

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

LPA No.505 of 2015 (O&M)

Date of Decision: 26.09.2016

Union of India and others

..... Appellants

Versus

Sarwan Singh and others

..... Respondents

**CORAM: HONBLE MR. JUSTICE SURYA KANT
HONBLE MR. JUSTICE SUDIP AHLUWALIA**

- | | |
|--|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |
| 3. Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |
| 4. To be referred to the Reporters or not? | Yes/No |
| 5. Whether the judgment should be reported in the Digest? | Yes/No |

Present: Mr. Vivek Singla, Advocate,
for the appellants.

Mr. G.S. Thind, Advocate,
for respondent No.1.

SURYA KANT J. (ORAL)

CM No.1031-LPA of 2015

(1) Prayer in this application is for condonation of delay of 2019 days in filing the accompanying appeal. The order was passed by learned Single Judge on 23.07.2009. Thereafter the appellants filed a Review Application bearing No.473 of 2009 which remained pending and was finally dismissed on 07.10.2014.

(2) The instant appeal has been filed in January, 2015. Though there is some delay in filing the appeal but the same is not fatal in nature.

(3) The application is, accordingly, allowed and the delay of 2019 days in filing the appeal is condoned.

LPA No.505 of 2015

(1) This Letters Patent Appeal filed by the Union of India is directed against the order dated 23.07.2009 whereby learned Single Judge allowed the writ petition with a direction to promote the respondent as Naib Subedar w.e.f. 01.09.2006.

(2) We have heard learned counsel for the parties and gone through the records. Learned Single Judge has found as a matter of fact that despite having been graded as 'Above Average' or 'High Average' which reports were surely superior than 'Average' reports, the appellants arbitrarily rejected the claim of the respondent for promotion as Naib Subedar.

(3) The only contention raised before us is that as per the criteria evolved by the appellants, 'Average' grading is treated better than 'High Average'. Such categorization, if any, appears to be totally anomalous and ill conceived as 'Average' cannot be better than 'High Average'. No such criteria or material was produced before the learned Single Judge. Since the respondent was admittedly graded as 'Above' or 'High Average' which expression or classification *ex facie* appears to be better than an 'Average' grading, we are of the considered view that the conclusion drawn by learned Single Judge that the respondent was unfairly denied promotion, calls for no interference. However, learned Single Judge instead of issuing direction to promote the respondent, ought to have directed that the respondent be considered for promotion as Naib Subedar w.e.f. 01.09.2006 keeping in view the observations made in the order of learned Single Judge.

(4) For the above-stated reasons, we do not find any merit in this appeal, which is, accordingly, dismissed, directing the appellants that let the claim of the respondent for promotion as Naib Subedar be considered w.e.f.

01.09.2006. While considering such claim, the 'High Average' or 'Above Average' reports shall not be treated inferior than the 'Average Reports'. On such re-consideration, if the respondent is found entitled to promotion w.e.f. 01.09.2006, he shall be entitled to all consequential benefits, more-so for the reason that the respondent has meanwhile retired from service.

(5) Ordered accordingly.

(6) Let the claim of the respondent be considered within three months from the date of receipt of certified copy of this order.

(SURYA KANT)
JUDGE

26.09.2016

Bhumika

(SUDIP AHLUWALIA)
JUDGE