

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

CWP No. 10010 of 2015 (O&M)

Date of decision: 30.07.2018

Joginder Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Gurminder Singh, Sr. Advocate with
Mr. R.P.S. Bara, Advocate for the petitioner(s).

Ms. Harsimrat Rai, DAG, Punjab.

Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, the petitioner seeks issuance of a writ in the nature of certiorari for quashing the impugned seniority list dated 04.04.2012, (Annexure P-15) the same being not in accordance with the statutory rules and the law laid down by this Court in CWP-2825 of 2011 (Annexure P-14).

The petitioner was appointed as Kanungo by way of direct recruitment in the revenue department on 26.05.1986. The petitioner qualified the departmental examination for promotion on 23.05.1991 and completed five years of service on 26.05.1991. He was promoted in his own pay scale of Kanungo on 01.09.1992 but at that time he had not completed the five years of service. Thereafter, the petitioner was promoted to the post of Naib Tehsildar on 01.04.1996 after the post got vacant in his cadre. In other words, the petitioner became eligible for

promotion in the year 1991 and he was promoted in his own cadre in the year 1992 while seven posts in his own cadre were lying vacant. It is asserted that the respondent-Department had discriminated the petitioner as in the year 1993, some persons, namely Gurmukh Singh, Jaswinder Singh and others were appointed to the post of Naib Tehsildar by way of direct recruitment whereas at that point of time, no post was vacant in their cadre and they had been recruited after creating new posts. After completion of training period, they were given the seniority from the date of their initial appointment, whereas the petitioner had been given seniority from 01.04.1996 on the ground that the post was got vacant on 01.04.1996, which is palpably wrong.

It is contended that the petitioner deserves to be promoted on the post of Naib Tehsildar w.e.f. 01.09.1992, the date when he was promoted to the post of Naib Tehsildar in his own pay scale. Learned counsel for the petitioner further states that one Mukesh Kumar who was similarly appointed had been given promotion to the post of Tehsildar from 18.11.1996 and now stands promoted to the post of DRO, whereas the petitioner has been given seniority of Naib Tehsildar from 01.04.1996. Learned counsel further submits that the petitioner became eligible for promotion in pursuance of the instructions issued by the State Government whereby it has been specified that the training period of Kanungos will be counted in the service for the purpose of seniority but the petitioner was given promotion in his own pay scale on 01.09.1992 despite there being vacant posts much prior to his promotion. He further

refers to the stand taken by the State whereby one Gurdev Singh was shown to be promoted as Naib Tehsildar on regular basis, vide order dated 21.01.1994 whereas, as per order dated 23.05.1992, said Gurdev Singh had already been retired from service after attaining the age of superannuation. The photocopy of order dated 23.05.1992 is taken on record as Mark 'A'.

On the other hand, learned State counsel submits that the petitioner was promoted to the post of Naib Tehsildar in his own pay scale of Kanungo w.e.f. 01.09.1992 as he had not completed the five years service because the training period was not counted in regular service. The posts that were lying vacant on 01.09.1992 were ex-cadre posts; the petitioner was promoted after the regular post fell vacant on 01.04.1996. Learned State counsel though admits the factum that Gurmukh Singh and others were directly recruited as Naib Tehsildars, however, she states that they were recruited due to service exigencies and the seniority was given to them from the date of their appointment and the training period was counted towards regular appointment in view of the Government instruction dated 21.11.2005 (Annexure P-5).

Heard, learned counsel for the parties and perused the record with their able assistance.

Admittedly, the petitioner joined the respondent-Department on 26.05.1986 as Kanungo and subsequently promoted to the post of Naib Tehsildar in his own pay scale of Kanungo w.e.f. 01.09.1992, after passing the departmental examination on 23.5.1991 and thereafter, he had

been given regular promotion/seniority w.e.f 01.04.1996. As per record, the petitioner had completed five years of service on 26.05.1991 requisite for the next promotion. The issue to be addressed in the instant petition is that once the petitioner had completed five years of service on 26.05.1991, then on which basis, he had been discriminated against by giving regular promotion on 01.04.1996. It is worth noticing that one Mukesh Kumar also appointed on 22.05.1986, four days prior to the petitioner but had been promoted to the post of Naib Tehsildar on 22.05.1991 after completion of five years of service and further promoted to the post of Tehsildar on 18.11.1996. It is not in dispute that Mukesh Kumar is senior to the petitioner. The stand taken by the State is that Mukesh Kumar was promoted to the post of Naib Tehsildar as one post was vacant on 22.05.1991 whereas, the petitioner was not given regular promotion as no post was vacant at that time, whereas, as admitted, seven ex-cadre posts were available at that time. On the one hand, the respondent-State has admitted that Gurmukh Singh and others were recruited as directed Naib Tehsildars in the year 1993 and on the other hand, the benefit to the petitioner was declined by stating that he was not entitled for promotion in the year 1991 as the posts available were ex-cadre posts. Further, said Mukesh Kumar, who joined as Kanungo four days prior to the petitioner, was promoted to the post of Naib Tehsildar in the year 1991, then in that eventuality, the stand of the State is falsified that no regular post was available at that time. The stand taken by the State appears to be indiscernible chosen in a hasty manner.

Nothing has come on record that there were any adverse remarks in the ACR or any disciplinary proceedings were pending/initiated against the petitioner during his service. The petitioner who is serving the department with complete devotion cannot be discriminated against without any justifiable reason.

In view of the above, the present petition is allowed. The petitioner will be deemed to be promoted from the due date of his promotion as Naib Tehsildar i.e. 26.05.1991. The respondents are further directed to release the consequential relief to the petitioner, within a period of three months from the date of receipt of a certified copy of this judgment.

30.07.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No