

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

Date of decision: 01.09.2016

CWP No.4162 of 2016 (O&M)

Bhup Singh

...Petitioner

Vs.

Staff of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Manohar Lall, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

CM No.10517 of 2016

Application is allowed. Rejoinder is taken on record.

CWP No.4162 of 2016

Heard. The petitioner was an employee of the District Court at Panipat. He has retired from service. He was ignored from promotion while in service on the due date on account of minor punishment awarded to him i.e. withholding of one increment without permanent effect. His junior was promoted. In such cases, instructions of the Government prescribe that promotion can be granted after the expiration of the currency of the penalty inflicted, but from the retrospective due date. The object of awarding minor punishment of withholding increment without cumulative effect is designed to suspend certain service rights, but after the period expires then promotion can be given when the principle of promotion is seniority -cum- merit, as in this case. The case may be somewhat different while dealing with a selection

post, where junior can supersede senior on the basis of superior service record. To make things easier for the petitioner to claim relief, the punishment order was set aside by the Administrative Judge of the Panipat Sessions Division vide order dated 05.07.2013 (Annex P-3), which removes the obstacles from the way of promotion from the due date.

In this admitted position, Mr. Manohar Lall rightly urges that the petitioner has a right of declaration as promoted to the post of Reader Grade-I although he retired on 30.11.2015 since the right to promotion claimed is antecedent to superannuation.

The case of the petitioner for promotion from the retrospective date has been declined for the reason that there is no available vacancy in the promotional cadre. That may be so. However, the petitioner is not seeking physical promotion, but notionally and, therefore, a suitable adjustment can be made on the roster of promotions and he can be promoted from the date the junior was promoted i.e. 02.01.2013 i.e. when respondent No.3 was promoted as Reader Grade-I. It is not a disputed fact that respondent No.3 was junior to the petitioner in the feeder cadre.

As a result of the above discussion, the present petition is allowed. It follows that both the impugned orders dated 20.11.2013 and 12.01.2016 have to be annulled. The official respondents would consider promoting the petitioner from the date the admitted junior was promoted as Reader Grade-I and give him the monetary benefits of arrears of difference of pay and allowances w.e.f. January, 2013. The amounts be determined and paid to the petitioner within four months from the date of receipt of the certified copy of this order.

As a result of the setting aside of both the orders, the pension of the petitioner would have to be re-fixed in the cadre by legal fiction treating the petitioner as having retired from service as Reader Grade-I on reaching the age of superannuation. The arrears of pension and pensionary benefits be also re-computed and paid to the petitioner within the same time frame.

01.09.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*