

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

CWP No.4227 of 1993 (O&M)

Date of decision: 11.03.2016

D.N. Sharma

.....Petitioner

Versus

Haryana State Warehousing Corporation and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sanjeev Sharma, Advocate,
for the petitioner.

Mr. Ashwani Talwar, Advocate,
for the respondents.

Ritu Bahri, J.

The petitioner is seeking direction to the respondents to grant him seniority from the date when his junior was promoted as Manager Grade-II along with all the consequential benefits, including subsequent promotion as Manager Grade-I, w.e.f. 10.09.1992.

The petitioner was selected against the post of Manager Grade-III in the pay scale of Rs.120-8-200 in response to an advertisement, vide letter dated 28.08.1968. However, he was given the appointment as Accounts Clerk in the pay scale of Rs.72-4-100/5-175 vide letter dated 04.09.1968 (Annexure P-1). He submitted his joining report on 09.09.1968. Thereafter, vide letter dated 20.09.1968 (Annexure P-2), he was posted as Accounts Clerk, Incharge, at State Warehouse Tohana with 20% special pay in the same pay scale. At that place, he continued to perform all the duties of Manager Grade-III. Later on, he made a representation dated 20.01.1969 (Annexure P-3) against the order dated 04.09.1968 and sought appointment

as Manager Grade-III. Vide letter dated 28.02.1969 (Annexure P-4), he was informed that as and when the post of Manager Grade-III becomes available, he would be appointed on that post. In the meantime, three persons were posted as Manager Grade-III and two vacancies were still vacant. The petitioner again made a representation dated 01.07.1970 (Annexure P-5) for being appointed as Manager Grade-III. Ultimately, he was promoted as Manager Grade-III vide order dated 05.08.1970 (Annexure P-6). Thereafter, the petitioner was suspended in May, 1973 and a charge sheet was served upon him vide letter dated 06.6.1973 on the ground of damage of wheat stock and shortage in paddy and rice due to loss of moisture. He gave his reply dated 19.06.1973 (Annexure P-7) to the said charge sheet. Consequently, he was issued a show cause notice dated 14.09.1973 (Annexure P-8) for recovery of Rs.1269.40. Vide order dated 04.01.1974 (Annexure P-9) recovery of Rs.1014.60 was ordered to be effected from the petitioner. Besides this, one increment of the petitioner was also stopped with cumulative effect. On appeal, the order dated 04.01.1974 was modified and only punishment regarding recovery of Rs.1014.60 was maintained. The other punishment regarding stoppage of increment was set aside and the petitioner was reinstated. Thereafter, his services were terminated vide order dated 06.08.1979 under Regulation 12 of the Act. Against the said order, petitioner filed CWP No.3578 of 1979, which was allowed by this Court vide order dated 07.10.1988. After passing of the said judgment, petitioner joined his duties on 06.05.1989 as Manager Grade-III at State Warehouse, Chautala. He, thereafter, made representations dated 29.05.1989, 12.08.1989 and 21.08.1989. However, the petitioner was not allowed to cross the efficiency bar, which was due on 01.04.1985. He again made a

fixation of seniority.

Grievance of the petitioner is that despite the order dated 07.10.1988 passed by this Court in CWP No. 3578 of 1979, although the respondents had reinstated him in service, but did not grant him any consequential benefits. Consequently, he filed COCP No.838 of 1992, which was dismissed by this Court, as during the notice period, the respondents had rejected the representation of the petitioner vide order dated 18.10.1992. Vide order dated 14.11.1990, the petitioner was promoted as Manager Grade-II in the pay scale of Rs.1600-50-2300-EB-60-2660, whereas, one Mr. J.K. Jain, who was junior to the petitioner, was promoted on 26.11.1980. Further, vide order dated 10.09.1992, the respondents had promoted certain Managers Grade-II as Managers Grade-1, who were much junior to the petitioner as per seniority list circulated vide letter dated 23.10.1978 (Annexure P-16). The work of the petitioner has been appreciated by the Managing Director of the respondent-corporation vide letter dated 14.10.1974 (Annexure P-20).

Upon notice, written statement on behalf of respondent Nos. 1 and 2 has been filed. Along with the written statement, the respondents have placed on record copy of order dated 04.05.1993, whereby writ petition (CWP No.869 of 1993) challenging his transfer order dated 30.12.1992 from SWH, Bapoli to SWH Rori, has been dismissed by observing that he had approached the Court by making false allegations to get his transfer orders cancelled. The respondents have further placed on record order dated 07.05.1990 (Annexure R-2), whereby Sh. R.K. Chhabra, Manager (Business) Haryana Warehousing Corporation (Head Office) was appointed as Enquiry Officer to hold a regular departmental enquiry against Sh. D.N.

initiated against the petitioner, he could not make a claim for further promotion after 07.05.1990. It has been further explained that the petitioner cannot claim promotion at par with Sh. J.K. Jain, who was promoted to the post of Manager Grade II on 27.11.1980. As per Annual Confidential Reports (ACRs) for the years 1974-75 to 1984-85, the petitioner could not secure 50% good reports as required. Besides this, his integrity has been assessed as doubtful. He was not allowed to cross the efficiency bar w.e.f. 01.04.1985 as he had not secured 50% good reports. On account of above said two adverse ACRs, appreciation letter dated 14.10.1974 would not extend any benefit to the petitioner. At the time when written statement was filed, enquiry initiated against him vide order dated 07.05.1990 (Annexure R-2) was still pending.

