

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 04.12.2018****CWP No.17923 of 1995**

Shri Krishan Yadav

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. J.S.Yadav, Advocate, for the petitioner.

Mr. Harish Nain, AAG, Haryana.

RAJIV NARAIN RAINA, J.

The petitioner claims deemed promotion from 28.01.1994 to the post of Senior Staff Officer with all consequential benefits, as he was overlooked for promotion due to an adverse entry in the columns of 'Integrity' and 'Special Comments' in the ACR for the year 1992-93. However, on his representation, the adverse remarks have been expunged by the Director General, Home Guards and Director, Civil Defence, Haryana by order dated 23.06.1995. The petitioner took voluntary retirement on 31.03.1994. Petitioner claims that his junior, namely, S.L.Dhawan was promoted on 28.01.1994 against which he made a representation on 02.02.1994, but at that time the adverse entries stood against him. Two persons junior to him were promoted for a few days short of retirement on superannuation.

The principle of promotion in the rules applicable to service is by way of selection based on merit -cum- seniority. Seniority alone will not carry person to higher position. The Rules governing the service are called 'The Haryana Home Guards & Civil Defence Services (State Services

Group-A) Rules, 1979'. The relevant provision of the Rules with respect to seniority reads as follows:

“From amongst officers of the rank of District Commandant, Junior Staff Officer, Accounts –cum- Administrative Officer, Public Relation Officer and Chief Instructor, Combined Training Institute Haryana, Home Guards & Civil Defence (State Services Group-B) having at least 5 years experience and Deputy Controller Civil Defence Group-A having at least 3 years experience as Deputy Controller, Civil Defence Class-I. Provided that only persons who are at least Graduate from a recognized University and who fulfill the above conditions shall be eligible for promotion. Selection will be based on merit -cum- seniority.”

The written statement discloses that at the time of petitioner's voluntary retirement, there were two contemplated charge-sheets, one each under Rule 7 & 8 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987. There were allegations of commission of financial irregularities while posted as District Commandant, Home Guards, Faridabad. The one under Rule 8 was for commission of financial irregularities in the purchase of Boot Polish. Inter alia, the petitioner could not be promoted on account of these contemplated charge-sheets. The charge-sheets, however, were filed on account of petitioner proceeding on voluntary retirement. His case was considered for promotion after expunging of the adverse remarks regarding 'Integrity' on 26.03.1995, but his service record was not meritorious as was of his juniors. The petitioner has two average reports to his discredit as compared to S.L.Dhawan and K.S.Chauhan, who had earned 'Outstanding', 'Very Good' and 'Good' reports in years relevant to the consideration. The petitioner was warned in the year 1985 for being absent from office at Hisar on different dates in the month of June, 1985. The adverse remarks were

that he left office every day. This average report was conveyed to him on 14.09.1993. These adverse remarks still exist in the ACR of the petitioner for the year 1992-93 although the sting of the remarks doubting his 'Integrity' stand expunged. The State has justified its action in ignoring the case of the petitioner for promotion on account of his confidential reports.

The petitioner states that in the absence of issuing charge-sheets, his claim could not have been denied. A contemplated charge-sheet is not sufficient to withhold right of consideration for promotion. Even if the decks were cleared, even then the principle for promotion was selection based on merit -cum- seniority where even one flaw is sufficient to bring a junior up. In any case, those juniors were promoted only for 2-3 days short of retirement and no prejudice has been caused to the petitioner by their promotions. He was himself not interested in serving the department, as he applied for voluntary retirement in 1993 and obtained it in the following year.

Besides, the so called juniors have not been arrayed as party respondents in this case and no orders can be passed affecting their rights at this belated stage.

In view of the above, no ground for interference is made out, as I find no illegality or irregularity committed by the respondents in ignoring the petitioner for promotion by selection grave enough to grant relief claimed. Consequently, the writ fails and is dismissed.

04.12.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

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