

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

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**CM-10608-C-2014 in/ and
RSA-4452-2010
Decided on: 7.9.2017**

STATE OF PUNJAB & ORS

....APPELLANTS

VS

BALDEV SINGH

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. H.S.Sitta, AAG, Punjab.

Mr. P.K.Bansal, Advocate
for respondent.

AJAY TEWARI, J.(Oral)

This appeal has been filed against the concurrent judgments of the Courts below decreeing the suit filed by the respondent.

The respondent joined the appellant-State of Punjab as a conductor on 16.7.1967 and after paying 37 years of service retired on 31.3.2004 as a Sub-Inspector (it is the admitted case of the parties that the post of Sub-Inspector is not a promotion post to that of conductor). Immediately on retirement, the respondent filed the instant suit claiming that he had wrongly being denied the proficiency step up due to him after 8 years (15.7.1975) and 18 years (15.7.1985). He further claimed that despite having a good record he had never been considered for promotion to the post of Inspector and persons junior to him had been so promoted and even they were promoted his case was not considered. The appellant contested the suit and it was pleaded that the suit was

barred by the limitation and further argued that the proficiency step ups were not granted to him since his service record was poor. Reliance was also placed on a notification dated 1.9.1989 as per which the period of 8 years or 18 years would have to be counted from the date when the employee stagnated and since the respondent had been given senior scale w.e.f 1.10.1988 the proficiency step up would be due only with effect from 1.10.1996 and the same was duly given him 1.10.1996; further with effect from that date he would not be entitled for step up for 18 years because he was retired in 2004. Both the Courts below found that no adverse annual confidential report had ever been communicated to the respondent and consequently, held that the appellant could not take the plea of the record being poor. As regards the reliance placed on the notification dated 1.9.1989 the Courts below rightly pointed out that for consideration for proficiency step up the date which were relevant as far as the respondent was concerned 1.7.1975 and 1.7.1985 (when he completed 8 years/18 years to service respectively) and till those dates he had not been granted the senior scale and therefore, it would have to be held that he had been stagnated and was entitled to be considered for proficiency step up. Both the Courts below held the issue of limitation against the respondent.

At the very outset counsel for the respondent has stated that the monetary claim of the respondent could be restricted to a period of 38 months prior to the filing of the suit. It is against the backdrop of these facts that this case has to be decided. The Assistant Advocate General has again argued that the record of the respondent was poor but

he is not in a position to deny that as per the material placed on record no adverse record was ever communicated to the respondent. The Assistant Advocate General has further argued that once the respondent was claiming promotion from the date his juniors were promoted it was incumbent upon him to have impleaded them as a party. It is not a case where the Court has directed the appellants to promote the respondent. On the other hand, they have noticed that the material placed on record showed that the claim of the respondent was never considered for promotion either independently or on the date/s when the cases of the persons junior to him were considered and have held that this was illegal. It is in the face of holding this exclusion of the respondent to be illegal that a direction has been given to the appellant to consider the claim of the respondent for promotion with effect from the date/s his juniors were considered without taking into consideration any uncommunicated adverse confidential report.

The third argument of the Assistant Advocate General is that the appellant is seeking relief of step up with effect from 1975 and 1985 and promotion and therefore these claims have to be held to be barred by limitation. This argument has to be rejected in view of the fair stand of the counsel for the respondent that the actual monetary benefits which would accrue to the respondent may be restricted to a period of 38 months prior to the filing of the suit.

In my opinion, the appeal must fail. The very foundation of the claim of the appellant is that service record of respondent is poor but the Courts below have found that no adverse report was ever

communicated to the respondent. Once that is so the appellants cannot rely upon any such report either for the purpose of consideration the claim of the respondent for proficiency step up or for promotion. Consequently, the appeal stands dismissed with the modification that the actual monetary benefits due to the respondent would be released only for a period of 38 months prior to the filing of the suit.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

7.9.2017
anuradha

(AJAY TEWARI)
JUDGE

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Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No