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

**CWP-26386-2014
Date of Decision :21.03.2017**

Jagdish Kumar

.....Petitioner

Versus

State of Haryana & Ors.

.....Respondents

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

Present: Mr. J.P.Dhull, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana.

P.B.BAJANTHRI, J. (ORAL)

In the instant petition the petitioner has questioned the validity of the order dated 04.10.2013 vide Annexure P-1 to the extent that he has been denied arrears of pay by ordering that petitioner is entitled to notional pay fixation with effect from 14.09.2011 and from the date of joining.

The petitioner while working as a Clerk his name for promotion to the post of Assistant was ordered, consequently he had approached this Court. This Court directed the official respondents to consider the grievances of the petitioner, thus the concerned respondent passed an order of promotion to the petitioner to the post of Assistant in the grade pay of 5000-7850 with effect from 18.05.2005 instead of 14.06.2010 the date from which his junior Om Parkash was promoted. Accordingly, right of the petitioner has been set right by incorporating his name at serial No.49A instead of 199 and it was further ordered that the petitioner is not entitled for arrears of pay and pay has been fixed notionally (Annexure R-1).

Therefore, the petitioner has not questioned the clause imposed in the order dated 09.01.2013 in respect of granting promotion to the post of Assistant to the petitioner. Pursuant to the order of promotion dated 09.01.2013 the petitioner has been further promoted to the post of Deputy Superintendent with effect from 14.09.2011 at par with the petitioner's junior on 04.10.2013 in this order also the petitioner has denied the benefit of arrears of pay during the intervening period from 14.09.2011 to 04.10.2013 and notional pay fixation has been made. Thus, the petitioner has questioned the validity of the condition imposed in the order of promotion to the post of Deputy Superintendent dated 04.10.2013 (Annexure P-1) on the ground that the petitioner's name has not been considered for promotion from time to time, as is evident from Annexure R-1 as well as Annexure P-1. Therefore, the petitioner is entitled for arrears of pay in the cadre of Deputy Superintendent during the intervening period from 14.09.2011 to 04.10.2013.

Learned counsel for the respondent resisted the petitioner's claim contending that the petitioner has not questioned the condition imposed in the order of promotion to the post of Assistant dated 09.01.2013 to the extent of fixation of notional pay and denial of arrears of pay. Consequently, he cannot claim arrears of pay in respect of Deputy Superintendent.

Heard, learned counsel for the parties. Short question for consideration in the present petition is whether petitioner is entitled for arrears of pay in the cadre of Deputy Superintendent during the period from 14.09.2011 to 04.10.2013 or not?

Admittedly, the petitioner's name was ordered for promotion to

the post of Assistant on 09.01.2013 without there being any reason and juniors have been promoted. The same error has been committed while promoting to the post of Deputy Superintendent also. Merely, the petitioner has failed to challenge the condition imposed in the order of promotion to the post of Assistant dated 09.01.2013 that doesn't mean that the petitioner is prevented in challenging the condition imposed in the order of promotion dated 04.10.2013 to the post of Deputy Superintendent.

Perusal of the records it is evident that no reasons have been assigned as to why the petitioner's name was over looked for promotion to the post of Assistant and Deputy Superintendent as and when it was due. Therefore, the condition imposed in the order dated 04.10.2013 (Annexure P-1) to the extent that the petitioner is entitled to notional pay fixation with effect from 14.09.2011 is hereby set aside and the concerned respondent is directed to pay arrears during the intervening period from 14.09.2011 to 04.10.2013 in the cadre of Deputy Superintendent and extend petitioner's difference of pay along with the interest at the rate 9% per annum and petitioner is entitled to cost of ₹10,000/-. Cost shall be paid to the petitioner within three months.

(P.B.BAJANTHRI)
JUDGE

March 21, 2017

Sunil Devi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No