

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20465 of 2012
Decided on : 13.05.2016

Rajinder Kumar

... Petitioners

Versus

Punjab State Cooperative Agricultural Development Bank Ltd.

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.M.S.Sarao, Advocate, for the petitioner.

Mr.Parminder Singh, Advocate, for the respondent.

G.S. Sandhawalia , J. (Oral)

Petitioner seeks promotion, from the post of Accountant to the post of Assistant Manager, w.e.f. 25.01.2011, i.e., the date from which his juniors were promoted. The ground for denial of promotion was communicated to the petitioner on 18.07.2011 (Annexure P6), by the respondent-Bank. The reasoning being that the petitioner had failed to secure the requisite number of 12 marks in the last 5 Annual Confidential Reports, which led to the denial. It is the specific case of the petitioner that he was never informed of the break-up of the 12 marks awarded to him for the last 5 years of the ACR's for assessment of his output and he had never been communicated the ACR's, below the bench-mark and after the communication dated 18.07.2011, he had also represented by serving a legal notice to that effect.

The defence of the Bank is that the persons junior to the petitioner had secured 12 marks, as per the bench-mark for the last 5 years and therefore, though the petitioner was at Sr.No.519 of the seniority list, but juniors upto 590 were promoted, on that account. The criteria of bench-mark of 12 marks was applicable. The stand of the Bank is that the status of the ACR's were not communicated to the petitioner as none of the ACR was adverse.

Counsel for the respondent-Bank has, accordingly, submitted that the petitioner had 'Good' ACRs for the last 5 years but since the marks for 'Good' would only be '2' and therefore, the petitioner did not secure 12 marks and only got 10 marks and thus, did not get the benefit of promotion. It is further pointed out that the petitioner had, thereafter, been promoted subsequently, during the pendency of the writ petition.

The said stand taken by the Bank, cannot be accepted. It has been time and again held that ACRs, whether good or adverse, have to be communicated to the employee so that he can improve his performance. The Apex Court in **Dev Dutt Vs. Union of India & others 2008 (8) SCC 725** held to that effect. The said view has further been approved by a three-Judge Bench of the Apex Court in **Sukhdev Singh vs. Union of India and others, 2013 (5) SCR 1004**. The relevant portion reads as under:-

“8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and

helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period. 9. The decisions of this Court in Satya Narain Shukla vs. Union of India and others¹⁰ and K.M. Mishra vs. Central Bank of India and others¹¹ and the other decisions of this Court taking a contrary view are declared to be not laying down a good law.”

Similarly, in **Dr.Gurdev Singh Bhardwaj vs. State of Punjab and others 2013 (1) RSJ 474**, it was held that adverse entry needs to be communicated to the employee and is liable to be ignored while determining the bench marks. The relevant portions read thus:-

“12. Following the dictum laid down by the Apex Court, it is clear that the average report relating to the year 2005-06 which clearly had an adverse effect insofar as consideration of the petitioner for purposes of promotion to the higher post of Senior Medical Officer, was required to be conveyed to him. Accordingly, it is held that the ACR for the year 2005- 06 having not been communicated to the petitioner was liable to be ignored while determining the bench mark.

13. That apart, I find that the respondent-authorities have acted arbitrarily in not considering the ACR of the petitioner for the year 2007-08. The right of an employee to be considered for promotion is a fundamental right under Article 16 of the Constitution of India. It is not just a right of consideration but, in fact, an obligation cast upon the employer to afford a fair consideration to an employee in terms of the principles of service jurisprudence. It has been admitted that the petitioner had been graded 'very good' for the year 2007-08 and such report had been duly received but was not available at the time of preparation of agenda submitted before the Departmental Promotion Committee. This cannot be a basis for denying to the petitioner the grading in terms of assigning three numbers for such 'very good' report for the year 2007- 08.

14. Learned counsel appearing for the petitioner would bring to my notice that the petitioner has since retired on 29.2.2012, having attained the age of superannuation.

15. Accordingly, I allow the present petition in terms of directing the respondent-authorities to reconsider the claim of the petitioner for promotion to the post of Senior Medical Officer in terms of determining the bench mark afresh by ignoring the ACR for the year 2005-06 and in terms of taking into account the five previous ACRs i.e. for the years 2008-09, 2007- 08, 2006-07, 2004-05 and 2003-04. It is further directed that if in pursuance to such exercise, which shall be concluded positively within a period of three months from the date of receipt of a certified copy of this order, the petitioner fulfils the requisite bench mark, then orders shall be issued promoting the petitioner to the post of Senior Medical Officer on a notional basis. The petitioner in such eventuality would also be held entitled to notional pay fixation on the post of Senior Medical Officer as on the date of his superannuation and would be released the revised pensionary/retiral benefits accordingly.”

Accordingly, keeping in view the settled position of law, the present writ petition is allowed. The respondents are directed to promote the petitioner, from the date his juniors were promoted, i.e., 25.01.2011, as Assistant Manager and the financial benefits, which are due, be disbursed to him, accordingly. Needful be done within a period of 3 months, from the date of receipt of the certified copy of this order.

MAY 13, 2016

sailesh

**(G.S. SANDHAWALIA)
JUDGE**