

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

CWP No. 10077 of 2015 (O&M)
Date of decision: March 8, 2017

Sohan Singh

...Petitioner

Versus

The State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Mr. Avinit Avasthi, AAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner herein is aggrieved against the denial of promotion to the post of Deputy Superintendent Jails Grade-II, as per the provisions of Rules 8 and 9 of Punjab Prisons State Service (II) Rules 1978.

2. In brief, the facts are that the petitioner was appointed in the Punjab Jail Department as Warder on 19.4.1977 and after getting promotion on the post of Head Warder, he was ordered to be promoted as Clerk in the Department by an order dated 17.06.2000. The respondent circulated a seniority list of the field staff of Junior Assistants/Clerk's and the name of the petitioner was reflected at serial No. 44 with the date of joining shown as 19.4.1977, with his date of promotion in the clerical cadre as 17.06.2000. The petitioner represented to the Department claiming that he was eligible for promotion to the post of Deputy Superintendent Grade II, however, the petitioner had not been called to the Head Office nor his option taken while considering persons junior to him eligible for promotion. Aggrieved the

instant writ petition has been filed.

3. Mr. Manu Bhandari, learned counsel appearing on behalf of the petitioner, contends that the petitioner is entitled to be promoted being eligible. It is argued that promotion to the post of Deputy Superintendent Grade-II is provided from ministerial cadre as well by way of direct promotion, as per Rules 8 and 9 of the Punjab Prison State Service (II) Rules 1978. Respondent No. 1 passed an order dated 11.09.2014 creating 23 new posts of Deputy Superintendent Grade-II and 16 posts belonging to direct quota were revived. The respondents prepared a seniority list in which an inter-se seniority of eligible candidates of the ministerial cadre was prepared in which the name of the petitioner was not included. The petitioner then represented seeking promotion to the post of Deputy Superintendent Grade II. However, the claim of the petitioner was not exceeded to and the respondents fixed Departmental Promotion Committee for promotion to the post of Deputy superintendent Grade II on 25.05.2015.

4. Per contra, Mr. Avnit Avasthi, the learned counsel appearing on behalf of the respondent State, submits that the respondents No. 1 called an agenda note for promotion to the post of Deputy Superintendent Grade-II from the ministerial cadre on which basis respondent No. 2 sought options from the employees of the Head Office, all offices of Superintendent of Jails, District Probation Officers and Principal Punjab Jail Training School, Patiala for promotion to the post of Deputy Superintendent Grade-II from the ministerial cadre by the letter dated 09.11.2013 on or before 11.11.2013 wherein it was mentioned that no application will be considered thereafter. It is argued that the petitioner had not submitted any

application/option regarding promotion to the said post within the stipulated period and represented only on 03.03.2014 and, therefore, he could not be considered for promotion.

5. I have heard the learned counsel for the parties and with their assistance have gone through the record of the case.

6. Rules 8 and 9 of the Punjab Prisons State Service (II) Rules 1978, which provide method of appointment and conditions for direct appointment, are reproduced hereunder:-

8. Method of appointment.- (1) The posts in the Service shall be filled in the following manner:-

(a) In the case of posts specified in Section I of Appendix 'A'—

(i) by promotion from amongst the officers mentioned in section II of Appendix 'A' who have an experience of working on any one or more of the posts held by such officers for a minimum period of five years;

(ii) by transfer or deputation of a person serving in any other department of the Government or any others State or Union of India if no suitable candidate is available by the method specified in sub-clause (i).

(b) In the case of posts specified in Section II of Appendix 'A'—

(i) by direct appointment; or

(ii) by promotion from amongst the Assistant Superintendents Jail or Welfare Officers who have an

- experience of working on either or both of these posts for a minimum period of seven years and have passed the departmental examination in the required standard; or
- (iii) by promotion from amongst persons who have an experience of working on the ministerial posts in the Department for a minimum period of ten years and possess the educational qualifications and physical standard as specified under Rule 9; or
- (iv) by transfer or deputation of a person serving in any other Department of the Government if no suitable candidates is available by the method specified in sub clause (i) or (ii) and (iii).

