

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

CWP-17160-1998 (O&M)

Date of decision: - 13.11.2018

Gurdial Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. Alka Chatrath, Advocate,
for the petitioner.

Mr. H.S. Sullar, DAG, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

Petitioner has approached this Court seeking pay-scale of the post of Junior Assistant w.e.f. 19.05.1994, when he completed ten years of service in the cadre of Clerk and further he is also seeking the promotion to the post of Senior Assistant with effect from the date the respondents No.3 and 4 were promoted.

The case set out by the petitioner is that initially he was appointed as a Peon on 23.11.1978. Keeping in view of the instructions issued by the State of Punjab granting 10% quota meant for promotion from Class IV employees to Class III posts, who have passed the type test, petitioner got the promotion as a Clerk on 19.05.1984 on Ad-hoc basis.

Thereafter, the services of the petitioner were regularized as Clerk on

08.11.1985. Keeping in view the representation given by the petitioner, the respondents-State treated the petitioner in the cadre of clerk from 19.05.1984 i.e. from the date of his initial promotion.

Three types of pay-scales were prescribed for the cadre of clerk. 20% of the junior most Clerks were given a pay-scale of ₹950-1800; after a period of five years of service 40% of the senior Clerks, keeping in view the number of posts in the cadre, were given a pay-scale of ₹1200-2100; and the remaining 40% were given a pay-scale of ₹1800-2640 after ten years of service in the cadre of Clerk by re-designating them as Junior Assistants.

In the present petition, the petitioner is claiming that on completion of ten years of service on 19.05.1994, he was entitled for being re-designating as a Junior Assistant and also for the grant of pay-scale of ₹1500-2640. It has been pleaded in the petition that the persons junior to the petitioner were granted the said benefit, but the same was denied to the petitioner on the ground that he did not had satisfactory record to claim the said benefit of higher pay-scale of ₹1500-2640 after completing ten years of service as a Clerk. The petitioner filed a representation against adverse remarks and the case set out by the petitioner in the petition is that the said representation against the unsatisfactory record remained pending and without deciding the said representation persons juniors to him were granted the higher pay-scale of ₹1500-2640 by re-designating them as Junior Assistants.

In reply, the State has controverted the allegation of the petitioner that the record of the petitioner was not good so as to entitle

him the re-designation as a Junior Assistant along with the higher pay-scale of ₹1500-2640. It has been mentioned in the reply that the Annual Confidential Reports of the petitioner for the years 1992-93 and 1993-94 were not up to the mark and hence the petitioner could not be granted the said benefit of re-designation as a Junior Assistant and a higher pay-scale of ₹1500-2640 when he completed ten years of service in the year 1994. Further in reply to para 21, it has been stated that the representation, which was filed by the petitioner against his adverse remarks for the period 1992-93 has been considered and rejected. Even though the date has not been mentioned in the reply, but today during the course of hearing counsel for the State has informed the Court that the said representation was rejected on 08.04.1994, which is much prior to the filing of the present writ petition in the year 1998.

I have heard the counsel for the parties and perused the record.

The higher pay-scale and re-designation as Junior Assistants were given to the persons junior to the present petitioner vide order dated 22.04.1997 (Annexure P-4). In the said order not only the petitioner but another employee, namely, Smt. Raj Rani, was also declined the said benefit of re-designation as a Junior Assistant along with higher pay-scale on the ground of unsatisfactory service record. For claiming a higher pay-scale or a higher designation, an employee ought to have satisfactory service record so as to enable to achieve promotion, higher pay-scale or higher re-designation. Same cannot be claimed only on the basis of seniority alone. Once it is a matter of fact that record of the petitioner before completing ten years of service in the cadre of Clerks was not

satisfactory enough to grant him the higher designation along with higher pay-scale of ₹1500-2640, hence no fault can be found with the action of the State in denying the petitioner the designation of Junior Assistant w.e.f. 19.05.1994 and a higher pay-scale of ₹1500-2640 when the same was granted to his Juniors, vide order dated 22.04.1997 (Annexure P-4).

The next claim of the petitioner as set out in the writ petition is to the promotion to the post of Senior Assistant. It has been pleaded that the persons, who were juniors to the petitioner, were promoted as Senior Assistants, whereas the petitioner has been denied the said benefit. The order promoting the persons, who were juniors to the petitioner, was passed on 01.10.1996, which has been appended as Annexure P-12 along with the present writ petition.

It is again to be reiterated that Annual Confidential Reports of the petitioner for the period 1992-93, 1993-94 and 1995-96 were not up to the mark and adverse remarks were recorded in the same. Once the record of the petitioner immediately prior to the date when the promotion was to be effected is unsatisfactory, then the claim of the petitioner, only on the ground of seniority, for promotion as Senior Assistant cannot be allowed. Unblemished record is the basis for promotion to a next higher rank.

Counsel for the petitioner during the arguments raised a plea that officer who has recorded the remarks was inimical towards the petitioner. The said averment cannot be taken into consideration in the absence of the said officer as a party to the present writ petition. Further there is no challenge to the adverse remarks recorded in the ACRs for the

period 1992-93, 1993-94 and 1995-96. In the absence of the same, the plea that the recording of the adverse remarks were due to the mala-fide action of the recording officer needs to be rejected at the outset.

In view of above, the present writ petition is dismissed without any order as to costs.

November 13, 2018
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes