

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 14006 of 2000(O&M)

Date of decision:25.10.2016

Ishwar Singh (since deceased) through his LRs ... Petitioner

Versus

State of Haryana &ors. ... Respondents

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

Present: Mr. Ramesh Hooda, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, A.A.G., Haryana.

Mr. Sudhir Hooda, Advocate,
for respondent No.4.

Ms. Alka Chatrath, Advocate,
for respondents No.5 to 9.

RAJIV NARAIN RAINA, J.(Oral)

1. Though the private respondents 3 to 9 had qualified the departmental examination earlier than the petitioner but before the date of consideration for promotion to the post of Naib Tehsildar when the committee met, the petitioner had by then qualified the examination and therefore, he would have a right of consideration for promotion earlier to his juniors who qualified the examination earlier to him but had not been promoted and accordingly his seniority will be liable to be restored to the original position in the seniority list. The service conditions of the parties are regulated by the Haryana Revenue Department, Naib Tehsildar (Group C) Rules, 1988 (for short 'the Rules'). Rule 12 therein prescribes that seniority is to be determined from the date of appointment. On March 25, 1994, an amendment was made in the Rules in Appendix B prescribing that qualification of passing the departmental examination requires to be added

to the essential qualifications laid down under the Rules which was matriculate with Hindi and having experience of Kanungo to be promoted to the post of Naib Tehsildar. This means that promotion is to be made from Kanungos as had passed the departmental examination and who fulfilled the qualification laid down in amended Appendix B. The admitted position is that the principle of promotion is based on seniority-cum-merit. It follows that all qualified Kanungos are to be considered for the promotion as Naib Tehsildars irrespective the date of their qualifying the departmental examination, earlier or later, and they should be considered for promotion in the order of seniority drawn in the feeder cadre of Kanungo. At the time of filing of petition, the petitioner was the senior most Kanungo in Rohtak Division who had qualified the departmental examination.

2. In the reply filed by the Commissioner, Rohtak Division, Rohtak, in defence of the petition, the instructions dated September 22, 2000 at Annex P-5 had been defended as prevailing within the setting of the rules. The amendment was carried out to avoid confusion and ambiguity in ordering promotions from amongst the Kanungos. The State maintains in its reply that at the relevant time five vacancies were available in the cadre of Naib Tehsildar when the private respondents cleared the departmental examination. The private respondents were not promoted as regular hands in time, for the reason that the State had increased the number of chances for passing the qualifying examination to more than three attempts whereas the effort should have been restricted to three attempts. Any crossing over the border line would entail loss of promotion and a right in the petitioner to be promoted to fill up the vacancy which remained unfilled when the private respondents have qualified the examination, and since the petitioner had not

qualified the same he had a preferential right to promotion over the others who may have qualified the test earlier but had not earned promotion.

3. However, this Court in CWP No.17606 of 1999 had passed an interim order on December 20, 1999 staying the promotion of those Kanungos who have passed the departmental examination for Naib Tehsildar beyond three chances and the respondents had passed the departmental examination in more than 3 chances. These relevant orders are attached with the written statement as Annex R-4 and of the non-official respondent at Annex R-4/2; and their authenticity is not disputed.

4. The petition was dismissed on May 15, 2000. The non-official respondents' case is that they could not be promoted because of the operation of the stay order though there were available vacancies at the relevant time in 1998. Since the writ was dismissed, the stay stood automatically vacated, and therefore, the petitioner would have put back to the original position of the date of occurrence of a vacancy in his favour. Merely because the non-official respondents were promoted in 2001 after the stay was vacated that would not mean that their rights stood extinguished.

5. As a result of the foregoing discussion, the petitioner does not appear to have an actionable claim for promotion to the post of Naib Tehsildar only on account of fact that he had not qualified the departmental examination on the date when the vacancies occurred and the non-official respondents were available and eligible for consideration for promotion but could not be promoted because of the interim stay order. Even assuming that the letter was withdrawn later, the rights of the private respondents should appear to stand crystallized and by the deeming fiction of law would

relate back to the date of occurrence of vacancies. It is well settled in the matter of promotion that the date of occurrence of vacancies is material date of consideration even though the promotion may take place later. Having said this and upheld the promotions of the private respondents from the retrospective dates then any future vacancies available after the date of passing of the departmental examination can go to the petitioner. This is a matter of calculation of vacancies with reference to the date of passing of departmental examination by the petitioner and in case, he has not been promoted he may make a representation to the Government department to consider him for promotion to the higher post on the date when the vacancy would be available to him as per turn. But for promotion to the higher post, the non-official respondents would be taken to have stolen a march over the petitioner and become senior to him for all intents and purposes by virtue of qualifying the departmental test prescribed for promotion. In this view of the matter, the question of senior and junior amongst the petitioner and the private respondents does not arise.

6. Petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

25.10.2016

monika

Whether speaking/reasoned *Yes*

Whether reportable *No*