

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

CWP No.22295 of 2019 (O&M)

Reserved on:02.08.2022

Pronounced on:05.09.2022

Sultan Singh

Petitioner

Versus

State of Punjab and others

Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Karan Bhardwaj Advocate
for the petitioners.

Mr. Pawan Sharda, Sr. DAG Punjab.

JAISHREE THAKUR J.

1. The petitioner has filed the present writ petition under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of mandamus, to consider the petitioner for promotion to the post of Junior Assistant w.e.f 29.12.2014 i.e. the date from which his juniors have been promoted to the said post whereas the case of the petitioner was not considered by DPC as the Annual Confidential Reports (hereinafter referred to as ACRs) for the period 1.4.2013 to 23.7.2013 and 27.7.2013 to 18.11.2013 had not been received. A further prayer has been made for quashing of adverse remarks recorded in the ACRs for the period 1.4.2013 to 23.7.2013 and 27.7.2013 to 18.11.2013 and the subsequent orders rejecting the appeal filed against the adverse remarks entered in the aforesaid ACRs.

2. The brief facts as set out are that the petitioner was working in Punjab Police having been appointed on 06.06.2001 as a Nursing Assistant. He was subsequently promoted to the post of Clerk on 05.10.2006. He continued to work without any blemish in his service record. The petitioner was posted in the office of Commandant, Commando Training Centre, Kila Bahadurgarh, District Patiala. The case of the petitioner for promotion to the post of Junior Assistant was under consideration. His ACR pertaining to the period of 01.04.2011 to 31.03.2012 was graded as 'A+ i.e Excellent'. It was alleged that persons junior to the petitioner were promoted to the post of Junior Assistant by DGP, Punjab by letter dated 29.12.2014, however, case of the petitioner for promotion to the post of Junior Assistant was kept pending as his ACR for the period from 27.07.2013 to 18.11.2013 was not received. The petitioner submitted representations through proper channel, however, the said representations were dismissed vide orders dated 06.10.2015 and 18.11.2015, as was his mercy appeal on 8.12.2015. The revision petition preferred against the adverse remarks in his ACR pertaining to the period 01.04.2013 to 23.07.2013 and 27.07.2013 to 18.11.2013 also stood consigned. Aggrieved against the aforesaid impugned orders, the instant writ petition has been filed.

3. Learned counsel appearing on behalf of the petitioner would vehemently contend that the petitioner was due for promotion to the post of Junior Assistant, however, he was not considered on the date when his juniors were promoted as his ACRs had not been received. It is argued that as on the date when the DPC was held there were no adverse entries

in his service record and in fact for the period 01.04.2011 to 31.03.2012, his ACR was graded as 'A+ i.e Excellent'. It is submitted that the period, for which there was no report before the DPC, has to be treated as '*no report period.*' It is further submitted that the adverse remarks as recorded by the reporting officer are without basis as the petitioner remained on casual leave for 23.08.2013, 26.08.2013, 27.08.013, 29.08.2013 and 30.08.2013 and on earned leave from 02.09.2013 to 21.09.2013 i.e. for a period of 33 days on account of a heart attack suffered by him and then due to the ailment of his son. Thereafter, he has worked with due diligence, which factor has not been taken into account while considering his representation against the adverse remarks and while dismissing his mercy appeal and revision petition.

4. Per contra, learned counsel appearing on behalf of the respondent-State would argue that the DPC was convened on 29.12.2014 on which date promotions were made of persons who were working as Clerks to the post of Junior Assistants. The petitioner's case was also considered but was deferred on account of the fact that his ACR had not been received. It is further submitted that the case of the petitioner along with other Clerks was pending for promotion. The record of the petitioner was examined in the Departmental Promotion Committee held on 31.03.2015 and it was found that there were adverse remarks, which had been conveyed to him and since the record was unsatisfactory, he was ignored for placement as Junior Assistant. It is submitted that as per the guidelines issued by the Director General of Police, Punjab dated 24.12.2019, last 5 years record/ACRs are to be examined by the Departmental Promotion

Committee. The record of the petitioner was not found satisfactory and therefore, the DPC did not recommend him for promotion.

