

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

**R.S.A No. 4032 of 2010 (O&M)
Date of decision:- 21.07.2015**

Rajeshwar Dhame

..Appellant

Versus

Managing Director, HVPNL and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. I.D. Singla, Advocate
for the appellant

Mr. Sudhir Hooda, Advocate, for the respondents

RITU BAHRI J.

This regular second appeal is directed against the judgment dated 02.06.2010 passed by learned District Judge, Bhiwani whereby the appeal filed by the defendants-respondents (for short 'the respondents') against the judgment and decree dated 27.10.2008 passed by learned Addl. Civil Judge (Sr. Divn.), Charkhi Dadri was allowed.

Brief facts of the case are that the plaintiff-appellant (for short 'the appellant') was appointed as Assistant Engineer by H.S.E.B on 08.02.1994 and he completed 05 years of regular satisfactory service on 07.02.1999 and thus, as per service condition, he was entitled to get time scale in the pay scale of 1000-325-15200. His work and

conduct during the relevant period was good. One ACR up to the period 07.02.1999 was conveyed to him. The appellant sent representations and filed an appeal for expunging the average remarks. The appellant prayed that since he had completed 05 years of satisfactory service, he was entitled to time scale. He was also seeking decree for mandatory injunction and for directions to re-fix his pay scale and for disbursement of his salary with interest.

On notice, the respondents filed their written statement pleaded that the appellant joined the erstwhile HSEB on 08.02.1994. It was denied that he had completed five years of satisfactory service or that he was entitled to the higher pay scale. It was pleaded that he did not have 70% ACRs which were good or very good and according to the available ACRs, two ACRs were average and good ACRs were only 55%. The appellant was given higher time scale on 01.04.2002 when he had fulfilled conditions. The appellant was also facing a charge sheet for being absent from duty and negligent in performing his duty. However, those charges were dropped on 07.10.1999. His representation regarding expungement of the remarks, was also declined.

After going through the oral as well as documentary evidence led by the parties, the trial Court decreed the suit of the

appellant and the department was directed to re-fix basic pay in the time scale pay and grade of Rs.1000-325/15200 w.e.f 08.02.1999 and shall disburse amount of arrears well within a period of two months. The trial Court referred to Haryana Government letter dated 13.04.1972 wherein it was *inter alia* provided that the officials who have earned 50% or more good or better than average report during the last ten years of service, should be considered eligible for promotion to higher post. This matter has further been considered by the State Government and it was decided that in future only such officials/officers who have obtained at least 70% or more reports of 'good' or better categories during the last 10 years should be considered eligible for promotion to higher post. Reference was made to Ex P1 which showed that there was over all assessment in ACRs for the period between 14.10.1995 to 31.03.1996, 01.04.1996 to 14.09.1996, 16.09.1996 to 27.01.1997, 20.08.1998 to 31.03.1999 and 01.04.1999 to 28.12.1999 found good. It was held that no such adverse remarks were conveyed to the appellant. Subsequent ACRs of the appellant were recorded as outstanding so it cannot be explained by the department as to how this impugned ACR can be disentitled appellant from getting time scale in the pay scale and grade of Rs.10000-325-15200 on completion of 05 years of satisfactory service

w.e.f 08.02.1999. Thus, memo dated 23.10.2003 qua upgradation of ACR even if rejected shall not defeat the claim of the appellant in any manner.

On appeal filed by the department-respondents, the lower Appellate Court accepted the appeal and reversed the findings given by the trial Court. Reference was made to letters which have come on record which shows that the work and conduct of the appellant for the period w.e.f 08.02.1994 to 14.06.1995 was not good. The ACR for this period was found missing in the record, but the department had maintained a resume of the confidential reports, wherein there are remarks that as per the old record, the ACR for this period was shown as average and the adverse remarks file had been merged in the ACR file. It also refers to a reference made by the appellant and entry is made at serial No. 2 in the remarks column. The appellant was allowed the time scale w.e.f 01.04.2002. The appellant was charge sheeted and he was found absent from duty on several occasions. The charges were subsequently dropped.

It was held by the lower Appellate Court that the appellant would have entitled to higher pay scale, if he had put in 70% of good or very good service but out of 4½ ACRs, two ACRs were average and the percentage of good ACRs were 55%, as per copy of the resume Ex

D1 which reads as under:-

<i>S. No.</i>	<i>Period</i>	<i>Assessment</i>	<i>Integrity</i>	<i>Remarks</i>
1	13.06.1994 to 31.03.1995			As per old record, the ACR for the period 13.06.94 to 31.3.95 had been shown as average and adverse remarks file No. 560/QRG had already been merged in the ACR file
2.	01.4.95 to 14.06.95	Short period		Reference received vide memo no. 295 dated 1.2.0 by the appellant
	15.6.95 to 25.7.95	-do-		-do-
	25.7.95 to 27.8.95	-do-		-do-
	28.08.95 to 13.10.95	-do-		ACR received vide memo 92 dt 26.6.96 vide CE/O&M PTI Panipat
	14.10.95 to 31.3.96	Good	Sound integrity	ACR received vide memo 92 dt 26.6.96 vide CE/O&M PTI Panipat
	01.4.96 to 14.9.96	Good	Sound	Not countersigned
	16.9.96 to 27.1.97	Good	Undoubtfull	-do-
	23.5.97 to 18.3.98	Average	Good	-do-
	1.4.98 to 10.8.98	Good	Good	-do-
	20.8.98 to 31.3.99	Good	Ok	-do-
	1.4.99 to 28.12.99	Good	Ok	Not countersigned
	29.12.99 to 31.3.2000	Good	V. Good	-do-
	1.4.2000 to 31.3.2000	Good	V. Good	-do-
	20.12.2000 to 31.3.2001	Average	O.K.	Conveyed to the officer adverse remarks vide File No. QRG-32 merged in the ACR with NP No. L td 4 as Charge 1 to 12 Dilw No. QRG
	01.04.2001 to 19.11.2001	Good	Sound	
	20.11.2001 to 31.03.2002	Good	Not doubtfull	

The work for the period 08.02.1994 to 14.06.1995 was also found not satisfactory, as per Ex D2.

Since the appellant was not able to show that he had put in regular satisfactory service, his request was rightly declined by the department.

The judgment dated 02.06.2010 passed by learned District Judge, Bhiwani, calls for no interference.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

21.07.2015

G Arora

(***RITU BAHRI***)

JUDGE