Provided that 37-1/2% of the total number of posts shall be filled by the method specified in sub clause (i) of clause (b) and 12-1/2% of the total number of posts shall be filled by the method specified in sub clause (iii) of clause (b);

Provided further that the first three vacancies would be filled by direct appointment, the next four vacancies would be filled by promotion and the eighth vacancy would be filled by promotion from amongst the ministerial staff or the department.

- (2) If no suitable candidate is available for appointment to any post through the specified method of appointment, the appointing authority may decide by which alternative

method that post shall be filled.

- (3) All promotions to the posts in the Service shall be made purely by selection on the basis of merit-cum-seniority and no person shall claim promotion on the basis of seniority alone.

9. Condition for direct appointment—No person shall be eligible for direct appointment to the posts specified in Section II of Appendix 'A' unless he-

- (i) possess a degree of a recognized university; and
- (ii) has the following height and chest measurements:-
 - (a) Height 170.17 cm (165 cm in the case of Dogras and Gorkha as
 - (b) Chest—
 - (i) 83.82 cm unexpanded and
 - (ii) 87.63 cm expanded
 - (iii) possess knowledge of Punjabi language of Matriculations standard.”

7. Rule 8 (b) specifies that posts specified in Section II of appendix 'A' posts are to be filled up either by (i) direct appointment or (ii) by promotion from amongst the Assistant Superintendent Jail or Welfare Officers who have an experience of working on either or both of these posts for a minimum period of seven years and have passed the Departmental examination in the required standard or by promotion from amongst persons who have experience of working on the ministerial posts in the Department for a minimum period of ten years and possess the educational qualifications

and physical standards as specified under Rule 9. With this, a further stipulation has been added that 37.5% of total number of posts shall be filled up by the method specified in clause (i) of (b) and 12.5% of the total number of posts shall be filled up by the method specified in sub clause (iii) of clause (b) meaning thereby any person working in ministerial cadre having 10 years experience would be eligible for promotion to the post of Deputy Superintendent Grade II. The petitioner who had been appointed as Clerk in 2000 had the necessary experience to be considered for appointment against the post of Deputy Superintendent Grade-II. The only reason forthcoming for denial is that the petitioner did not exercise his option within the stipulated period, to which it is submitted by the counsel for the petitioner that the petitioner was never made aware that he had to exercise an option. A perusal of the record would reveal that the petitioner had represented to the Department concerned for including his name to be considered for promotion, however, the same was never decided. An additional affidavit has been filed in court pursuant to an order dated 07.12.2016. The State was asked to show as to whether the Jail Superintendent to whom the email was sent had further conveyed the communication to the petitioner or not to exercise his option. The affidavit would reveal that the petitioner was not made aware that he had to exercise his option within the specified time.

8. It is well settled that the State is expected to act fairly in all matters as well as in the matter of promotions. The record reveals and that the petitioner had been agitating for consideration to be promoted to the post of Deputy Superintendent Grade-II. Various representations had already

been submitted in this regard and the Superintendent, Central Jail, Patiala, had even forwarded one to the Principal Secretary, Home Affairs and Justice Department, Punjab. Even when the Additional Director General of Police forwarded names of persons to be promoted to the post of Deputy Superintendent Grade-II as to whether any court cases were pending against these employees, the petitioner immediately represented for consideration of his name but such representations were never decided. Therefore, the plea taken that the petitioner had not exercised his option for promotion to the post of Deputy Superintendent Grade-II is not valid enough reason to deny him consideration. The petitioner being senior should have been considered for promotion. He was not made aware that he had to exercise an option and, therefore, no fault can be attributed to him.

9. Resultantly, the above noted writ petition is allowed. The petitioner be given promotion from the date his juniors were given promotion with all consequential benefits.

March 8, 2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No