondents but he did not appear. He further submitted that the impugned order passed is only regarding framing of the tentative seniority list.

8. I have heard the learned counsels for the parties.

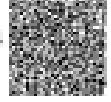


9. The short issue involved in the present case is that earlier the petitioners have been granted the deemed date of promotion w.e.f. 31.03.2010, then before the grant of the aforesaid deemed date of promotion, petitioner No.1 in CWP-13082-2015 filed a writ petition before this Court and the same was disposed of as having been rendered infructuous on 19.12.2014 vide Annexure P-2 because of the reason that the petitioner had already been granted the benefit of deemed date of promotion. After the aforesaid order was passed by a Coordinate Bench of this Court on 19.12.2014, just about four months thereafter vide Annexure P-3, show cause notice was issued to the petitioners. The date of the aforesaid show cause notice is 13.04.2015 and it has been clearly stated in the show cause notice that 15 days time is granted to the petitioners to explain the position as the respondent-Nigam intended to change the deemed date of promotion from 31.03.2010 to 01.04.2013. In clear words it has been so stated that in case nothing is heard at the end of the petitioners within the stipulated period of 15 days, then it will be presumed that they have nothing to explain in their defence. The petitioners filed their respective replies to the aforesaid show cause notice vide Annexure P-5 and Annexure P-6, in which various grounds have been taken by them justifying how they are entitled for being promoted w.e.f. 31.03.2010 on the basis of the prescribed quota. However, it is surprising to see that just after two days of issuance of show cause notice to the petitioners on 15.04.2015, vide Annexure P-8 a tentative seniority list has been prepared in which it has been so depicted that the deemed date of promotion of the petitioners has been changed from 31.03.2010 to different dates i.e. 01.04.2013, 01.09.2013 and 04.09.2013 and thereafter, as per



learned counsel for the parties, the aforesaid tentative seniority list became final.

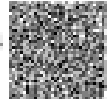
10. It is a case of Mr. Padamkant Dwivedi, learned counsel for the respondents in CWP-11308-2023 that the aforesaid impugned order is only a tentative seniority list so prepared. However, it is not understood that on the one hand, the respondent-Nigam has specifically issued show cause notice to the petitioners for the purpose of considering the change of deemed date of promotion on 13.04.2015, then what was the urgency in framing the tentative seniority list just after two days of the issuance of the aforesaid show cause notice and even without considering the replies which had been filed by the petitioners, which although were filed at later point in time because in one of the replies the date is 17.04.2015. The prayer of the learned counsels for the petitioners is only to the extent that a fresh order may be passed after considering their replies which have been filed by the petitioners and also on the ground that they were well justified within their own quota and their deemed date of promotion was 31.03.2010 and the same could not have been changed. After perusing the record and considering the aforesaid date of show cause notice and the date of the aforesaid impugned order Annexure P-8, this Court is of the considered view that the respondent-Nigam could not even have prepared the tentative seniority list after two days of the issuance of show cause notice to the petitioners because it would have been a futile exercise to have issued any show cause notice to the petitioners. This action of the respondent-Nigam was violative of the principle of natural justice, namely, *audi alteram partem*.



11. This Court is of the considered view that the grievance of the petitioners is pertaining to the grant of deemed date of promotion with effect from 31.03.2010. In order to redress the grievances, petitioner No.1 in CWP-13082-2015 filed a writ petition before this Court and a Coordinate Bench of this Court disposed of the said writ petition as having been rendered infructuous vide Annexure P-2 on 19.12.2014, in which the prayer made was to quash the action of the respondents by which the promotion of petitioner No.1 w.e.f. 31.03.2010 has been withheld with a further prayer to direct the respondents to promote petitioner No.1 from the aforesaid date. However, during the pendency of that petition, petitioner No.1 was granted the benefit of deemed date of promotion and that is the reason as to why the aforesaid writ petition was disposed of as having been rendered infructuous vide Annexure P-2. The aforesaid order passed by a Coordinate Bench of this Court dated 19.12.2014 (Annexure P-2) is reproduced as under:-

*“Learned counsel for the petitioner, at the very outset, fairly states that since during the pendency of the writ petition, due promotion has been granted to the petitioner, instant writ petition has been rendered infructuous and may be disposed of, as such. However, he submits that respondent authorities may be directed to release the consequential benefits in favour of the petitioner, within reasonable time.*

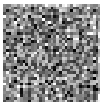
*In view of the above, instant writ petition is disposed of, as having been rendered infructuous. However, the Managing Director, Dakshin Haryana Bijli Vitran Nigam Limited, Hisar, is directed to ensure that consequential benefits on account of promotion granted to the petitioner is released in his favour at an early date, but in any case within a period of two weeks from today.*



*Disposed of, accordingly.”*

12. A perusal of the aforesaid would show that even the Managing Director of the respondent-Nigam was directed to ensure that consequential benefits on account of promotion granted to the petitioner is released in his favour at any early date but in any case, within a period of two weeks. However, after about 4 months, the aforesaid show cause notice was issued to the petitioners by giving an opportunity of hearing to them to file reply within a period of 15 days, but after two days only one tentative seniority list was circulated. This Court is of the considered view that heavens were not going to fall if the tentative seniority list would have been prepared after considering the grounds taken by the petitioners in their replies. The argument which has been raised by Mr. Padamkant Dwivedi, learned counsel for the respondents in CWP No.11308-2023 and Mr. Daman Dhir, learned counsel for respondents No.1 to 4 in CWP-13082-2015 that it was vide Annexure R-2, which has been attached along with CWP-11308-2023 that the final decision was taken in the month of May on the basis of the meetings held on 14.05.2015 and 28.05.2015, wherein it has been so specifically stated that the show cause notices were to be considered. A perusal of the aforesaid would show that there is nothing to show as to how there was an application of mind by the concerned authorities who have rejected the grounds taken by the petitioners in their replies with regard to their claim of deemed date of promotion.

13. It is a case where petitioner No.1 in CWP-13082-2015 was diligent enough to have initially filed a writ petition before this Court as aforesaid, which was disposed of as having been rendered infructuous vide Annexure P-2



on 19.12.2014 because the benefit of deemed date of promotion was granted and rather direction was issued to grant the consequential benefits on account of promotion so granted. In case the respondent-Nigam was still to take any action under any law whatsoever then at least some reasonable opportunity of hearing had to be given even for the purpose of circulating any tentative seniority list. Therefore, the aforesaid so called opportunity of hearing as so stated in Annexure R-2 was an exercise in futility.

14. In view of the above, the present writ petition is disposed of with a direction to the respondent-Nigam to now have a fresh look at the grievance of the petitioners that they should have been promoted w.e.f. 21.03.2010 on the basis of their permissibility in the quota. The Managing Director of the respondent-Nigam shall grant adequate opportunity of hearing to the petitioners in both the petitions and all the stakeholders as well either in person or through their counsels. The petitioners shall also be at liberty to raise any other ground whatsoever by filing any application or representation to the Managing Director of the respondent-Nigam. It shall be the duty of the Managing Director of the respondent-Nigam to consider all the grounds which have been taken by the petitioners either in the reply filed to the show cause notice or if any supplementary ground is taken and thereafter, by considering each and every ground shall pass a speaking order on the claim of the petitioners strictly in accordance with law, within a period of three months from today.

(JASGURPREET SINGH PURI)  
JUDGE

17.07.2024  
Chetan Thakur

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No