

IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

CWP No.2734 of 2013

Date of Decision:5.5.2015

Gurbachan Singh

...Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. A.K. Walia, Advocate for the petitioner.

Mr. Sushant Maini, D.A.G. Punjab.

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

DEEPAK SIBAL, J.

The facts in brevity as borne out from the record as also from the arguments raised at the bar are that on 3.4.1986, the petitioner was appointed as a Inspector (Audit) in the Department of Co-operation, Government of Punjab. On 15.7.2004 on the lodging of a FIR under the Prevention of Corruption Act, 1988, the petitioner was ordered to be suspended. While the petitioner was under suspension and the trial in pursuance to the above referred FIR was pending, on 25.04.2007, his juniors were promoted to the post of Senior Auditors. Through judgment of the Special Judge, Bathinda, dated 15.4.2008, the petitioner was acquitted qua the charge of corruption which had been levelled against him. As no appeal against the judgment of the Special Judge, Bathinda, was filed, the same became final.

On his acquittal, through order dated 10.09.2008, the petitioner was reinstated in service and on his representation initially the period of

suspension of the petitioner was ordered to be treated as leave of the kind due but later on his further representations, through order dated 18.6.2010, the suspension period of the petitioner was ordered to be treated as on duty. Thereafter, on the basis of consideration of his case by the Departmental Promotion Committee on 3.12.2009, the petitioner through order dated 4.1.2010 was promoted as Senior Auditor. As the above promotion was prospective in nature, the petitioner made a representation seeking promotion with effect from the date his juniors had been promoted. When his representation went undecided, he approached this Court through CWP No.18276 of 2011; Gurbachan Singh versus State of Punjab and others which was disposed of with a direction to the respondents to take an appropriate decision on the representation made by the petitioner by passing a speaking order. In compliance to the order passed by this Court, order dated 27.01.2012 (Annexure P-13) was passed rejecting the representation filed by the petitioner which gave him a cause to approach this Court through the present writ petition.

I have heard learned counsel for the parties.

The petitioner seeks promotion as Senior Auditor with effect from the date his juniors had been promoted i.e. 25.4.2007. Through the impugned order, the respondent-State of Punjab has sought to deny the claim of the petitioner on the ground that while considering the case of promotion of an employee like the petitioner, as per applicable instructions, the Annual Confidential Reports (ACRs) for the five preceding years are taken into consideration to see whether the employee is making the required bench mark for promotion. As the petitioner seeks promotion as Senior Auditor with effect from the date of promotion of his juniors i.e. 25.4.2007,

it is the case of the respondent-State that in the case of the petitioner ACRs for the years 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07 were required to be considered but since for the years 2005-06 and 2006-07 the petitioner was under suspension, no ACR of his was recorded. Therefore, the available ACRs for the years 2000-01, 2001-02, 2002-03, 2003-04, 2004-05 were taken into consideration and it was found that the petitioner did not meet the requisite bench mark. Thus, the petitioners was held not entitled to be promoted with effect from the date his juniors had been promoted.

It is the admitted position between the parties that the entire suspension period of the petitioner has been ordered by the respondents to be treated as duty period. That being so, then the ACRs of the petitioner for that period were also required to be recorded, as per applicable instructions and after that the case of the petitioner for promotion was required to be considered from the date his juniors had been promoted. This would be as per the directions issued by a Division Bench judgment of this Court rendered in the case of **B.R. Aggarwal v. The Chairman, Haryana Warehousing Corporation and others**; 2004(6) SLR 179 wherein it was held as under:

“A perusal of the above shows that ACRs for the years 2000-2001 and 2001-02 are to be finalised on the outcome of the vigilance report. The ACRs for the years 1991-92, 1992-93 and 1994-95 were not recorded as the petitioner remained under suspension. However, the petitioner has placed on record an order dated 22.9.1993 in which it has been ordered that the suspension period from 13.6.1991 to 20.5.1993 should be treated as duty period for all intents and purposes. Similarly, by order dated 10.6.1994 to 3.7.1995 shall be treated as duty period for all intents and purposes. Having treated the period of suspension as duty period, it would be incumbent on

the respondents to record afresh ACRs for the years 1991-1992, 1992-1993 and 1994-1995. It is only after the ACRs are recorded that the case of the petitioner can be considered under the instructions dated 19.11.1991.” (Emphasis supplied)

In view of the above, the impugned order dated 27.1.2012 (Annexure P-13) is quashed and the respondents are directed to reconsider the entire matter with regard to the promotion of the petitioner from the date his juniors had been promoted, after finalizing his Annual Confidential Reports as per applicable instructions. The Annual Confidential Reports be communicated to the petitioner so that he has an opportunity to make a representation against the same, if so advised. Let the necessary exercise be done within a period of four months from the date of receipt of a certified copy of this order.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

5.5.2015
rajeev