After going through the contents of the petition, written statement and the order dated 09.10.1992 (Annexure R-3), it transpires that promotion of the petitioner at par with Sh. J.K. Jain has been declined on the ground that he was not having 50% good ACRs and in two confidential reports for the years 1972-73 and 1974-75, his integrity was assessed as doubtful. On account of these two reports, he could not cross the efficiency bar w.e.f. 01.04.1985. In the replication, it has been reiterated by the petitioner that ACRs for the years 1972-73 and 1974-75 were never conveyed to him and hence, these adverse reports could not be read against him to deny promotion. It is further stated that the respondents have already made recoveries against the petitioner vide order dated 10.10.1980 (Annexure P-25). Even in the petition, the petitioner has taken a specific stand that no adverse remarks were conveyed to him. Moreover, the respondents have not stated as to on which date these two adverse remarks were conveyed to the

14.11.1990 and the second Enquiry Officer was appointed on 07.05.1990 (Annexure R-2). Hence, after appointment of the Enquiry Officer, the petitioner has since been promoted as Manager Grade-II. After being promoted as Manager Grade-II on 14.11.1990, the enquiry report (Annexure R-2) cannot be used against the petitioner to deny him further promotion as Manager Grade-I. Since the respondents have not specifically denied in the written statement that the adverse remarks for the years 1972-73 and 1974-75 were ever conveyed to the petitioner, a presumption will have to be drawn that the petitioner was not afforded any opportunity to make any representation against those remarks.

A reference can be made to the judgment passed by a Co-ordinate Bench of this Court in **Gurdial Singh Vs. State of Haryana**, 2002 (1) SCT 605. In this case, the petitioner had been denied the benefit of promotion on account of adverse reports, which were not communicated to him. The respondents had taken average reports as adverse and without communicating the same to the petitioner, had denied him the right of promotion. The writ petition was allowed by observing as under:-

“4. The question of adverse remark against the petitioner now remains to be considered. The petitioner has stated in Para No.11 of the writ petition that no adverse report has ever been communicated to him. In reply to para No.11, in the written statement, this averment is not controverted. It is, of course, mentioned that the record of service of the petitioner was not satisfactory and criminal proceedings were pending against him and hence, his name could not be considered along with respondent No.3. The petitioner has again made a statement in the replication that no adverse report has ever been communicated. If the average reports are considered against an employee for consideration for promotion, then they are adverse, and have to be communicated to the employee and when they are not communicated to the employee concerned, he cannot be denied promotion based on the ground of said adverse report.”

In Raghubir Singh, Sub Inspector Vs. State of Haryana, through the Director General of Police, Haryana, Chandigarh, 2012 (1) SCT 205, this Court was examining a case where benefit of promotion was denied to an employee by taking average assessment as 'adverse' and that too without communicating the same to the concerned person. It was held that the decision was vitiated on account of not communicating the said remarks to the petitioner. The said petition was allowed by following the law laid down in Gurdial Singh's case (supra). Further, the Hon'ble Supreme Court in Union of India Vs. K.V. Jankiraman, 1991 (3) SCT 317, has held that normal rule of "no work no pay" is not applicable to the cases where an employee, although he is willing to work, is kept away from work by the authorities for no fault of his. The decision rendered by the Hon'ble Supreme Court has been consistently followed by this Court in a number of cases.

Learned counsel for the petitioner has also referred to the policy dated 15.01.1975 issued by the Chief Secretary to Government of Haryana, regarding promotion of officials to the higher posts. As per this policy, the officials who have earned 50% good or better than average reports during the last 10 years of service should alone be considered eligible for promotion to a higher post. The Government further took a decision that if, any representation against any adverse remarks is pending, it should be kept in view. The selection committee can defer the matter till a final decision is taken on the representation. After the decision, matter can be taken up by the selection committee. The representation against adverse remarks should be decided within three months.

In the facts of the present case, in para No.18 of the replication,

the petitioner has specifically taken a stand that the adverse remarks in the

ACRs had never been communicated to him. The respondents have not denied this fact in their written statement. Therefore, the claim of the petitioner deserves to be allowed.

In view of the above discussion, this petition is allowed and a direction is given to the respondents to consider the case of the petitioner for promotion to the post of Manager Grade-II w.e.f. 27.11.1980 and further promotion as Manager Grade-I w.e.f. 10.09.1992 along with all consequential benefits.

11.03.2016
ajp

(RITU BAHRI)
JUDGE