

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

RSA No.2327 of 1990

Date of Decision:26.09.2016

Union of India and others

... Appellants

Vs.

Sain Dass

... Respondent

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Ms. Abha Rathore, Advocate for the appellants.
None for the respondent.

P.B. BAJANTHRI J.

The matter is of the year 1990.

The respondent, who is working as a Rakshak, his name was considered for the purpose of promotion to the cadre of Senior Rakshak in the year 1984 amongst others. Promotion committee after perusal of service particulars of the respondent declared him unfit with reference to adverse remarks reflected in his service records.

The respondent feeling aggrieved by the rejection of his claim for promotion to the post of Senior Rakshak filed a civil suit before the trial Court. On 1.8.1988, the trial Court suit was decreed holding that circular dated 27.7.1984 and 10.1.1986 are illegal and the plaintiff (respondent herein) is entitled to all the benefits of promotion from the date of junior's promotion to the post of Senior Rakshak. The appellants aggrieved by the order of the trial Court preferred an appeal before the Appellate Court. The Appellate Court uphold the order of the trial Court on 2.3.1990. Thus, the appellants have presented this appeal.

The question of law in the present appeal is as follows:

“1. Whether the document Ex.DW1/1, DW1/2, DW/3 can be held to be not relevant by the Appellate Court since the same have not been

challenged by plaintiff/respondent?

2. Whether the Court can go into merits of promotion made by Selection Committee, when there is no allegation of malafide or arbitrariness?

3. Whether selection can be challenged without impleading the 192 selected candidates?"

Learned counsel for the appellants submitted that the respondent's name amongst others was considered by promotion committee on 31.8.1984 wherein the respondent was held to be unfit for promotion to the post of Senior Rakshak having regard to the fact that there were adverse remarks against the respondent. This factual aspect has not been appreciated by the trial Court as well as the Appellate Court. Thus, there is an error committed by the trial Court and the Appellate Court.

Employee is entitled to be considered for promotion. In the present case, respondent's name has been considered for promotion and rejected for want of eligibility. The respondent had adverse report of ACR for the previous year as on the date of consideration of his name for promotion to the post of Senior Rakshak i.e. 31.8.1984. Therefore, the trial Court and Appellate Court erred in holding that circular dated 27.7.1984 and 10.1.1986 are illegal. Consequently holding that the respondent is entitled to promotion to the date of junior's promotion is not in accordance with the procedure for promotion from the post of Senior Rakshak. Hence, this appeal is allowed and the orders passed by the trial Court as well as the Appellate Court are set aside.

26.09.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No