

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19391-2012

Date of decision-20.08.2019

Satinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gagneshwar Walia, Advocate for the petitioner.

Ms. Anju Arora, Addl.A.G., Punjab,
for respondent Nos.1 to 3.

Respondent No.4 proceeded against *ex parte*
vide order dated 11.10.2018.

JITENDRA CHAUHAN, J. (Oral)

The claim of the petitioner in the instant writ petition filed under Articles 226/227 of the Constitution of India is for grant of promotion to the post of Election Kanungo from the date his juniors were promoted.

It is contended that the petitioner was appointed as Clerk with the respondent-Department of Elections w.e.f. 11.01.2002 on regular basis and was placed at Sr. No.31 in the seniority list (Annexure P-7). Vide order dated 16.08.2012 (Annexure P-9), four employees, who were junior to the petitioner in the cadre of Clerks and placed at Sr. Nos.32 to 36 have been promoted as Election Kanungo despite the fact that the petitioner possesses an unblemished record of service.

On the other hand, learned State counsel refers to instructions

dated 06.09.2001 (Annexure R-4), which stipulate that for promotions for the posts falling in Group B, the minimum benchmark will be “Good” and the promotions would be made strictly on seniority-cum-merit basis. Further, the grade “Good” will carry two marks, thus, minimum ten marks (5 years X 2) are required for an official to be considered for promotion. The petitioner secured nine marks in his last five ACRs, therefore, his case was rejected after consideration.

Heard.

The dispute in the instant case is with regard to order dated 16.08.2012 (Annexure P-9), whereby, four employees, junior to the petitioner in the Cadre of Clerks, have been promoted to the post of Election Kanungo, whereas, the petitioner has been ignored. It has come on record that vide letter dated 26.07.2012 (Annexure P-8), the office of the Chief Electoral Officer called for the Annual Confidential Reports of Clerks from the years 2006-07 to 2011-12 to consider their cases for promotion to the post of Election Kanungo. It has been asserted on behalf of the respondents that on consideration, it was found that the ACR of the petitioner for the year 2009-10 recorded Grading as “B (Average)”, with remarks “Not fit for promotion”. On account of this grading, he has been awarded 'one mark' for ACR of the year 2007-08 and thus the total marks for the period in question have been assessed as nine as against the stipulated ten marks required to be promoted to the next higher grade of Election Kanungo.

At this stage, reference can be made to Annexure P-12 (vernacular), the information received by the petitioner under the Right to

Information Act, 2005, wherein, it has been categorically stated that the ACRs for the years 2007-08, 2008-09, 2009-10, 2010-2011 and 2011-12, were never conveyed to the petitioner. Reliance in this regard can be placed on a decision rendered by Hon'ble the Supreme Court in ***Dev Dutt Vs. UOI and others, 2008(4) RSJ 130***, wherein, it has been observed as under:-

“36. In our opinion, fair play required that the respondent should have communicated the 'good' entry of 1993-94 to the appellant so that he could have an opportunity of making a representation praying for upgrading the same so that he could be eligible for promotion. Non-communication of the said entry, in our opinion, was hence unfair on the part of the respondent and hence violative of natural justice.

37. Originally there were said to be only two principles of natural justice : (1) the rule against bias and (2) the right to be heard (audi alteram partem). However, subsequently, as noted in A.K. Kraipak's case (supra) and K.L. Shephard's case (supra), some more rules came to be added to the rules of natural justice, e.g. the requirement to give reasons vide [S.N. Mukherji vs. Union of India](#) AIR 1990 SC 1984. [In Maneka Gandhi vs. Union of India](#) (supra) (vide paragraphs 56 to 61) it was held that natural justice is part of [Article 14](#) of the Constitution.

38. Thus natural justice has an expanding content and is not stagnant. It is therefore open to the Court to develop new principles of natural justice in appropriate cases.

39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by [Article 14](#) of the Constitution in our opinion requires such communication. [Article 14](#) will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would

result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.”

It is, thus, clear that non-conveying of the ACRs to the officials at appropriate stage and subsequently reading the same against them is a conduct violative of the principles of natural justice. Similarly, the conduct of the respondents in the instant case in denying the benefit of promotion on the strength of an adverse ACR which was never conveyed to the petitioner does not withstand the test of judicial scrutiny.

In view of the above, the instant petition is allowed. The respondents are directed to promote the petitioner to the post of Election Kanungo from the date his immediate junior(s) were promoted along with all consequential benefits. The necessary exercise be completed within six weeks from the date of receipt of a certified copy of this judgment.

(JITENDRA CHAUHAN)
JUDGE

20.08.2019
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No