5. I have heard the counsel for the parties and produced the pleadings of the case.

6. The main grouse of the petitioner is that he has been ignored for promotion to the rank of Junior Assistant on the ground that his ACR was not satisfactory. It is submitted that on the date when the DPC was convened that is on 23.12.2014 and his juniors were promoted, there were no adverse remarks pending against him in his ACR which were communicated only in the month of February 2015.

7. The law in this regard is well-settled that adverse entries are to be communicated to a delinquent employee within a reasonable period of time. Reference in this regard may be made to the judgments rendered by the Hon'ble Supreme Court in **Sukhdev Singh Vs Union of India and others (2013) 9 SCC 566**, **Dev Dutt Vs Union of India (2008) 8 SCC 321**, **A.K Praipak Vs Union of India (1969) 2 SCC 262** amongst others. Failure to communicate adverse entries has been held to be violative of the principles of natural justice.

8. Equally true is the fact that the petitioner has a right to be considered for promotion, but cannot claim promotion *per se*. The Supreme Court has said that the right to promotion cannot be treated as a fundamental right, but consideration for promotion has now been evolved as a fundamental right. **Ajay Kumar Shukla Vs Arvind Rai 2021 SCC Online SC 11995**. The Constitution Bench in the case of **Ajit Singh versus State of Punjab (1999) 7 SCC 209** laid emphasis on Article 14

and Article 16 (1) of the Constitution of India to hold that if a person who satisfies the eligibility and the criteria for promotion but still is ignored and not considered for promotion, that will be clear violation of his/her fundamental right. The relevant paragraphs of the same are reproduced as under:-

“21 Articles 14 and 16(1) : is right to be considered for promotion a fundamental right

22 : Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the “State shall not deny to any person equality before the law or the equal protection of the laws”. Article 16(1) issues a positive command that “there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State”.

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense “equality of opportunity in matters of employment and appointment to any office under the State. The word “employment” being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be “considered” for promotion. Equal opportunity here means the right to be “considered” for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be “considered” for promotion, which is his personal right.

“Promotion based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1)

xxxx xxxx xxxx xxxx xxxx

27. In our opinion, the above view expressed in Ashok Kumar Gupta and followed in Jagdish Lal and other cases, if it is intended to lay down that the right guarantee to employees for being “considered” for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be “considered” for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta right from 1950.”

9. As per the reply filed, a Committee was constituted for placement of Clerks to the post of Junior Assistants. The Committee held meetings from 27.11.2014 to 01.12.2014 and issued orders regarding promotion to persons whose record had been received. Since the record of 20 Clerks was not complete, their matters were kept pending and on receipt of the complete record, the meeting was reconvened on 31.03.2015 and the case of the petitioner was considered therein. His record was not satisfactory so he was ignored for placement as Junior Assistant. Therefore, it is not a case where the petitioner was not considered for promotion.

10. The argument that the reporting authority had not furnished the ACR within time, therefore, the period has to be treated as no report period is unfounded. Counsel for the petitioner would rely on instructions (Annexures P-32 to P-35) where the time frame has been specified for submission of ACR. In the opinion of the court, even if the ACR was not furnished to the DPC which had been convened, the same DPC met again and considered the case of the petitioner along with 19 others whose ACRs had not been received. It cannot be said that the petitioner was

disadvantaged in any manner whatsoever, as at best he would be entitled to consideration, which was done. In case, he had been found suitable his promotion would have been done with effect from the date his juniors were promoted. Even otherwise in the judgment rendered by this Court in L.P.A. No. 362 of 2011 titled as **Davinder Singh Vs. State of Haryana and others** decided on 11.05.2011, while considering the instructions regarding filing up of ACR, it has been held:

"10. It, thus, stands established that the instructions concerning recording of ACR are not justiciable and enforceable in the courts of law, which in fact, are meant for internal use of the department."

11. The representation of the petitioner against the adverse ACRs has been considered and rejected. The recording of ACR is the subjective opinion of the reporting officer who had occasion to supervise his work and conduct and the same cannot be adjudged by this Court.

12. Consequently, finding no merit in the instant writ petition, the same stands dismissed.

(JAISHREE THAKUR)
JUDGE

September 05, 2022

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No