

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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**CWP-3815-2015 &
CM-15674-CWP-2019**

Date of decision: 20.01.2020

VARINDER JIT BHANDARI AND ANR

...PETITIONERS

V/S

STATE OF PUNJAB & ORS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.K.Chopra, Sr. Advocate,
with Mr. Gaurav Sharma, Advocate,
for the petitioners.

Ms. Anu Pal, DAG, Punjab,
for the State.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court impugning the order dated 26.11.2014 (Annexure P-2), vide which the claim of the petitioners for promotion to the post of Agriculture Officers w.e.f. 26.11.2014 i.e. the date on which the persons junior to the petitioners were promoted as Agriculture Officers, stands rejected on the ground that the petitioners do not make the benchmark, which was fixed at 12 marks on the basis of the

Annual Confidential Reports. It was asserted that petitioner No. 1-Varinder

Jit Bhandari has a total of 11 marks whereas petitioner No. 2-Sarbjit Singh has a total of 6 marks. The persons junior to the petitioners had 12 or more marks and, therefore, having obtained the benchmark fixed for promotion to the post of Agriculture Officers they were promoted and the petitioners were ignored.

Learned senior counsel for the petitioners submits that the respondents have wrongly proceeded to deny the petitioners the promotion to the post of Agriculture Officers, as was claimed by the petitioners w.e.f. 26.11.2014, instead of granting the petitioners promotion w.e.f. 10.07.2015. His contention is that the Reporting Officer in the year 2010-11 had, in his remarks in the Annual Confidential Report of petitioner No. 1, recorded 'Very Good', which was downgraded by the Reviewing Officer to 'Good' and the Accepting Authority accepted the same, which was finally taken as 'Good', whereas the said Annual Confidential Report was never conveyed to petitioner No. 1, because of which, the same could not have been taken into consideration as he had been granted the remarks as 'Very Good' by the Reporting Officer. The contention, thus, with regard to petitioner No. 1 is that the said ground, as taken by the respondents, cannot sustain and deserves to be set aside. In support of his assertion that the Reporting Officer's remarks, if are required to be downgraded, firstly there must be reasons assigned for the same and secondly, the same needs to be conveyed to the employee concerned, reliance has been placed upon the judgment of this Court in **Kulwant Singh vs. State of Punjab and others**, 2014 (1) SCT 361 (Annexure P-8) as also the Division Bench judgment of this Court in CWP No. 19559-CAT of 2003 titled as **Prithi Pal Singh Dhanjal vs. CAT and others**, decided on 24.03.2014 (Annexure P-9).

As regards petitioner No. 2-Sarbjit Singh, his assertion is that in the relevant years, which were to be taken into consideration for promotion, Annual Confidential Reports for the years 2009-10, 2011-12, 2012-13 have been reported to be not available whereas for the year 2010-11 and for the year 2013-14, even the Accepting Authority had recorded his remarks as 'Very Good'. He, therefore, contends that because of non-availability of the Annual Confidential Reports, this petitioner cannot be denied the promotion. He asserts that even if the unavailable Annual Confidential Reports are taken to be Very Good or even Good, he would still make the grade i.e. the minimum benchmark of 12 marks, entitling him for promotion to the post of Agriculture Officer. He, therefore, contends that the writ petition qua the petitioners deserves to be allowed and the petitioners be promoted from the date their juniors have been promoted.

Counsel for the State, on the other hand, has asserted that the minimum benchmark being 12 and both the petitioners on the basis of the available Annual Confidential Reports could not make the minimum benchmark as required to be obtained by each of the employees and, therefore, they were rightly ignored by the respondents for promotion to the post of Agriculture Officer. However, on facts, as have been asserted by the counsel for the petitioners, the counsel for the State could not dispute the same, rather the said factual assertion is apparent from the reply, which has been filed by the respondents. Reference, in this regard, can be made to para-2 of the written statement where the gist of the Annual Confidential Reports of the petitioners has been given in a tabulated form which reads as follows:-

“Petitioner No. 1 Varinder Jit Bhandari

<i>Year</i>	<i>Reporting Officer</i>	<i>Reviewing Officer</i>	<i>Accepting Authority</i>	<i>Rank</i>
2009-10	Good	Good	Good	2
2010-11	Very Good	Good	Good	2
2011-12	Very Good	Very Good	Very Good	3
2012-13	Good	Good	Good	2
2013-14	Good	Good	Good	2
		Total		11

Petitioner No. 2 Sarbjit Singh

Year	Reporting Officer	Reviewing Officer	Accepting Authority	Rank
2009-10	Not Available			
2010-11	Very Good	Excellent	Very Good	3
2011-12	Not Available			
2012-13	Not Available			
2013-14	Excellent	Excellent	Very Good	3
		Total		6”

I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the records of the case and the judgments, on which reliance has been placed by the learned senior counsel for the petitioners.

The facts, as narrated above, are not in dispute. The question, which requires to be considered and decided viz-a-viz petitioner No. 1, is whether the Annual Confidential Report for the year 2010-11, which has been recorded by the Reporting Officer as 'Very Good' and has been

downgraded by the Reviewing Officer as 'Good' and by the Accepting Authority also as 'Good', could be taken into consideration by treating it as 'Good' despite the same having been not conveyed to petitioner No. 1 nor any reason assigned for such downgrading which also has never been conveyed to him and could that be a ground for denying him the benefit of marks, otherwise petitioner No. 1 would have been entitled to having obtained 'Very Good' remarks from the Reporting Officer.

The answer to the said question in the light of the judgments, as relied upon by the counsel for the petitioners in the case of **Kulwant Singh vs. State of Punjab and others**, 2014 (1) SCT 361 (Annexure P-8) as also the Division Bench judgment of this Court in CWP No. 19559-CAT of 2003 titled as **Prithi Pal Singh Dhanjal vs. CAT and others**, decided on 24.03.2014 (Annexure P-9) has to be no as these judgments make the things clear that in a situation where the downgraded Annual Confidential Report has not been conveyed to the petitioner or whether reasons are not assigned by the Reviewing Officer/Accepting Authority for such downgrading, the same should not have been taken into consideration adversely against an employee.

If that be so, petitioner No. 1 in the Annual Confidential Report for the year 2010-11 was required to be granted three marks as the Reporting Officer had granted him 'Very Good' remarks. With the grant of 3 marks of this Annual Confidential Report, petitioner No. 1, who had attained 11 marks, would obtain 12 marks, thus, fulfilling the benchmark fixed by the respondents for consideration for promotion to the post of Agriculture Officer.

As regards petitioner No. 2, the facts, as recorded above qua

him, also cannot be disputed as is apparent from the tabulated details relating to the Annual Confidential Reports reproduced above. The non-availability of the Annual Confidential Reports for the years 2009-10, 2011-12 and 2012-13 cannot be taken against petitioner No. 2 as it is for the Reporting Officer/Reviewing Officer/Accepting Authority to have ensured recording of the Annual Confidential Reports, for which the petitioner cannot be held responsible or liable. The non-availability of the said Annual Confidential Reports, therefore, cannot, in any manner, be taken against petitioner No. 2 for denying him the benefit of the service which he had rendered for this period for which the Annual Confidential Reports are not available.

Keeping in view the fact that the Annual Confidential Reports for the years 2010-11 and 2013-14 are 'Very Good', the other three non-available Annual Confidential Reports need to be taken as 'Very Good'. Even if, these three non-available Annual Confidential Reports are taken to be 'Good', still petitioner No. 2, who already has 6 marks in the two available Annual Confidential Reports, would get the remaining 6 marks required thus, making him also eligible with the requisite benchmark having been obtained for consideration for promotion to the post of Agriculture Officer.

In view of the above, the challenge of the petitioners to the impugned order dated 26.11.2014 (Annexure P-2) is sustained to the extent that the petitioners be also promoted from the date their juniors were promoted as it has been brought to the notice of the Court that the large number of posts are available with the department and the petitioners are satisfied with the promotion to the post of Agriculture Officer from the date

their juniors were promoted. Petitioners shall be entitled to all the consequential benefits in pursuance to the order passed by this Court granting them promotion from the date their juniors were promoted. The same be released to them within three months from today.

The writ petition stands allowed and disposed of in above terms.

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In the light of the disposal of the main case, the present application has been rendered infructuous and the same is disposed of as such.

January 20, 2020

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No