

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
227**

RSA-2746-2018

Date of decision: 27.05.2019

BRAHMANAND

...APPELLANT

VS.

STATE OF HARYANA AND OTHERS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. U.K.Agnihotri, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the judgment and decree dated 05.02.2016 passed by the Civil Judge (Junior Division), Rohtak, whereby the suit for declaration to the effect that the appellant-plaintiff is entitled for promotion to the post of Sub-Inspector w.e.f. 07.06.2012 along with all consequential benefits and mandatory injunction for issuing directions to the respondents to promote the appellant from the said date and release the benefits along with interest @12% per annum from the due date, stands dismissed with costs, appeal against which preferred by the appellant-plaintiff stands dismissed by the District Judge, Rohtak vide judgment dated 21.09.2017.

It is the contention of the learned counsel for the appellant that as per the information received by the appellant-plaintiff from the respondents-defendants under the Right to Information Act, the appellant has been intimated vide Letter (Ex. P1) that he was promoted to the post of

Sub-Inspector w.e.f. 07.06.2012 and, therefore, the stand of the respondents that the appellant has not been promoted and was not fit for promotion because of the downgrade, his Annual Confidential Report for the year 2009-10 is unsustainable. His submission is that the appellant was entitled to promotion as Sub-Inspector w.e.f. 07.06.2012, the date on which his juniors were promoted and, therefore, the respondents cannot run away from the information, which has been supplied to him under the Right to Information Act as per Ex. P1. Prayer has, thus, been made for setting aside the impugned judgment and allowing the suit of the plaintiff.

I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the records of the case.

Admitted facts are that the appellant-plaintiff was appointed as a Conductor in Haryana Roadways, Gurgaon Depot on 18.03.1981. He continued as such till he was regularized vide Letter dated 12.01.2004. For the year 2009-10, the Annual Confidential Report was downgraded by the competent authority and has been conveyed to the appellant vide Letter dated 22.06.2010 Ex. DW1/D. Ex. DW1/C is the list of punishment showing all embezzlement done by the appellant-plaintiff during his service period and would reveal that the service record of the appellant-plaintiff was not satisfactory. For the year 2009-10, embezzlement of ₹105 was detected, for which the case was pending. In the Annual Confidential Report for the said year i.e. 2009-10, Ex. P7 is the entry made regarding the said embezzlement after the decision of the fraud case. These adverse remarks were duly conveyed to the appellant-plaintiff vide Letter dated 22.06.2010 Ex. DW1/D. He was issued a Show Cause Notice Ex. DW1/F to

explain the reason within 15 days as to why the remarks in his Annual Confidential Report be not downgraded.

Reply was filed to the Show Cause Notice by the appellant-plaintiff and he was given an opportunity of personal hearing by the Director General, State Transport, Haryana, who, vide order dated 02.08.2013, Ex. D2, downgraded the Annual Confidential Report of the appellant-plaintiff for the year 2009-10. His integrity was assessed as 'doubtful' and on the basis of these remarks, he was compulsorily retired with immediate effect on 21.07.2014, Ex. D4. In the light of the above, the question of promotion of the appellant as Sub-Inspector does not arise.

Another aspect, which needs to be highlighted here, is that no order of promotion pertaining to the appellant-plaintiff has been produced on record. In the absence of any promotion order and keeping in view the above service record of the appellant-plaintiff, the Courts below have rightly proceeded to dismiss the suit which has been filed by the appellant-plaintiff.

There is no illegality or irregularity committed by the Courts below which would call for any interference by this Court in the concurrent findings which have been recorded therein nor is there any question of law involved in the present appeal.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

May 27, 2019
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No