

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

**CWP-2693-2012 (O&M)
Date of decision : 01.07.2019**

Dhanpat Raj

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R. Kartikeya, Advocate,
for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

Ms. Rimjhim Mahajan, Advocate,
for Mr. Sanjeev Pandit, Advocate,
for respondent No.3.

JITENDRA CHAUHAN, J.

The petitioner seeks quashing of order dated 19.04.2011 (Annexure P-16), whereby, respondent No.3 was promoted as Senior Lecturer (Mechanical Engineering) w.e.f. 30.06.1998 and as a consequence thereof, he was further promoted as Head of Department (Mechanical Engineering) w.e.f. 01.12.2000, with a further direction to refix the seniority and date of promotion of the petitioner and respondent No.3 in the cadre of Senior Lecturer, HOD and Principal by applying the reservation roster along with all consequential benefits.

It is contended that the petitioner was recruited against the post reserved for the Scheduled Caste on 06.06.1989. In a meeting of the

Departmental Promotion Committee held on 18.11.1996 for considering the cases of Lecturers/Workshop Superintendents for promotion as Senior Lecturer in the Pay Scale of ₹3000-5000, the petitioner was promoted vide order dated 11.06.1997 (Annexure P-1) against a reserved vacancy. The petitioner was assigned roster point No.12, whereas, respondent No.3 was assigned roster point No.14. Thereafter, a meeting of the Departmental Promotion Committee was held on 21.06.2000 for considering the cases of Senior Lecturers for promotion to the post of HOD, wherein, the claim of the petitioner was ignored while respondent No.3 and one Amrik Singh were promoted as HOD vide order dated 30.08.2000 (Annexure P-2). Prior to holding of the said DPC meeting, the petitioner vide representations dated 03.06.2000 (Annexure P-3) and dated 06.07.2000 (Annexure P-4), laid claim for promotion as HOD on the basis of roster point available for the Scheduled Caste category. However, the said representations were not considered and the petitioner was subsequently promoted as HOD (Mechanical) on 02.01.2004 (Annexure P-7). After the promotion of the petitioner as HOD, respondent No.3 was given officiating charge of Principal on 04.08.2003 (Annexure P-8). However, on 28.03.2007, the official respondents realized that promotion of respondent No.3 as Senior Lecturer was erroneous and accordingly a notice (Annexure P-9) was issued to him for his reversion from the said post. Subsequently, vide order dated 13.11.2009 (Annexure P-11), respondent No.3 was reverted from the post of HOD to Senior Lecturer w.e.f. 30.08.2000 and w.e.f. 18.06.1997 from the post of Workshop Superintendent. Aggrieved against the action of the authorities, respondent No.3 approached this Court by filing CWP-18105-

2009, which was decided vide judgment dated 28.07.2010 (Annexure P-12) holding that respondent No.3 shall be deemed to be promoted as Senior Lecturer w.e.f. 30.06.1998 instead of 11.06.1997. In compliance thereof, respondent No.3 was promoted as Senior Lecturer w.e.f. 30.06.1998 instead of 11.06.1997 but surprisingly, modified the date of his promotion as HOD to 01.12.2000 instead of 30.08.2000, vide orders dated 19.04.2011 (Annexure P-16). The petitioner submitted a detailed representation on 01.11.2011 (Annexure P-11) with a request to change the date of promotion of respondent No.3 as Senior Lecturer to 30.06.1998 instead of the earlier date i.e. 18.06.1997, the petitioner who was promoted as Senior Lecturer on 01.07.1997, in any case, had become senior and therefore, further promotions as HOD and Principal were required to be revised by holding review DPCs. The petitioner, after representing to the respondent-State on 30.08.2011 and 01.11.2011 (Annexure P-17), preferred the instant petition.

It is submitted that after filing of the present writ petition, reply by way of affidavit dated 03.01.2014 was filed stating therein that during the pendency of the writ petition, it was decided to review the case of promotion of the petitioner as HOD w.e.f. 21.06.2000 and an agenda was put up to fill second reserved post at roster point No.15 which had been given to one Amrik Singh in the DPC held on 21.06.2000, who is a general category candidate. In spite of admitting the fact that roster point No.15 was to be given to a reserved category candidate i.e. the petitioner, the reviewed DPC rejected the claim of the petitioner on the ground that he was not eligible for promotion on the basis of his last five ACRs.

Learned counsel for the petitioner contends that in terms of the

stand taken by the State government with respect to considering of the petitioner's claim against roster point No.15, which was to be given to a reserved category candidate and had earlier been given to one Amrik Singh (general category) coupled with the fact that respondent No.3 had superannuated, the petitioner's claim against respondent No.3 has been rendered academic. It is further contended that on account of the errors committed by the official respondents, huge irreparable loss has been caused to the petitioner. In the DPC held on 21.06.2000 (Annexure P-13), the bona fide claim of the petitioner was overlooked by extending the benefit of reserved roster point No.15 to a general category candidate. Admittedly, now the official respondents in the reviewed DPC held on 18.11.2013 (Annexure R-2) corrected their mistake by considering the petitioner for promotion to the post of HOD against the said roster point, yet the petitioner was deprived of the benefit of his promotion on the basis of the last five ACRs, which are stated to be not upto the mark being not 'very good'. The authorities have wrongly construed the ACR of the petitioner for the period 1998-99 which records 'Hard Working & Honest' as of a lesser degree than 'very good'. Even otherwise, several other persons who did not have ACRs as 'good' have been promoted as HOD including the above cited employee Amrik Singh, who had only two 'good' ACRs.

