

Date of decision: 19.01.2017

RSA No.2957 of 1994 (O&M)

Vs.

Mohinder Singh & others ...Respondent

Present: Mr. Umesh Aggarwal, Advocate, for the appellants.

Mr. A.D.S.Bal, Advocate, for respondent No.1.

RAJIV NARAIN RAINA, J. (ORAL)

Having heard learned counsel for the parties at considerable length, I find that there is no substantial question of law involved in this appeal against the concurrent findings of fact recorded by both the Courts below and appreciation of the law point involved in the dispute.

Plaintiff-respondent No.1 was ignored for promotion as Junior Engineer – II in 1986 and his juniors were promoted. Aggrieved by loss of promotion, the plaintiff approached the Civil Court, Patiala claiming a declaration that he has a right of promotion from the date his juniors were promoted, and there was no service obstruction in the way of his promotion, as he had nothing adverse in his service record for the relevant period of its consideration. He may have been graded as ‘Average’ for the period 1985-86, but ‘Average’ is not adverse and is not an impediment to promotion where the principle of promotion is seniority -cum- merit.

The original record of consideration has been produced by Mr.

Umesh Aggarwal, appearing for the appellants – Board (now PSPCL). The

reason for passing over the plaintiff-respondent No.1 in 1986 is due to “adverse remarks”. The Departmental Promotion Committee proceedings records in long hand on the face of the sheet of paper that Committee recommended that the petitioner may be ignored up to March, 1989 vide noting dated 24.03.1987. Mr. Aggarwal has also produced the adverse remarks communicated for the material period from 17.06.1985 to 31.03.1986. The remarks are as follows:

- “1. You were held responsible for the fatal accident to Sh. Banarsi Dass Private person on dated 25.10.1985.
2. You are careless & irresponsible official.
3. You needs improvement.”

For the same period, he was graded as ‘Average’. The first remark is completely foreign to the consideration by any Departmental Promotion Committee. If the plaintiff was involved in a fatal accident involving a private person in an incident which occurred on 25.10.1985, it had nothing to do with his employment. These remarks could not have been put on paper to be read adverse to the interest of the plaintiff. The remarks that ‘he needs improvement’ were advisory in nature. The only remarks, which need comment is at No.2 above. If he was careless and irresponsible official, then there is no record to support acts of carelessness and irresponsibility. Such loose remarks deserve not to be read unless accompanied by tangible material in the hands of the Reporting Officer and therefore, cannot be held to be adverse in nature. In the third paper supplied by Mr. Umesh Aggarwal from the record, there is a column to the effect that: ‘if any punishment/disciplinary proceedings against him’. It is recorded against the column that “a show cause notice was issued to the official...” [plaintiff] “...vide SE/Ropar No.23937 dated 03.10.1986 for which reply has not been received so far”.

A mere issuance of a show-cause notice is not a substitute for a charge-sheet which if had been issued could have been material to deprive an official of promotion. Therefore, it is irrelevant material which has been used against the Lineman to deny him promotion without legal justification. All these three papers, being photocopies of the original record produced by the learned counsel for the appellants, are taken on record as Mark – ‘A’ (Collectively).

On 19.01.1995, learned counsel appearing for the appellant-Board made a statement that the Plaintiff-respondent No.1's record of service was not good and a charge-sheet was served upon him and disciplinary proceedings initiated. The charge-sheet was issued on 03.10.1986 . However, the issuance of charge-sheet could have no effect on the retrospective date when the consideration for promotion took place, which was prior thereto. It is well settled law that a charge-sheet could only affect further promotion, if any. The learned Additional District Judge has considered this aspect and returned proper findings in his judgment and decree dated 22.07.1994. The Courts *a quo* have correctly held that the plaintiff was entitled to be considered for promotion from the back date i.e. the date when juniors were promoted to the higher post and the material used against the Plaintiff-respondent No.1 was insufficient to deprive him of promotion to the higher post.

Mr. Aggarwal states that plaintiff-respondent No.1 was promoted later on to the post of Junior Engineer – II on 31.05.1989 after he was exonerated in the inquiry. This fact is only noticed without comment since it has no effect on the pre-existing rights of the plaintiff for promotion from the date when his juniors were promoted.

For the reasons recorded above, I find no error in the work of the Courts below, as the judgment and decree of both the Courts below are based on sound and concurrent judicial opinion. Accordingly, the instant appeal is dismissed with costs throughout incurred in the courts below in favour of the respondent. The decree be implemented.

19.01.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>