

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

CWP No. 556-2016

Date of decision : 23.08.2018

Jai Pal Singh

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ramesh Goyat, Advocate
for the petitioner.

Ms. Palika Monga, DAG, Haryana

RITU BAHRI, J. (Oral)

The present writ petition is for issuance of writ in the nature of mandamus directing the respondents to promote the petitioner to the post of Assistant w.e.f 13.09.1995 instead of 04.01.2006, the date of which juniors to him have already been promoted, vide orders dated 02.12.2008 (P-2), 28.03.2013 (P-4) and 28.06.2013 (P-5).

The petitioner joined the official respondents department as Clerk on 25.10.1991 on the recommendation dated 06.11.1989 by Staff Selection Board, Haryana. Thereafter, respondent-department prepared seniority list of clerks/typist/storekeepers etc and the name of the petitioner figured at Sr. No. 74. However, one junior Dharamvir, Clerk was promoted to the post of Assistant w.e.f 13.09.1995 and accordingly, the petitioner and other similarly situated employees raised objection against the promotion of Dharamvir being junior. Thereafter, one Tilak Raj who was at Sr. 104 filed

CWP No. 18333 of 2002 seeking promotion w.e.f date on which his junior Dharamvir was appointed. The writ petition was allowed on 16.08.2005. SLP was also filed against order dated 16.08.2005, which was also dismissed on 23.07.2008. Finally, Tilak Raj was promoted to the post of Assistant vide order dated 02.12.2008 (P-2) w.e.f 13.09.1995.

The petitioner then gave representations including legal notice requesting the respondents to promote him to the post of Assistant w.e.f the date the junior to the petitioner has been promoted. However, the petitioner was promoted to the post of Assistant on 04.01.2006 despite the fact that the petitioner was entitled for promotion w.e.f 13.09.1995. Further the respondent-department gave promotion to Sh. Shamsheer and Vijay Pal w.e.f 13.09.1995 on the ground that their junior Dharamvir has been promoted w.e.f 13.09.1995.

The petitioner then served legal notice dated 17.09.2015 to the respondents-authorities requesting to allow the same benefit to him as has been granted to his juniors but no action has been taken till date and hence the present writ petition.

On notice, a reply has been filed by respondent No. 1 and 2 stating therein that the claim of the petitioner for retrospective promotion was considered in view of prevailing Government instructions, relevant service Rules/service record and facts of Tilak Raj's case vide order dated 13.05.2016. After consideration, the petitioner has been extended the benefit of Tilak Raj's case and has been given retrospective notional promotion without insisting upon the type test, to the post of Assistant/Accountant/Cashier vide order dated 13.05.2016 (R-1). The

petitioner has been granted the benefits of notional pay from the date of retrospective promotion and actual benefit from the date of joining against the promoted post.

Heard learned counsel for the parties.

It is not in disputed by the respondents that name of the petitioner figured at Sr. No. 74 and he is senior to Dharambir, Tilaj Raj, Vijay Pal and Shamsher whose name figured at Sr. No. 173, 104, 134 and 133 respectively. Thus, once the relief of retrospective promotion has been granted to his juniors, the same relief should have been granted to the petitioner. The respondents are relying upon judgment of Mahabir Singh Malik v. State of Haryana and another, passed in CWP No. 22231-2010 and connected petition wherein also the petitioners were claiming promotion from the date junior Dharam Vir Singh was granted promotion. This Court allowed the writ petition and directed the respondents to consider the claim of the petitioners to the post of Assistant with effect from the date his junior Dharamvir Singh was promoted to the post of Assistant. In case the claim of the petitioner is granted, he shall not be entitled to the benefit of arrears except for 38 months prior to the date of filing of the writ petition.

In the present case, the petitioner has been promoted w.e.f 25.10.1996 vide order dated 13.05.2016 (R-1) and he has been allowed benefit of notional pay from the date of retrospective promotion and actual benefit from the date of joining against the promoted post.

The present writ petition deserves to be allowed in the light of the judgment passed by this Court in CWP No.18333 of 2002 titled:[Tilak Raj vs. State of Haryana and others](#), decided on 16.8.2005, as the claim of

the petitioner is far superior than that of Tilak Raj, as the petitioner is senior to Tilak Raj. The petitioner has been wrongly promoted w.e.f 25.10.1996 vide order dated 13.05.2016 (R-1), as the petitioner should have been promoted w.e.f 13.09.1995. It would not be out of place to mention here that the Review Application No.41 of 2011 preferred by the respondents in CWP No.18333 of 2002 stands dismissed by this Court vide order dated 22.8.2012 on the ground of delay as also on the ground that the same is not maintainable in the light of dismissal of the Special Leave Petition by the Supreme Court preferred by the respondents which judgment has attained finality.

In view of the above factual position, this petition is allowed and a direction is issued to the respondents to consider the claim of the petitioner for promotion from the date his juniors Dharambir, Tilaj Raj, Vijay Pal and Shamsheer have been promoted. The respondents shall make payment of arrears for 38 months w.e.f 16.05.2013 the date when he first gave his representation to the respondents.

(RITU BAHRI)
JUDGE

23.08.2018

G Arora

Whether speaking/reasoned
Whether reportable

Yes
No