

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

CWP No.7121 of 2015(O&M)

Date of decision: 11.5.2016

Rama Sharma

... Petitioner

Versus

State of Punjab & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Manu K. Bhandari, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, A.A.G., Punjab.

Mr. Ashok Sharma Nabhewal, Advocate,
for respondent No.4.

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

RAJIV NARAIN RAINA, J.(Oral)

1. There is a categorical admission in the reply filed by the State of Punjab in paragraph 3 that none of the Annual Confidential Reports(ACRs) of the petitioner for the period relevant to the consideration for promotion to the post of District Ayurvedic and Unani Officer (DAUO), Punjab, were ever communicated and served on her. The State further avers in paragraph 3 that the ACR for the years 2012-13 and 2013-14 were not signed by the Reviewing and Accepting Authorities. The State has pointed out that the ACRs were to be sent to these Authorities through dealing Assistant, namely, Ashok Kumar for their review/acceptance, who Mr. Inqulab Nagpal, Punjab, informs the Court has been charge-sheeted for major misconduct and is facing disciplinary proceedings. The ACRs which were required to be

considered in the Departmental Promotional Committee in respect of the petitioner were from 2009-10 to 2014-15. The petitioner was graded as 'Good' for the years 2009 to 2012, 'Very Good' for 2012-13 and 'Average' for 2013-14 while she was graded as 'Very Good' for the years 2012-13 and 2014-15. The remarks in the last column of Annex R/1 certified that ACRs were written by “Single Authority” for the assessment years 2012-13 and 2013-14. It is common ground that the numbering system is followed in making promotions to the post of DAUO. When the numbering system is involved, the method of promotion acquires the characteristics of selection [where junior can supersede senior who fails to make the benchmark] and accordingly “average” becomes adverse and has thus to be communicated within time to enable the petitioner to seek departmental remedies against the recording of average ACR. This precious remedy is lost to the petitioner against “average” grading and seriously prejudiced her. See Dev Dutt Vs. Union of India & Ors., (2008) 8 SCC 725.

2. The petitioner has failed to make the grade of promotion by one mark and if the average ACR for the year 2013-14 is ignored, she would earn promotion as DAUO. The ACRs which have not acquired finality before the Reviewing and Accepting Authorities are not ACRs in the eyes of law and have to be ruled out from consideration. It appears that the case of the petitioner has been delayed and she has lost her promotion for no fault of hers. The fault vested somewhere in the respondents. It cannot be gainsay that ACRs are the ornaments of service and career are made or marred on them. They are not to be taken lightly

by anyone who is concerned with recording them and ordering promotions and reversions, passing disciplinary orders and so on and so forth. The State in its written statement confirms that ACRs for 2012-13 and 2014-15 were ignored. It may be mentioned that the petitioner is senior to the persons promoted in the DPC held on January 8, 2015.

3. Mr. Manu Bhandari contends that in this peculiar situation where none of the relevant ACRs have been conveyed the petitioner then cannot be disadvantaged and denied promotion for the dereliction in duty in not conveying the ACRs in time. It is settled position that ACRs cannot be conveyed in one lot covering many years. This sort of thing has not met judicial approval. A cursory look at the grading for the years 2013-14 and 2014-15 or the rest of them in Annex R-1 does not disclose a person who does not deserve or merit promotion at all.

4. In view of above facts and circumstances read with the written statement filed by the State, this petition is allowed. A mandamus is issued to the State to consider promoting the petitioner as DAUO from the date her juniors were promoted. The petitioner's second extension in service beyond superannuation is due to expire at the end of July, 2016. Therefore, a direction is issued to the competent-authority in the respondents by way of amends to pass final orders within three weeks from the date of receipt of a certified copy of this order. In the event of promotion, the petitioner will be entitled to all the consequential benefits flowing therefrom.

(RAJIV NARAIN RAINA)
JUDGE

11.5.2016

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