



CWP-10136-2022

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

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CWP-10136-2022 (O & M)
Date of decision: 09.01.2025

Shabdesb Kumar

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rakesh Sobti, Advocate,
for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is for quashing the orders dated 16.09.2009 (Annexure P-5) and 24.08.2021 (Annexure P-8) rejecting claim of the petitioner for grant of proficiency step up w.e.f. 08.11.2001 on completion of 8 years service in the cadre of Naib Tehsildar.

2. The petitioner, initially appointed as a District Revenue Accountant, was promoted to the position of Naib Tehsildar on 08.11.1993, following the completion of 8 years of service, he sought a proficiency step up, in accordance with the instructions dated 10.01.2000 and 16.01.2001 (Annexures P-2 and P-3) stipulating that 50% of ACRs of



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8 years have to be “good” and the ACRs of preceding two years, out of the aforesaid consideration period of 8 years, have to be “good”.

3. Learned counsel refers to para 3 of the reply filed by way of affidavit of the Under Secretary, Department of Revenue Rehabilitation and Disaster Management, relevant portion whereof reads thus:

“In pursuance to the relevant rules and above clarifications case of the Petitioner for grant of benefit of Assured Career Progression Scheme was examined in the year 2009 and it was revealed that the Petitioner has earned the below mentioned Annual Confidential Reports during his service as Naib Tehsildar:

Sr. No.	Year	Overall Assessment
1.	1993-1994	Average
2.	1994-1995	Very Good
3.	1995-1996	Not in file
4.	1996-1997	Average
5.	1997-1998	Conveyed(Average)
6.	1998-1999	Not in file
7.	1999-2000	Good
8.	2000-2001	No report Certificate
9.	2001-2002	Average
10.	2002-2003	Not in file
11.	2003-2004	Good
12.	2004-2005	Average
13.	2005-2006	No Report Certificate



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As at no stage two out of three Annual Confidential Reports of the Petitioner were good and even at no stage 50% Annual Confidential Reports of the Petitioner had been good, as per rules and above instructions, Petitioner has not been found eligible to get the benefit of Assured Progress Scheme. Accordingly, the petitioner is wrongly blaming the said instructions dated 10.01.2000 and dated 16.01.2001 mis-interpreting them and on this very ground this Civil Writ petition of the petitioner may kindly be dismissed.”

3. The adverse remarks in the ACR relating to the year 1997-98 which are admitted as having been communicated to him, were expunged vide order dated 20.03.2002 (Annexure P-7), the petitioner having submitted a representation thereto. As regards, the ACRs for the years 1993-94, 1994-95 and 1995-96, the same having not been conveyed, are liable to be disregarded when determining the benchmark as has been held by this Court in **Dr. Gurdev Singh Bhardwaj vs. State of Punjab and others**¹, placing reliance on the judgment of Hon’ble the Supreme Court in **Dev Dutt vs. Union of India**², against which LPA has been dismissed vide order dated 20.12.2012, relevant paras thereof read thus:

“12. Following the dictum laid down by the Apex Court, it is clear that the average report relating to the year 2005-06 which clearly had an adverse effect insofar as consideration of the petitioner for purposes of promotion to the higher post of Senior Medical Officer, was required to be conveyed to him. Accordingly, it is held that the ACR for the year 2005-06 having not been

¹ 2013(1) RSJ 474

² (2008) 8 SCC 725



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communicated to the petitioner was liable to be ignored while determining the bench mark.

13. That apart, I find that the respondent-authorities have acted arbitrarily in not considering the ACR of the petitioner for the year 2007-08. The right of an employee to be considered for promotion is a fundamental right under Article 16 of the Constitution of India. It is not just a right of consideration but, in fact, an obligation cast upon the employer to afford a fair consideration to an employee in terms of the principles of service jurisprudence. It has been admitted that the petitioner had been graded 'very good' for the year 2007-08 and such report had been duly received but was not available at the time of preparation of agenda submitted before the Departmental Promotion Committee. This cannot be a basis for denying to the petitioner the grading in terms of assigning three numbers for such 'very good' report for the year 2007-08.

14. Learned counsel appearing for the petitioner would bring to my notice that the petitioner has since retired on 29.2.2012, having attained the age of superannuation.

15. Accordingly, I allow the present petition in terms of directing the respondent-authorities to re-consider the claim of the petitioner for promotion to the post of Senior Medical Officer in terms of determining the bench mark afresh by ignoring the ACR for the year 2005-06 and in terms of taking into account the five previous ACRs i.e. for the years 2008-09, 2007-08, 2006-07, 2004-05 and 2003-04. It is further directed that if in pursuance to such exercise, which shall be concluded positively within a period of three months from the date of receipt of a certified copy of this order, the petitioner fulfils the requisite bench mark, then orders shall be issued promoting the petitioner to the post of Senior Medical Officer on a notional basis. The petitioner in such eventuality would also be held entitled to notional pay fixation on the post of Senior Medical Officer as on the date of his superannuation and would be released the revised pensionary/retiral benefits accordingly.”



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4. Learned counsel, at this stage, on instructions, prays that a direction be issued to the respondents to re-examine the matter, taking into account the aforementioned judgment and ignoring the aforementioned ACRs, in a time bound manner, to which learned State counsel has no objection.

5. In view of the above and without commenting on the merits of the case, this petition is hereby disposed of with a direction to the respondents to have a relook at the matter in the light of the aforesaid judgment, by ignoring the above specified ACRs, within a period of six months, which this Court has no reason to believe the authorities would not address in a just, fair and reasonable manner. Upon doing so, after notice and hearing offered to him and if found entitled, grant the benefit forthwith. Needless to say, if the orders are adverse to his interest, the same shall contain reasons and the petitioner shall be free to seek legal redress thereupon.

09.01.2025

parveen kumar

(AMAN CHAUDHARY)
JUDGE

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