On the other hand, learned State counsel submits that during the pendency of the instant petition, review DPC meeting was held on 18.11.2013, wherein, the committee found the petitioner as 'not fit' for promotion as not having 'very good' benchmark as set out in instructions dated 18.10.1999 (Annexure R-1). Thus, the petitioner was rightly

promoted w.e.f. 02.01.2004.

Heard.

There is no dispute with regard to the fact that during the pendency of the instant petition, the official respondents have admitted the claim of the petitioner to be considered for promotion in the DPC meeting held on 21.06.2000, wherein, only one post was reserved for Scheduled Caste candidates, whereas, two posts were to be reserved for the purpose. Therefore, a review DPC was held on 18.11.2013, wherein, the case of the petitioner was considered but rejected. Before proceeding further, it would be apt to refer to the minutes of meeting of the review DPC held on 18.11.2013, relevant portion whereof, reads thus:-

“4. The summary of confidential reports of Sh. Dhanpat Raj which was available at the time of holding the meeting of Departmental Promotion Committee on 21-6-2000 is as under:-

<i>1994-95</i>	<i>Average</i>
<i>1-4-95 to 10.1.96</i>	<i>Average</i>
<i>1996-97</i>	<i>Average</i>
<i>1997-98</i>	<i>Good</i>
<i>1998-99</i>	<i>Sincere and Hard worker</i>
<i>1999-2000</i>	<i>Good.</i>

On the basis of above cited confidential record the grading of his two confidential reports was good. So the Departmental Promotion Committee did not find Sh. Dhanpat Raj eligible for promotion on the basis of available confidential record for the last 5 years.”

From the perusal of the aforesaid, it emerges that the

committee while recording that the grading of his two confidential reports was 'good', has not considered the remarks for the year 1998-99 'sincere and hard worker' even at par with 'good'.

On 16.05.2019, this Court noticed as under:-

“The ACRs of Amrik Singh for the relevant period, who was promoted against a reserved category post at roster point No.15 in the year 2000 along with translated copies, be made available to the Court on the next date of hearing.

Post again on 22.05.2019.

Learned State counsel will also apprise the Court as to what is the import of the remarks 'sincere and hardworking' recorded in the ACR of the petitioner for the year 1998-1999.”

The ACRs of other lecturers including Amrik Singh, as reflected in Annexure P-18, which goes uncontroverted, are reproduced hereinbelow:-

“3. Officers whose 3 ACRs were not good but they were promoted by DPC considering their record as good:-

S. No.	Name of officer and designation	Date of D.P.C.	Promoted to the post	Detail of ACRs
1.	Amrik Singh, Senior Lect. Mech.	21-6-2000	HOD	1994-95 – good 1995-96 – average 1996-97 – average 1997-98 – above average 1998-99 – satisfied 1999-2000 – good
2.	Sandeep Kaur, Lect. Applied Science	21-6-2000	Senior Lect. Applied Science	1994-95 – average 1995-96 – average 1996-97 – average 1997-98 – good 1998-99 – satisfied 1999-2000 – satisfied

3.	Dharminder Singh, Lect. Production	21-6-2000	Sen. Lect. Production	1994-95 – average 1995-96 – average 1996-97 – average 1-4-97 to 31-8-97 – average 6-11-97 to 31-3-98 – good 1998-99 – good 1999-2000 – good
4.	V.K. Bhasin, Lect. Civil	21-6-2000	Sen. Lect. Civil	1994-95 – 1995-96 – average 1996-97 – good 1997-98 – good 1998-99 – satisfied 1999-2000 – average

Though, copies of the ACRs of Amrik Singh have been furnished in the Court, however, no response has come forth with regard to the query “what is the import of remarks 'sincere and hardworking' recording in the ACR of the petitioner for the year 1998-1999” put by the Court. Learned State counsel has failed to give any satisfactory parameter to describe the ACR in question as 'average' or merely 'good'.

Even otherwise, a perusal of memo dated 17.07.2007 (Annexure P-18) reveals that some officers including above-referred Amrik Singh, whose three ACRs were not good but they were promoted by the DPC on 21.06.2000, whereas, twenty five officials were promoted only on the basis of having overall 'Good' ACR record. Said Amrik Singh who was promoted against roster point No.15 had only two 'good' ACRs while the petitioner had two 'good' ACRS and one recording 'Sincere and Hard Worker'. Rather, such a worker graded by the Reporting Officer as 'sincere and hard worker' deserves to be graded 'outstanding' and by no stretch of imagination can be said to be a degree lower than 'good'. The omission in not reflecting the grading of the petitioner in the ACR either appears to be a

bona fide error on the part of the Reporting Officer or the Reporting Officer was not aware of the manner in which the ACR is to be recorded. In either situation, the prejudice caused to the petitioner cannot be allowed to stand for any deficiency in recording the ACR. Now that said Amrik Singh has already retired, therefore, at this stage, any order in favour of the petitioner will not cause any prejudice to said Amrik Singh. Moreover, he is not a party to this petition.

In view of the above, the instant petition is allowed; the official respondents are directed to grant the benefit of promotion to the petitioner to the post of HOD (Mechanical Engg.) w.e.f. 21.06.2000, along with all consequential benefits including the effect thereof on subsequent promotions and the benefits attached thereto, granted to the petitioner, including the difference of salaries at different points of time. The necessary exercise including payment of arrears be done within a period of three months from the date of receipt of a certified copy of this judgment.

Allowed.

01.07.2019
atulsethi

(JITENDRA CHAUHAN)
JUDGE

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