

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.19182 of 2015

Date of decision: 11.9.2015

Pal Singh

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM: MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Baltej Singh Sidhu, Advocate for the petitioner.

G.S.SANDHAWALIA, J, (Oral)

In the present writ petition, the petitioner has challenged the promotion orders dated 23.12.2014 (Annexure P/3) and order dated 9.5.2015 (Annexure P/4) whereby respondents no.2 to 4 who are allegedly juniors to him have been promoted to the post of Deputy Excise and Taxation Commissioner.

Counsel restricts his prayer to the extent that respondents may be directed to decide petitioner's representation dated 23.2.2015 (Annexure P/7) which he has already filed for necessary relief within some time frame on account of the fact that he is due for retirement in January, 2016.

Counsel submits that he has been denied the promotion on account of non availability of ACRs for 2011-12 and 2012-13 and therefore, his representation may be decided keeping in view of the judgment of this Court in **Civil Writ Petition No.22617 of 2010-Dr. Gurdev Singh Bhardwaj Vs. State of Punjab and others** decided on 16.8.2012 (Annexure P/6) wherein it has been held as under:-

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.

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.

16. The petition is allowed in the aforementioned terms.”

Keeping in view the limited relief sought by the petitioner, this Court does not feel necessary to call upon the respondents to file their reply.

Accordingly, without commenting upon the merits of the case, the present writ petition is disposed of with a direction to respondent no.1 to decide the representation dated 23.2.2015 (Annexure P/7) in view of the observations made in **Dr. Gurdev Singh Bhardwaj's case** (supra) within a period of three months from the date of receipt of a certified copy of this

order. Needless to say that in case relief is to be denied to the petitioner then a reasoned order be passed by the said respondent

The present writ petition is disposed off with the aforesaid directions.

September 11, 2015
Pka

(G.S.SANDHAWALIA)
Judge