

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

(115)

CWP-11850-2021

Date of Decision : July 06, 2021

Pradyumna Singh

.. Petitioner

Versus

**Haryana State Co-operative Agriculture and Rural Development Bank
Limited and others**

.. Respondents

(Through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil Kumar Nehra, Advocate, for the petitioner.

Mr. Sharad Aggarwal, Assistant Advocate General, Haryana.
(keeping in view the advance copy given).

HARSIMRAN SINGH SETHI J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is qua the impugned order dated 01.06.2021 (Annexure P-12) by which the objections raised by the petitioner to the provisional seniority list in the cadre of Assistant Secretary has been rejected.

Brief facts leading to filing of present petition are that the petitioner was appointed as a Manager in the respondent-Bank on 15.03.1996. From the post of Manager, the next promotional post is District Manager, on which post, the petitioner was promoted on 24.01.2012. From the post of District Manager, the next promotion is to the post of Assistant Secretary. In the cadre of District Manager, the name of the petitioner was at Sr. No.7 in the seniority list and the names of the private respondents No. 4 to 6 were from Sr. No.9 to 11 in the said seniority list. Petitioner was admittedly senior to the private respondents in the cadre

of District Manager and had a preferential right for promotion to the post of Assistant Secretary, i.e. the next promotional post.

As per the averments made in the petition, prior to the consideration of his case for promotion to the post of Assistant Secretary in the year 2014, the petitioner made a request to the Bank that he should not be considered for promotion because of his prevailing family circumstances and he should be allowed to continue working as District Manager. This request of the petitioner was accepted by the respondent-Bank and the respondent-Bank considered the case of the other employees for promotion to the post of Assistant Secretary including that of respondents No. 4 to 6 against the available vacancies in the said cadre. Respondents No. 4 to 6 were promoted as Assistant Secretary vide order dated 15.12.2014 on which post they joined and discharged their duties continuously. Thereafter, keeping in view the changed family circumstances, the petitioner requested that being senior most District Manager, he is in a position to accept the promotion and therefore he should also be considered for promotion against the vacant post of Assistant Secretary. Request of the petitioner was considered by the respondent-Bank and he was promoted as Assistant Secretary on 26.03.2018 vide order Annexure P-7. Petitioner continues to work on the said post as of now.

Respondents issued a tentative seniority list in the cadre of Assistant Secretary vide Annexure P-9 dated 09.01.2019. The grievance of the petitioner is that in the said tentative seniority list, the name of the petitioner was mentioned at Sr. No.6 whereas the names of respondents No. 4 to 6 were mentioned at Sr. No. 3 to 5. The petitioner filed objections against the said provisional seniority list in the cadre of Assistant Secretary,

raising an objection that as the petitioner was senior to the private respondents No. 4 to 6 in the cadre of District Manager, hence, upon promotion as Assistant Secretary in the year 2018, he will regain seniority over and above those junior persons in the cadre of Assistant Secretary and therefore, be treated senior to the private respondents even in the cadre of Assistant Secretary and therefore, the provisional seniority list be modified accordingly.

The objections raised by the petitioner to the provisional seniority list dated 09.01.2019 were rejected by the authorities vide order dated 01.06.2021, which order is under challenge before this Court in the present writ petition.

Learned counsel for the petitioner submits that it is a settled principle of law that where a person, who is senior in the feeder cadre, will regain his seniority in the promoted cadre even if, the senior is promoted to the said promoted cadre after his juniors. The reliance is being placed upon the judgment of the Hon'ble Supreme Court of India in ***Ajit Singh Januja and others Vs. State of Punjab and others, 1996(2) SCC 715.***

The second objection taken by the petitioner is that the Managing Director should not have decided his objections as his representation/objections were raised before the Board of Directors and therefore, the rejection of the objections/representation by the Managing Director is without jurisdiction.

I have heard learned counsel the petitioner and have gone through the record with his able assistance.

Though it is a conceded position that though the petitioner was senior to the private respondents No. 4 to 6 in the cadre of District Manager,

but when his turn came for promotion to the next higher post of Assistant Secretary, he himself had foregone his promotion in writing in the year 2014. Once the petitioner had himself foregone the promotion in the year 2014, the necessary corollary was that the District Managers, who are next in seniority list, were considered for promotion against the available vacancies and respondent No. 4 to 6 being next in line in seniority, were promoted in December, 2014 as Assistant Secretary. The petitioner was promoted to the post of Assistant Secretary only on 26.03.2018 i.e much after the date the respondents No. 4 to 6 were promoted.

Question which arises for the consideration of this Court is whether an employee, though senior in the feeder cadre but had foregone his promotion and juniors were promoted, will regain his seniority in the promoted cadre despite the fact that the said employee was promoted at a later stage as compared to the employees who were junior in the feeder cadre.

The fixing of the seniority is governed by the rules applicable to the service. Concededly, the rules governing the seniority in the present case have been cited in the impugned order i.e. Rule 13. As per the said Rule, the seniority is to be determined on the basis of continuous length of service in a cadre. Rule 13 relating to fixing of the seniority of the employees, as reproduced by the petitioner in paragraph 24 of the petition, is as under:-

“13. Fixation of Seniority

13.1 The seniority shall be determined separately in each category/cadre of service.

13.2 The inter se seniority of the employee shall be from the date of joining that category of service as a regular employee

subject to the provision detailed in subsequent paragraph.

13.3. In case two or more employees join on the same date, their seniority shall be determined as follows:-

- a) If the appointment is made in pursuance of rule 9.5 then the seniority shall be determined according to the merit list.
- b) If the date of joining of two or more employees in the category of service through direct recruitment or promotion is the same latter shall be the senior to the former.
- c) If the two or more employees are promoted in the same category/cadre in the same date, the seniority shall remain the same as in lower category.
- d) The period of Adhoc service rendered by an employee and followed by regular appointment shall not be counted towards seniority and promotions.”

