



CWP-26739-2018

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

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CWP-26739-2018 (O & M)
Date of decision: 15.01.2025

Jagjit Singh

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.K.Arora, 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 order dated 03.10.2016 issued vide endorsement dated 08.11.2016 (Annexure P-3) to the extent of denying retrospective promotion to the petitioner to the post of District Treasury Officer and consequential promotion to the post of Deputy Controller (F&A).

2. The petitioner, who joined as a Clerk, was promoted as Assistant on 21.11.1997 and Treasury Officer on 05.01.2001. He preferred CWP-9919-1992, quashing action of the respondents in placing private respondents No.3 to 21 therein as senior to him in the seniority list of Senior Assistants, which was disposed of on 13.03.2014, relevant paras whereof read thus:

“After hearing learned counsel for the parties and considering the submissions made above, where the petitioners are claiming that they should be placed higher in the seniority list as compared to the private respondents for the reason that they had passed the Assistant Grade Examination before they were promoted as Assistant whereas the private respondents were initially promoted as Assistant provisionally



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subject to their passing of the Assistant Grade examination but when they did not pass it, they were granted exemption from passing the test on 03.05.1985. In terms of law laid down by this Court in Charan Singh's case (supra), where while interpreting Rule 12 of 1984 Rules, it has been held that such an exemption from passing the Assistant Grade examination shall operate prospectively and any benefit shall accrue to such persons from the date the exemption is granted. Keeping in view the aforesaid enunciation of law, the petitioners have been able to make the case that they deserve to be ranked senior to the private respondents as they were promoted after they had passed the Assistant Grade examination whereas the private respondents, who were promoted prior to the petitioners as Assistant but provisionally, at that stage, subject to passing their Assistant Grade examination. They did not pass the examination but were granted exemption on 03.05.1985 and as such they shall be deemed to have been promoted on that date.

After correcting the seniority list, the petitioners be given all consequential benefits including any further promotion etc., if available. However, as fairly stated by the learned counsel for the petitioners that they shall not be claiming any arrears. Their pay/pension be notionally fixed and for future whatever is due to them be paid from April, 2013 onwards. It is further made clear that the benefits already granted to the respondents, who have already retired from service will not be disturbed in any manner.

The present petition, is accordingly, disposed of.”

3. In compliance to the said directions, the petitioner was placed at Sr.No.174 in the seniority list, however, his claim for promotion to the said post w.e.f. the date that of his juniors, has been denied on account of he having not passed the departmental examination, despite the fact that vide order dated 09.03.1983 (Annexure P-4), the Govt. had relaxed the condition of passing the said examination with regard to the officer who had attained or would attain the age of 52 years on the 31st December of the year in which he has to be promoted, which he had completed on 06.02.2007, the year in which he was entitled for promotion



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having 6 years of service as required by the statutory rules. As regards, the ACRs for the years 2002-2007, out of which two were 'average', the same having not been conveyed, are liable to be disregarded at the time of re-determination, 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 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.

¹ 2013(1) RSJ 474

² (2008) 8 SCC 725



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15. Accordingly, I allow the present petition in terms of directing the respondent-authorities to reconsider 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.”

4. Hon’ble the Supreme Court in **Rukhsana Shaheen Khan vs. Union of India and others** 2019(1) Apex Court Judgments (SC) 231, has held thus:

“1. The sole issue involved in this appeal is whether the uncommunicated Annual Confidential Reports (ACRs), which are adverse to the appellant, should have been relied upon for the purpose of consideration of the appellant for promotion.

2. In view of the decision of this Court in Sukhdev Singh Vs. Union of India & Ors. reported in (2013) 9 SCC 566, there cannot be any dispute on this aspect. This Court has settled the law that uncommunicated and adverse ACRs cannot be relied upon in the process.

3. This appeal is, accordingly, allowed and the impugned Judgment is set aside with the following directions :-

(a) The competent authority is directed to ignore the uncommunicated adverse ACRs and take a fresh decision in accordance with law.

(b) The appellant shall be afforded an opportunity of hearing in the process.

4. It will be open to the appellant to make all available submissions, including the reference to the Judgment of this Court in Prabhu Dayal Khandelwal Vs. Chairman, U.P.S.C & Ors. reported in (2009) 16 SCC146.

5. The above exercise shall be completed within a



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period of two months from today.
No costs.”

5. 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 judgments and ignoring the aforementioned uncommunicated two ACRs in a time bound manner.

6. The aforesaid facts having been brought out, during the course of hearing, learned State counsel sought instructions and thus states that the respondents would not be averse to having a relook at the matter and decided taking into consideration the same, afresh within a period of six months, which satisfies the learned counsel for the petitioner.

7. The matter stands disposed of accordingly and if the petitioner is found entitled, grant the benefit forthwith. Needless to say, if the orders are adverse to his interest, the same may be passed after granting opportunity of hearing to him and shall contain reason, whereupon the petitioner shall be free to seek legal redress thereupon.

15.01.2025

parveen kumar

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No