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

**CWP No.26307 of 2014.
Date of Decision: 13.5.2019**

Arun Kumar

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

PRESENT Mr. A.P.S.Sandhu, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN J.

By way of present civil writ petition, the petitioner seeks mandamus directing the respondents to promote the petitioner as Statistic Assistant in Group – B, in pay bank of 10300 – 34800 with grade pay of 4400 and further for quashing of order dated 15.11.2013 (Annexure P6), whereby the representation filed by the petitioner against the action of respondents for not promoting the petitioner to the post of Statistic Assistant in Group – B, was dismissed.

It is pleaded in the writ petition that the petitioner was appointed as Investigator, a Group 'C' post in the Economic and

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Statistic Organization, Department of Planning, Govt. of Punjab, vide order dated 12.9.1995 (Annexure P1). Thereafter, the Department decided to fill 18 vacant posts of Statistic Assistant in Group 'B'. The promotions from Group 'C' to Group 'B' are governed by the instructions given in Circular No.4/6/2000 – 3P.1/13720 dated 6.9.2001 (Annexure P3) as per which the benchmark is “Good” and the promotion is to be made strictly on seniority-cum-merit basis and there will be no supersession. It is further pleaded that for consideration of merit, the ACRs of last five years are to be considered. It is claimed that for the year 2007-2008 to 2011-12, the ACRs of the petitioner were “Good” or “Very Good” without any complaint since the date of his joining. The list of successful promotees to the post of Statistic Assistant was declared by the Department on 22.8.2013, however, the petitioner was shocked to see that his name did not figure in the promotion list (Annexure P4).

Aggrieved by the above action of respondents, the petitioner sent number of representations dated 27.8.2013, 29.8.013 and 14.10.2013 (Annexure P5 colly). Vide order dated 15.11.2013 (Annexure P6), it was informed that the case of the petitioner for promotion has not been considered as allegedly there was an adverse remark in his ACR for the year 2011-12.

It is contended by the learned counsel for the petitioner that neither the alleged adverse remark against the petitioner in the ACR

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pertaining to the year 2011-12, was ever communicated to the petitioner nor any notice was ever served upon him before making any such adverse remark. Even no explanation was ever called from the petitioner. The petitioner has unblemished long service record and adverse remark, if any, is an attempt to accommodate someone else.

Learned counsel for the petitioner further contends that even in the impugned order dated 15.11.2013 (Annexure P6), there is no mention that what is the adverse remark against the petitioner as such, the adverse remark which was never communicated to the petitioner cannot be taken into consideration for denying the promotion to Group 'B' post. It is submitted that the petitioner is entitled to be promoted to the post of Statistic Assistant with the consequential seniority as the alleged adverse remark was never communicated to the petitioner.

On the other hand, on behalf of the respondents, it is contended that the adverse remarks in the ACRs were conveyed to the petitioner vide letter dated 21.11.2012 (Annexure R-2/T and R-2). The petitioner was not promoted to the post of Statistical Assistant on account of adverse remarks in the ACR for the year 2011-12.

However, in the replication, the petitioner has denied that the alleged adverse remarks were conveyed to him vide letter dated 21.11.2012. It is reiterated that no such letter was ever communicated or sent to the petitioner.

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Heard.

On the last date of hearing, the learned State counsel had informed that the petitioner has been promoted w.e.f. 7.12.2018, however, no material has been placed on record to show that when and in which manner, the petitioner had been communicated regarding adverse entry in the ACR pertaining to the year 2011-12. The dispatch number is not sufficient to hold that the adverse remarks were conveyed to the petitioner.

Thus, considering the long unblemished service record; ACRs of the petitioner for the required period i.e. from 2007-08 to 2011-12, having remained “Good” or “Very Good”, and the Department having failed to controvert the same and further having failed to substantiate by any evidence that adverse remarks were ever communicated to the petitioner, the present writ petition is allowed. Impugned dated 15.11.2013 (Annexure P6), is hereby set aside. The petitioner will be deemed to have been promoted from the date other employes have been promoted with consequential seniority.

13.05.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No