A bare perusal of Rule 13.1 and 13.2 makes it clear that the seniority is to be considered in each cadre separately and the inter se seniority of the employees working in a particular cadre is to be taken from the date of joining the said cadre meaning thereby that seniority of the candidate in the feeder cadre does not have any relevance in the promoted cadre unless and until a junior has been promoted by superseding a senior by way of reservation. Length of service in the cadre in which the seniority is being prepared is the only relevant factor to be taken into consideration while fixing the seniority. A candidate having longer length of service in the cadre is to be treated senior than the employee having shorter period of service in the said cadre. The only exception is where a reserved category candidate gets promotion to a higher cadre on the basis of reservation by superseding eligible senior general category candidate, the general category candidates are to retain their seniority of the feeder cadre.

In the present case, it is not a case where the petitioner was superseded by respondents No. 4 to 6 on the basis of reservation rather, they were promoted on their own turn, keeping in view the availability of vacancies in December, 2014 when the petitioner himself had foregone the promotion. Therefore, the seniority in the cadre of District Manager is irrelative to the seniority to be maintained in the cadre of Assistant Secretary in the present case keeping in view the facts and circumstances stated hereinbefore.

Admittedly, the continuous length of the service of private respondents No. 4 to 6 is more than that of petitioner in the cadre of Assistant Secretary and therefore, giving them seniority over and above the petitioner in the tentative seniority list dated 09.01.2019 cannot be faulted with and the rejection of the prayer of the petitioner for amending the said seniority by the respondents-authorities is also in consonance with the rules governing the service.

Further, in case the rules governing the service have any ambiguity in respect of any issue, the Haryana Civil Services Rules are to be brought in operation for solving the said issue. The Haryana Civil Services Rules as framed in the year 2016 clearly deals with the issue raised in the present petition regarding the deferment of promotion. The Rule 6 which deals with the deferment promotion is as under:-

“ 6. Deferment of Promotion:

When an official forgoes his promotion, his name may not be reconsidered for at least one year and the person promoted during this period will rank senior to him. On these conditions the deferment of promotions may be allowed.”

A bare perusal of the above would show that whenever an employee forgoes promotion, the name of the said employee is not to be considered for promotion for a period of one year and the employees promoted during the said period are to rank senior to the employee, who had foregone the promotion. In the present case, the petitioner had foregone his promotion in the year 2014 and respondents No. 4 to 6, though junior to him, but being eligible and the next available candidates were promoted in the year 2014 against the vacant post of Assistant Secretary whereas, the petitioner got promotion only in March, 2018 hence, the petitioner cannot claim seniority over and above respondents No. 4 to 6, who admittedly have longer length of service in the cadre of Assistant Secretary than the petitioner.

As regard the argument raised by the learned counsel for the petitioner that as per the judgment of the Hon'ble Supreme Court of India in *Ajit Singh Januja's case (supra)*, an employee who is senior in the feeder cadre, will regain his seniority over and above his juniors in the promoted cadre though, the senior is promoted at a later stage, the same cannot be accepted for the reason that judgment in *Ajit Singh Januja's case (supra)* only applies in the case of reservation, where a reserved category junior employee supersedes a senior by availing the benefit of reservation to be appointed on roster point available for the said reserved category in the promotional cadre. It was only under those circumstances the Hon'ble Supreme Court of India has held that a senior general category employee, who has been superseded by a junior reserved category employee will regain his seniority on promotion to the next higher post and that too in case he catches the said junior in the promoted cadre. The judgment of *Ajit*

Singh Januja's case (supra) is not applicable in the facts and circumstances of the present case as petitioner was never superseded by respondents No. 4 to 6 on account of reservation policy rather respondents No. 4 to 6 were promoted in the cadre of Assistant Secretary on their own turn against the available vacancies, whereas petitioner declined promotion as Assistant Secretary when his turn came, hence, the arguments being raised by the learned counsel for the petitioner does not merit acceptance and are accordingly rejected.

Another argument, which has been raised by the learned counsel for the petitioner that the representation/objections which were raised by the petitioner against the tentative seniority list were before the Board of Directors and not before the Managing Director therefore, Managing Director did not have any jurisdiction to pass the order rejecting the representation/objections raised by the petitioner qua the tentative seniority list dated 09.01.2019.

A bare perusal of the tentative seniority list would show that the same was issued by the Managing Director. Once, a tentative seniority list has been issued by a particular authority, the objections have to be heard and decided by the said authority. Even otherwise the objection which is being taken that the Board of Directors should have decided objections raised by the petitioner against the tentative seniority list dated 09.01.2019 is technical in nature.

Further once this Court is deciding the claim of the petitioner on merits with regard to fixation of his seniority and his claim of seniority over and above respondents No. 4 to 6, this argument of the petitioner cannot be accepted so as to remand the case back to the Board of Directors

for a fresh decision. Once, learned counsel for the petitioner has argued on merits qua his claim before this Court and this Court has adjudicated on the merits of the case, this argument loses its significance. The case cannot be remanded to the Board of Directors, once this Court has found that the petitioner is not entitled for the relief as being claimed on merits so as to decide the same issue.

No infirmity can be found in the order fixing the seniority of the petitioner below the private respondents No. 4 to 6 in the cadre of Assistant Secretary keeping in view the rules governing the service especially regarding fixation of seniority as well as the law on the said aspect.

Accordingly, the present writ petition is dismissed.

July 06, 2021
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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