

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 23411 of 2013
Date of Decision: March 30, 2017

Manjeet Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. K.S. Khehar, Advocate,
for the petitioner.

Mr. Swarn Sandhir, Advocate,
for respondents no.2 and 3.

P.B. Bajanthri, J. (Oral)

1. In the instant writ petition, petitioner has questioned the validity of order dated 08.08.2013 by which the third respondent rejected the petitioner's representation dated 01.07.2013.

2. The petitioner was in the cadre of Clerk and he is due for promotion to the post of Assistant. His name has been overlooked for promotion on the score that petitioner had adverse remarks for the year 2009. It is undisputed that the Annual Confidential Reports for the year 2009 was not communicated even though it is adverse to the petitioner. While consideration of the petitioner's name for promotion taking of uncommunicated adverse remarks and ignoring the claim of the petitioner for promotion to the post of Assistant is the subject matter. The other contention for overlooking the petitioner's claim is that the petitioner was penalized by withholding one month salary in the year 2009. The

respondents have admitted in the statement of objections that Annual Confidential Reports for the year 2009 has not been communicated. Therefore, un-communicated adverse remarks cannot be taken into consideration for the purpose of promotion. Hence, the decision of the respondents in not promoting the petitioner to the post of Assistant as on 29.06.2013 is incorrect. Insofar as other contention that petitioner has been penalized of withholding of one month salary in the year 2009 is concerned, the same was not communicated and no documents are made available so as to consider the said contention. On the other hand, perusal of the service record vide Annexure R/13, an entry has been made on 27.07.2013 to the extent that the petitioner has been punished by imposing penalty of withholding of one month salary. The said date cannot be taken into consideration for the reasons that as on 29.06.2013, there was no entry relating to imposition of penalty of withholding of one month salary imposed in the year 2009 and such imposition has been entered into service book only on 27.07.2013 which is subsequent to the date of promotion of a junior as Assistant. That apart the same has not been communicated to the petitioner to that extent there is no material. Further, respondent No.3 in his decision cited the reasons that petitioner was warned to be careful in future on thrice and was fined to the extent of one day's salary. It is to be noticed that time and again courts have held promotion of an employee can be deferred or kept in sealed cover in case disciplinary / criminal proceedings are pending consideration. In the present case, as on the date of promotion, neither was pending so far reasons cited by respondent no.3 is not tenable.

3. In view of these facts and circumstances, rejection of the petitioner's claim for promotion to the post of Assistant on par with his

juniors w.e.f. 29.06.2013 is highly arbitrary and illegal. Consequently, impugned decision of the third respondent dated 08.08.2013 (Annexure P/7) is hereby set aside. The third respondent is directed to reconsider the petitioner's name for promotion to the post of Assistant w.e.f. 29.06.2013 and to extend all the service benefits including monetary benefits during the intervening from 29.06.2013 till passing of the order of promotion. The above exercise shall be completed by the third respondent within a period of three months from today.

4. Accordingly, instant writ petition stands allowed.

March 30, 2017
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned : Yes

Whether reportable : No