

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

CWP-5220-2012 (O&M)
Date of decision : 29.01.2018

Darshan Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Aman Bansal, Advocate,
for the petitioner(s).

Ms. Sudeepti Sharma, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J. (Oral)

By way of the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner(s), *inter alia*, seek(s) issuance of a writ in the nature of Certiorari for quashing order dated 08.11.2011 (Annexure P-7), rejecting the claim of the petitioner for promotion as Deputy Superintendent of Police.

Contends that the officials junior to the petitioner have been promoted ignoring the rightful claim of the petitioner. The petitioner had been serving the Department since 21.02.1974, with an unblemished career and retired on 31.05.2011 as Inspector. He refers to Rule 13.1 of the Punjab Police Rules, 1934, to contend that the main factors governing the selection are efficiency and honesty. He further states that in similar circumstances, one Inspector Parsa Singh, approached this Court by way of filing CWP-3258-2003, decided on 15.01.2004 and he was granted the benefit of promotion in pursuance of the orders passed by this Court. It is further

averred that the decision not to promote the petitioner on the basis of average reports is vitiated by the fact that they are never communicated to the petitioner.

On the other hand, learned State counsel refers to impugned order (Annexure P-7), to contend that the petitioner scored 11.25 marks on the basis of Annual Confidential Reports of last five years, whereas, the instructions dated 06.09.2001 of the Government provide that a candidate is required to have a minimum of 12 marks as per the prescribed grading system to be eligible for promotion to the post in question. However, she very fairly concedes that the case of the petitioner is at par with said Parsa Singh.

I have heard learned counsel for the parties and have gone through the case file.

In ***Raghubir Singh Vs. State of Haryana, 2012(1) RSJ 355***, this Court has held as under:-

“3. This fits with a logic that if a particular appraisal and a grading have a bearing on promotion prospects, then any relative grading which denies eligibility for consideration must be taken as adverse and hence, ought to be communicated. An 'Average' entry normally may not be taken as adverse, but in a situation where a mere 'Average' entry would be taken as not fulfilling a benchmark for promotion, it has an immediate ramification for promotion and hence, no such appraisal could be taken into reckoning if it is not

communicated. Consequently, the decision not to promote the petitioners on the basis of 'Average' reports is vitiated by the fact that they were not communicated and hence, the petitioners were bound to be favourably considered for promotion from the date when the respective juniors were promoted.”

In the case in hand, the petitioner was never communicated the remarks which had adverse bearing on his promotional prospects, therefore, the ground - possessing less marks than the minimum required to be eligible for promotion - taken by the respondents in denying the promotion to the petitioner stands vitiated.

In Parsa Singh's case (supra), persons junior to the petitioner therein were promoted to the rank of Deputy Superintendent of Police, on the ground that he did not have the requisite 12 marks in the ACRs for the last five years. Said Parsa Singh approached this Court and his writ petition was disposed of by observing thus:-

“In view of the above, we hereby direct the respondent to reconsider the claim of the petitioner for promotion to the rank of DSP and in doing so, not to take into consideration the policy instructions dated 29.12.2000. In case the petitioner is found suitable for promotion to the rank of DSP, he shall be granted promotion as such with effect from the date persons junior to him were promoted. The aforesaid exercise be

carried out expeditiously and without any delay. The petitioner shall also be entitled to all the consequential benefits arising therefrom.

The writ petition is allowed in the aforesaid terms”

Feeling aggrieved, the State of Punjab preferred Civil Appeal No.4235 of 2006 (SLP (C) No.10701 of 2004) which was dismissed by Hon'ble the Supreme Court vide order dated 03.03.2011. Consequently, said Parsa Singh has been granted the benefit of promotion from the rank of Inspector to Deputy Superintendent of Police.

Learned State counsel has conceded that the case of the petitioner is at par with said Parsa Singh.

In these circumstances, the instant writ petition is allowed in terms of the decision of this Court rendered in Parsa Singh's case (supra).

Allowed.

29.01.2018
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No