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

RSA No.1534 of 1989

Decided on : December 09, 2015

JAG RAM

....Appellant

VERSUS

STATE OF PUNJAB AND ANOTHER

....Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajiv Kataria, Advocate
for the appellant-plaintiff.

Mr. Piyush Bansal, DAG, Punjab.

AMIT RAWAL, J (ORAL)

Appellant-plaintiff is in regular second appeal against the concurrent findings of fact whereby the suit claiming declaration to the effect that he being entitled to benefits being Scheduled Caste and deemed to be promoted as Havaladar Instructor since 01.06.1976 and with consequential benefits admissible to him, has been dismissed.

Mr. Rajiv Kataria, learned counsel appearing on behalf of the appellant-plaintiff submits that the appellant was due to be promoted as Havaladar Instructor w.e.f. 01.06.1976. However, he has been only promoted in the year 1981 and thus it has seriously prejudiced his service benefits as well as other consequential benefits which he was entitled to.

The respondents-defendants had erroneously taken into consideration the adverse remarks for the period from 1975-1976, 1976-1977, 1977-1978 whereas only adverse remarks for the year 1977-78 had been conveyed though it has not been even challenged. In the absence of conveying of the adverse remarks, the department could not have taken into consideration aforementioned ACRs while considering the petition for the promotion in 1976. He further submits that respondent-department on 17.11.1976 even called upon the appellant-plaintiff to submit his certificate of Scheduled Caste. The same was supplied therefore the respondent was actually contemplating to consider the appellant for promotion but in the written statement gave a different tinged colour to the story.

In support of his contentions, he has also relied upon the judgment of Hon'ble Supreme Court in 'Dev Dutt versus Union of India and others, 2008 (3) SCT 429' to contend that good or bad ACR should be communicated to the public servant, within a reasonable time period so that he can make the representation, U.P. Jal Nigam versus Prabhat Chandra Jain, 1996(2) SCT 227 : R.K. Chhabra versus State of Haryana, (P&H) 1997 (1) SCT 740. Thus, prays that there is illegality and perversity in the impugned orders, much less substantial question of law arise for determination by this Court.

Mr. Piyush Bansal, Deputy Advocate General, Punjab submits that non-communication of the adverse remarks would be fatal in case the respondent decides not to retain the employee beyond a specific age. In essence he is compulsory retired and for that purpose, the ACRs

can be looked into being track record whether a person is fit for promotion or not. In essence the plaintiff has only right to be considered and not right for promotion. He has been rightly considered for promotion w.e.f. 01.06.1976 and case is rejected and against the same, he has filed an appeal which was also dismissed on 24.09.1984 and thereafter suit was filed on 20.12.1984.

I have heard learned counsel for the parties and appraised the paper book book.

There is no dispute to be ratio decidendi culled out in the afore mentioned judgments pertaining to case where the person is not sought to be retained beyond the particular age in essence being compulsory retired. However, in the instant case the respondent-department had taken into consideration, the ACRs for the year 1975-1976, 1976-1977 and 1977-1978 and found that petitioner not fit for promotion in 1976 but subsequently the ACRs were found to be good then he was promoted w.e.f. 1981.

In my view, the non communication of the adverse remarks for the purpose of promotion would not be fatal, as non-consideration of promotion is not a punishment.

Keeping in view the aforementioned facts, I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate Court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

December 09, 2015
rajneesh

(AMIT RAWAL)
JUDGE