

CWP No.4956 of 1996

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4956 of 1996

Date of decision : 13.10.2023

Brij Lal Singla

....Petitioner

Versus

State of Punjab and Others

....Respondents

CORAM : HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present :- Mr. Gagandeep Singh Wasu, Advocate for the petitioners.

Mr. D.K. Singal, Addl.AG, Punjab.

SANJEEV PRAKASH SHARMA, J. (ORAL)

1. The petitioner before this Court is claiming promotion on the post of Senior Assistant from the date, his juniors were promoted.
2. Learned counsel for the petitioner submits that the petitioner was superseded for the first time in the year 1978 when persons junior to him were promoted. Again, he was superseded in February 1984 when three of his juniors were promoted, ignoring the petitioner.
3. The respondents in their reply have pointed out that there were several adverse remarks to his credit. He submits that the petitioner was twice granted the benefit of crossing efficiency bar firstly on 16.06.1979 with retrospective effect from 31.05.1972 and thereafter again on 11.06.2004 w.e.f 01.08.1983.

4. The case of the petitioner is that initially he had preferred a writ petition. In the writ petition, the petitioner had challenged certain orders with regard to his reversion from the post of Assistant which took place in pursuance to certain orders passed by this Court. The question regarding the issue of passing the Assistant Grade Examination was ultimately finalized by Hon'ble Supreme Court in a judgment titled as **Saroj Rani & Ors vs. State of Punjab passed in SLP No.9516 of 1995** wherein the Apex Court in the light of amendment made in the Rules granted exemption from passing of the Assistant Grade examination as prospective and at the same time, it was so held that the channel of promotion should be in the ratio of 70:30 amongst the Assistants on the basis of seniority-cum-merit and on the basis of passing of the examination. The respondents have stated that in terms of the said directions, the petitioners's case was again considered and he was granted promotion w.e.f 21.01.1991 on seniority-cum-merit basis.

5. Learned counsel for the petitioner submits that his promotion should be from the date his juniors have been promoted as above.

6. I have considered the submissions of learned counsel for the parties.

7. The respondents have placed the details of his ACRs in the reply, which read as under:

“1969-70 Shirks duty, Disobedient. Not fit for job assigned. Below average.

1970-71 Just Average.

1971-72 Not available.

1972-73 Should take more interest. He is careless in performing his duties

1973-74 The defects noticed in him were pointed out to him often in the presence of P.M.O.

1974-75 Sh. Brij Lal Singla is corrupt, un-reliable & quarrelsome. He is

in the habit of roaming about and disturbing others during duty hours. He has done misappropriation of Govt funds out of Dhobi Washing Charges. His overall performance is below average.

1975-76	Not available.
1976-77	Defects pointed verbally.
1977-78	Special report (Satisfactory)
1978-79	Just average. Most of the period he remained absent from duty. As such no opinion can be given.
1979-80	Average.
1980-81	Satisfactory.
1981-82	Satisfactory.
1982-83	Average worker.
1983-84	Below Average. Does not take proper interest in work.

8. For the purpose of crossing efficiency bar, the petitioner seems to have been granted the benefit from 1972 as his ACRs were just Average at that relevant time. Again he has been granted the benefit from 01.08.1983. A perusal of his ACR before August 1983 reveals that the petitioner had five just average ACRs and therefore, he may have crossed the efficiency bar correctly. However, the question arises whether he would be entitled for promotion also.

9. Learned counsel has placed reliance on a judgment reported as **Brij Nath Pandey vs. State of U.P., 2001 (4) Supreme 276** wherein Hon'ble Supreme Court has held as under:

"1. Leave granted.

2. Heard Counsel on both sides. The appellant was denied promotion in the selection which took place in 1995 when, according to him, his junior was promoted. According to the appellant the adverse entries in his Annual Confidential Reports 1985-86 and 1986-87 could not have been taken into

consideration in view of the fact that the appellant was subsequently allowed to cross the efficiency bar since 1.1.92 vide an order dated 20.5.92. In our view this contention of the appellant is correct and the adverse entries in 1985-86 and 1986-87 cannot come in the way of the appellant for further promotion once he was allowed to cross the efficiency bar on 20.5.92. So far as the adverse remarks of 1993-94 are concerned at the time of the selection in 1995 the said adverse remarks were there on record but they were subsequently deleted on 6.7.96. Therefore, the appellant is entitled for a fresh consideration for his promotion in 1995. The respondents are therefore directed to consider the case of the appellant afresh with reference to the selection of 1995 when his junior was promoted.

3. A point was raised by the respondent that the other candidates might be affected with this order and have not been impleaded. We are unable to agree. The appellant is not seeking any direction with reference to the seniority. The dispute is purely between the appellant and the respondent State. If the adverse remarks could not have been taken into consideration, he has made out a case for reconsideration of his case. While doing so it is not necessary to hear other persons who might be affected. The fresh consideration as directed above will be done within a period of three months from to day.

4. The appeal is allowed as above. There shall be no order as to costs”

10. The case of the petitioners is, however distinguishable to the aforesaid facts of this judgment. The period of adverse remarks was the period during which the efficiency bar was crossed. Here the case is that after the petitioner crossed the first efficiency bar in 1972, he had adverse remarks of integrity being doubtful for the year 1974-75. If his case was to be considered in the year 1978 and five years previous ACRs are considered, adverse remarks of 1974-75 would come in his way and therefore, the respondents rightly rejected his case for promotion in the year 1978. Again if his record is looked into for the purpose of promotion in February 1984, he had below average immediately for the year 1983-84 and therefore again he was rightly denied his promotion for 1984 whereafter the Rules were amended and the requirement of passing the Assistant Grade Examination came into being from August 1984 which the

petitioner could not pass. He has, therefore been promoted on seniority-cum-merit in the year 1991. Therefore, no case for interference is made out.

11. Writ petition is devoid of any merit and the same is dismissed.

October 13, 2023
manoj

(SANJEEV PRAKASH SHARMA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable : No