

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

CWP No.2452 of 2013 (O&M)

Date of decision: 18.05.2016

Sher Singh Yadav

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. S.S. Shekhawat, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana,
for the respondents.

Ritu Bahri, J.

The petitioner is seeking quashing of the order dated 03.12.2012 (Annexure P-16), whereby he has been denied the arrears of pay and allowances of notional period of promotion from 01.04.2007 to 11.11.2010 as Deputy Director, on the ground that he has not worked on this post.

Sher Singh Yadav-petitioner was appointed as Assistant District Statistical Officer in the Economic and Statistical Organization (now Department of Economic and Statistical Analysis), Planning Department, Haryana, on 18.08.1981. Thereafter, he was promoted on adhoc basis and was appointed as Economist in the Office of CPDO, Gurgaon vide order/letter dated 04.01.1995 (Annexure P-2). In the year 2001, some

regarding inter se seniority of promotee and direct recruits. On 23.02.2001, one Devinder Singh Chikkara was appointed to the post of DSO as a direct recruit. He was much junior to the petitioner and was promoted to the post of Deputy Economic and Statistical Adviser (Class-I) vide order dated 01.06.2007 (Annexure P-4). Thereafter, the petitioner made a representation dated 02.07.2007 (Annexure P-6) to finalise the seniority list and to promote him from the date when officer junior to him has been promoted i.e. 01.06.2007, whereupon, the Department of ESA, Haryana, circulated a proposed seniority list of Group-B officers vide letter dated 14.01.2008 (Annexure P-7), in which, name of the petitioner figured at serial No.1. The petitioner made two representations dated 28.03.2008 and 06.10.2008 (Annexure P-8, Collectively). Vide order dated 01.05.2008 (Annexure P-9), the FC & Secretary, Planning Department, Haryana Civil Sectt., decided that the petitioner was senior to Sh. Devinder Singh Chikkara, who has been promoted to the post of Deputy Economic & Statistical Advisor vide order dated 01.06.2007 (Annexure P-4). Thereafter, the petitioner filed CWP No.21339 of 2008 before this Court seeking direction to the respondents to promote him to the post of Deputy Economic and Statistical Advisor. This petition was disposed of vide order dated 19.12.2008 (Annexure P10) by giving a direction to the respondents to take a final decision on the representation of the petitioner within a period of two months. Vide order dated 15.12.2009 (Annexure P-11), the adhoc promotion to the petitioner given in the year 1995 was regularized w.e.f. 15.04.1999. Thereafter, the petitioner was promoted to the post of Deputy Director w.e.f. 01.06.2007 i.e. the date of promotion of his junior Sh. Devinder Singh Chikkara, notionally and actually from the date he assumed the charge in the pay band of

P-12). The petitioner again made representations dated 11.05.2010 and 17.05.2011 (Annexure P-13, collectively) claiming that he should be promoted retrospectively w.e.f. 01.04.2007 when the post became available on the retirement of Smt. Krishana Ahlawat, Deputy ESA (Now Deputy Director) on 31.03.2007, instead of 01.06.2007. Thereafter, as per order dated 10.08.2011 (Annexure P-14) the Government decided to promote the petitioner notionally w.e.f. 01.04.2007. Finally, he made a representation dated 11.05.2012 (Annexure P-15) for grant of arrears of notional period of promotion to the post of Deputy Director w.e.f. 01.04.2007 to 11.11.2010. This representation was declined vide letter/order dated 03.12.2012 (Annexure P-16). Hence, this petition.

Learned counsel for the petitioner has argued that once the respondents had accepted the claim of the petitioner that he was senior to Sh. Devinder Singh Chikkara and had promoted him w.e.f. 01.04.2007 i.e. the date when his junior had been promoted, the petitioner had a right to claim all consequential benefits as well as arrears in view of the judgment passed by the Hon'ble Supreme Court in **Union of India Vs. K.V. Jankiraman**, AIR 1991 SC 2010 and this view of the Hon'ble Supreme Court has been followed by this Court in **Vidya Parkash Harnal Vs. State of Haryana**, 1995 (3) SCT 785. Learned counsel has further referred to the Division Bench judgments of this Court in **Rameshwar Vs. State of Haryana and others**, 2006 (1) RSJ 30 DB and **Ramphal Vs. State of Haryana**, 2003 (5) SLR 699, to contend that once, keeping in view the seniority of the petitioner, he had been granted promotion with retrospective effect, the arrears of salary could not be denied on the principle of 'no work no pay.'

adhoc promotees filed CWP Nos.10720 of 2007 and 2303 of 2010 for regularization of their adhoc promotions. On the other hand, the petitioner had filed CWP No.21339 of 2008. Some direct quota recruits also filed CWP No.7490 of 2009 for finalizing their seniority in the light of advice given by the Chief Secretary, Haryana (Rules Committee). This petition was disposed of with the following directions:-

“This writ petition is disposed of with a direction to the respondents to pass a speaking order on the representations of the petitioner Annexures P-15 to P-17 in the light of the advice Annexure P-18 within a period of three months from the date of receipt of a certified copy of this order.”

In compliance of the directions given in the above said writ petition, the Government finalized the case of regularization of adhoc promotion of the petitioner and other similarly situated adhoc promotees and inter se seniority of promotes and direct quota recruits vide **order dated 16.12.2009**. Accordingly, the date of regularization of adhoc promotion of the petitioner was changed as 15.04.1999 keeping in view the availability of post meant for promotion quota on the basis of advice of Chief Secretary, Haryana (Rules Committee). Thereafter, the petitioner was considered senior to Sh. Devinder Singh Chikkara. However, on account of status quo order with regard to promotion, he could not be promoted on the post of Deputy Director. After finalization of seniority by the State Government, all the writ petitions were dismissed on 01.02.2011. The petitioner was promoted as Deputy Director on 10.11.2010. He was given notional promotion from the date his junior was promoted as Deputy Economic and Statistical Advisor. The petitioner has since retired on 31.05.2012 and thereafter, filed the present petition seeking actual benefit of promotion i.e. arrears of salary. Learned counsel for the respondents has referred to the

others Vs. O.P. Gupta and others, SLP No.3799 of 1995, decided on 12.01.1996 (Annexure R-2), to contend that unless the seniority list is prepared and finalized and promotions are made in accordance with the Rules on the basis of above seniority list, the question of entitlement to work in the promotional posts does not arise. Hence, payment of arrears of salary would not be admissible to those employees.

The petitioner has been granted the benefit of notional promotion w.e.f. 01.04.2007 when the *inter se* seniority of the promotees and direct quota recruits was finalized vide order dated 16.12.2009. It was on account of dispute of seniority that he could not be granted promotion being senior to Sh. Devinder Singh Chikkara. The seniority was finalized in compliance of the directions given by this Court in CWP No.7490 of 2009. The date of regularization of adhoc promotion of the petitioner was changed as 15.04.1999 keeping in view the availability of post meant for promotion quota on the basis of advice of Chief Secretary, Haryana (Rules Committee) and it is thereafter, he was to be considered senior to Sh. Devinder Singh Chikkara. After the dismissal of CWP No.2303 of 2010 on 01.02.2011, the petitioner was promoted to the post of Deputy Director on 10.11.2010 notionally from the date his junior was promoted as Deputy Economic and Statistical Advisor. Judgments referred to by the petitioner cannot be of any help to him as in those cases, the case of promotion had not be initiated or the petitioners were facing disciplinary proceedings and on account of that reason, promotion was not granted. It was held that the petitioner was not at fault and hence, arrears of promotional pay scales were granted to him.

In the present case, seniority of the petitioner was finalized on 16.12.2009 and thereafter, on account of an interim order dated 08.01.2010

promoted to the post of Deputy Director. This petition was finally dismissed on 01.02.2011 and thereafter, the petitioner was given notional promotion w.e.f. 01.04.2007 by considering him to be senior to Sh. Devinder Singh Chikkara. The delay in promotion cannot be attributed to the respondent-department, rather it was on account of finalization of the seniority dispute between direct quota recruits and the promotees. Seniority of the petitioner was finalized after dismissal of the aforesaid writ petition on 01.02.2011 and date of regularization of adhoc promotion of the petitioner was changed as 15.04.1999. Thereafter, he was to be considered senior to Sh. Devinder Singh Chikkara. The petitioner has been given notional promotion w.e.f. 01.04.2007.

At this stage, reference can be made to the judgment passed by the Hon'ble Supreme Court in **O.P. Gupta's** case (supra) (Annexure R-2), wherein it has been held that before finalization of the seniority, the promotion could not be made. Pursuant to the directions given in the year 1990, the State had prepared a seniority list in accordance with the rules and thereafter, the promotions were given to all eligible persons on December 1, 1992. In the interregnum period, some persons had retired. The deemed date of promotion was given as 01.01.1983. Following the law laid down by the Hon'ble Supreme Court in **K.V. Jankiraman's** case (supra), it was held that unless the seniority list was prepared and finalized and promotions were made in accordance with the rules, the question of entitlement to work in the promotional posts did not arise. Consequently, the petitioners were not held entitled to payment of salary.

In the facts of the present case, the petitioner has since retired on 31.05.2012 and his seniority list was finalized vide order dated 16.12.2009.

rightly given the benefit of seniority over and above Sh. Devinder Singh Chikkara and was promoted notionally w.e.f. 01.04.2007.

Following the law laid down in **O.P. Gupta's** case (supra) (Annexure R-2), no case for payment of salary, as prayed for, is made out.

Resultantly, the present petition is dismissed.

18.05.2016
ajp

(RITU BAHRI)
JUDGE