

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

Sr. No. 264

CWP-4288-2016

Decided on : 31.03.2016

Shamey Singh

..... Petitioner

VERSUS

Haryana State Agricultural Marketing Board,
Panchkula and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

To be referred to Reporters or not?

Whether the judgment should be reported in the digest?

Present: Mr.C.M.Chopra, Advocate, for the petitioner.

Mr.R.D.Bawa, Advocate, for the respondents.

DEEPAK SIBAL, J.

On 31.03.2016, after hearing learned counsel for the parties, through a short order, the writ petition was allowed with reasons to follow which are detailed as under.

After having heard learned counsel for the parties and perusing the record with their able assistance, the relevant facts which have emerged, are that on 23.02.1980, the petitioner was appointed as Peon-cum-Chowkidar in Market Committee Tauru, Gurgaon. On 04.05.1989 since an inquiry was contemplated against the petitioner, he was suspended and on 30.12.1989 for certain acts of omission and commission on his part was served with a charge-sheet. In the

departmental inquiry which ensued, the petitioner was found guilty and his punishing authority while accepting the inquiry report, through order dated 10.09.1993, dismissed him from service. Such dismissal was challenged by the petitioner before this Court through CWP-12400-1993 which was dismissed through order dated 14.10.1993. The order of this Court was challenged by the petitioner before the Apex Court through a Special Leave Petition which was allowed and the matter was remanded back to this Court for a fresh decision. As per the order of the Apex Court, the matter with regard to the challenge by the petitioner to his dismissal, was taken up afresh by this Court and through order dated 11.04.1997, the writ petition was disposed of while permitting the petitioner to file an appeal against the order of his termination. It was further directed that if any appeal is filed, the appellate authority of the respondent-Board would consider and decide the same on merits. In compliance with the order of this Court, the petitioner's appeal was considered and allowed through order dated 27.08.1997 and as a consequence thereof the petitioner was ordered to be reinstated but without back-wages. The petitioner rejoined service but the part of the order denying him back-wages was challenged by him before this Court through CWP-2177-1998 which was allowed through order dated 13.07.1998.

On rejoining service, the petitioner came to know that on 05.12.1990, a Class-IV employee like the petitioner namely Ram Rattan who was junior to him, while ignoring the petitioner's claim, had been promoted to the next higher post of Auction Recorder. The petitioner has

placed on record the seniority list of Class-IV employees wherein the petitioner figures at Sr. No.36 in comparison to aforesaid Ram Rattan, who figures at Sr. No.48. Accordingly, the petitioner represented his case but only to receive assurances that the needful would be done with no actual favourable response . Ultimately, on 27.03.2014, the petitioner was also promoted as Auction Recorder with prospective effect and not with effect from the date his junior Ram Rattan had been promoted. In his joining report, he had specifically stated therein that the promotion offered was being accepted by him after lodging a protest that he should be granted promotion with effect from the date when his junior Ram Rattan had been promoted. He further brought to the notice of the authorities that on his promotion he had got no financial benefit and instead was incurring a monthly financial loss of Rs.340/-. The petitioner's representation was rejected against which he filed another representation and was also rejected on 22.06.2015, giving him a cause to approach this Court through the present petition.

Though the present petition had been filed seeking promotion as Auction Recorder w.e.f. the date his junior Ram Rattan had been promoted or in the alternative, for a direction to the respondents to permit the petitioner to forego his promotion as Auction Recorder without any penal consequences, learned counsel for the petitioner, on instructions from the petitioner, does not press his main prayer and only seeks the issuance of a direction to the respondents on his afore-referred alternate plea.

Upon notice having been issued, learned counsel for the

respondents put in appearance and filed a short written statement in which it was submitted that at this stage there was no provision in law for the petitioner to forego his promotion.

After hearing learned counsel for the parties, I am of the opinion that in the facts of the case in hand, the prayer of the petitioner permitting him to forego his promotion, should be allowed.

The facts as pleaded and brought on record clearly show that the petitioner while serving the respondents as a Class-IV employee had earlier been wrongly dismissed from service, a fact which was later impliedly acknowledged by the respondents as its own appellate authority allowed the petitioner's appeal filed by him against the order of his dismissal. Later, while considering his case for promotion to the next higher post of Auction Recorder though his junior Ram Rattan was promoted w.e.f. 05.12.1990, the petitioner was promoted only w.e.f. 27.03.2014. On protests lodged by him, the only answer by the respondents which is found on the record, is that his case after such a long period could not be reopened and reconsidered. Further, in the year 2014, when the petitioner was promoted as Auction Recorder, he submitted his joining report under protest stating therein that either he be promoted w.e.f. the date his junior had been promoted or he be permitted to forego his promotion as his promotion to the post of Auction Recorder with prospective effect was in fact to his prejudice which was not just financial as he was getting lesser pay than he was getting earlier but also that on the promotional post of Auction Recorder which is a Class-III post, he would retire at the age of 58 years as compared to the retirement

age of 60 years for Class-IV employees. This genuine request of the petitioner was also rejected by the respondents through an order bereft of any reason.

Since the promotion had been accepted by the petitioner under protest, with certain conditions, on the denial of those requests it would be open to him, in the peculiar facts of the case, to forego his promotion especially when such promotion is doing him more harm than good both on the financial front as also with regard to his length of service.

In view of the above, the writ petition is allowed and the respondents are directed to permit the petitioner to forego his promotion offered to him through order dated 27.03.2014 (Annexure P-8). It is clarified that on foregoing his promotion, the petitioner's promotion shall be ignored for all intents and purposes and that he would continue as a Class-IV employee, subject to good work and conduct and applicable service rules, till the age of 60 years.

31.03.2016
shamsher

[DEEPAK SIBAL]
JUDGE