

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

CWP No.19084 of 2015

Date of Decision: 10.09.2015

Rakesh Pal

... Petitioner

Versus

State of Punjab & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Arora, Advocate,
for the petitioner.

1. To be referred to the Reporters or not? .
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

The petitioner claims ante-dated promotion w.e.f. the year 2008 when DPC was convened and his juniors were promoted from the post of Block Development and Panchayat Officer (BDPO) to District Development and Panchayat Officer (DDPO). The petitioner was passed over in 2008 because of disciplinary proceedings pending against him as he was facing two charge sheets. But while the DPC met it did not follow the sealed cover procedure while it ought to have. The position was the same in the year 2011 when cases of other persons junior to him were considered by DPC and promotions followed.

Mr Arora, learned counsel for the petitioner submits that the name of the petitioner was considered in 2012 when for the first time sealed cover procedure was adopted and he was found eligible to be promoted on all other parameters subject to disciplinary clearance. One of the two pending charge sheets had been dropped by the disciplinary

authority in the year 2011 but still actual promotion could not come in 2012 as the second charge sheet remained pending finalization which was ultimately dropped in the year 2013 which resulted in the opening of the sealed cover in the same year and the petitioner was finally promoted as DDPO but w.e.f. 30.11.2012 whereas the promotion should have related back to the date juniors were promoted in the year 2008. No fault could be found with the petitioner if sealed cover procedure was not followed in 2008 and merely because it was followed in the year 2012 that would not mean that the promotion could be denied for the period prior to the date of holding of the second DPC in the year 2012 after the petitioner stands exonerated of the imputations of misconduct in the two charge sheets. There is no doubt that from 2008 to 2013 the petitioner could not earn promotion due to disciplinary proceedings pending against him. Presently, the impediments in the way to the petitioner for securing promotion from the retrospective date when his juniors were promoted stands removed. It is the say of the petitioner that even in the year 2008 when sealed cover procedure was not followed he was eligible for promotion since there was nothing adverse in his service record and confidential rolls except the two charge sheets which stand dropped by the disciplinary authority and he is innocent of the charges framed against him. But he has wrongly been promoted from 2012 and not from 2008 and stands superseded by persons junior to him in service. If the position is not corrected he will suffer loss of seniority as his juniors will steal a march over him for promotion to the next higher post which will compound the problem and add to his suffering and amount to reduction

in rank and loss of pay and allowances in case it is allowed to happen. This is his first grievance in this petition.

The second grievance of the petitioner is that despite promotion and ante-dated clearance of disciplinary proceedings and with the matter having been dropped by the Government, he has not been granted the benefit of ACP scheme during the interregnum, and this is causing him recurring financial loss.

Mr. Arora submits that issuing notice of motion and waiting the stand of the state may defeat the equity since his rights would be postponed to an unknown future event when the court would make a final order after hearing the State. In the circumstances, he prays that delay will cause injustice and a direction may be issued to the respondent-decision-maker in Government to review the case of the petitioner in accordance with law and in the light of observations made herein and take a final decision as to retrospective promotion of the petitioner from the date his juniors were promoted as DDPO.

The competent authority would acquaint itself with the law of the subject of seal cover procedure and its salutary purposes, which is designed as a quick solution and remedy to problems by DPCs to deal with names while considering promotion cases and fitness for promotion by keeping aside the disciplinary proceedings as though they did not exist so that in case clearances come the sealed cover can be opened and acted upon without holding review DPC. The procedure is designed to save time of the Government to address other and more pressing matters of governance and obviate the necessity altogether of holding a review DPC

and wasting time. Findings contained in sealed cover are not to be acted upon till the time comes to open it after the proceedings in question are over.

The competent authority would also keep in view the law laid down by the Supreme Court in **Union of India v. K.V. Jankiraman**, AIR 1991 SC 2010 which ruling clears all doubts the administrator may have on the subject just as it guides this Court.

Consequently, the competent authority shall treat this petition as a representation and pass final orders after hearing the petitioner on his case and the decision, it is needless to say, would be a speaking one on both the grievances. It is directed that the consideration be finalized within two months from the date of receipt of certified copy of this order including time spent in hearing.

With these directions, the petition stands disposed of.

(RAJIV NARAIN RAINA)
JUDGE

10.09.2015
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