

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 13839 of 2014 (O&M)

Date of Decision: 18.01.2023

Roshan Lal Verma

... Petitioner(s)

Versus

State of Punjab and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Manuj Nagrath, Advocate
for the petitioner(s).

Mr. Gurpreet Singh, Additional Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. While praying for issuance of the writ in the nature of certiorari to quash the order, dated 07.05.2013 whereby the petitioner was not recommended for promotion from the post of a Sub Divisional Officer to that of the Executive Engineer, the present writ petition has been filed.

2. The petitioner has been denied promotion by the Departmental Promotion Committee (hereinafter referred to as “the DPC”) on the ground that he has failed to clear the benchmark of 12 marks as required, on the basis of the Annual Confidential Reports (hereinafter referred to as “the ACRs”). The meeting of the DPC was held on 07.05.2013. The ACRs of the petitioner for the period from 2008-09 to 2012-13 are admittedly not available.

3. The State of Punjab has issued guidelines for the consideration

"9.4 Guidelines for DPCs

The following guidelines are laid down to regulate the assessment of suitability of candidates by DPCs:

9.4.1 *While merit has to be recognized and rewarded, advancement in an officer's career should not be regarded as a matter of course, but should be earned by dint of hard work, good conduct and result-oriented performance as reflected in the annual confidential reports and bases on strict and rigorous selection process.*

9.4.2 *Confidential Reports are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRS should be fair, just and non-discriminatory. Hence, the DPC should assess the suitability of the employees for promotion on the basis of their Service Records and with particular reference to the CRS for five preceding years irrespective of the qualifying service prescribed in the Service/ Recruitment Rules. (If more than one CR has been written for a particular year, all CRs for the relevant years shall be considered together as the CR for one year).*

9.4.3 *Where one or more CRS have not been written for any reason during the relevant period, the DPC should consider the CRS of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRS of the lower grade into account of complete the number of CRS required to be considered as per above para. If this is also not*

possible, all the available CRS should be taken into account."
From the perusal of these rules especially Rule 9.4.3 it is crystal clear that if the CRS of the previous five years are not at all available, then all the available CRs should be taken in to account. By virtue of the application of this Rule, the petitioner has 11.53 bench marks/points of the previous available ACRs of the petitioner."

4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

5. The learned counsel representing the petitioner submits that the DPC has taken into account the petitioner's average ACRs with respect to the year 1976-77 as well as 1987-88 while calculating the benchmark although these could not be considered, as these reports were never communicated to the petitioner, Hence, the same cannot be taken adversely against the petitioner. In any case, he submits that now the petitioner's case for promotion has already been recommended by the Chief Engineer.

6. On the other hand, the learned counsel representing the State of Punjab, while relying upon the last part of para 9.4.3 of the guidelines, submits that all the ACRs of the petitioner were required to be considered. He, hence, submits that if the average of all the ACRs of the petitioner is calculated, it works out to 11.53 marks, whereas, the benchmark is set to 12 marks. He further submits that the second prayer of the petitioner shall be considered as and when the meeting of the DPC takes place.

7. The Hon'ble Supreme Court in ***Dev Dutt v. Union of India (2008)8 SCC 725***, for the first time, had examined the issue, in detail and

the average ACRs which have been taken into account are with respect to the period before the judgment was passed in *Dev Dutt's case (supra)*. As per the stand of the respondents, for each average ACR, one mark has been added, which is as per the instructions. The argument of the learned counsel representing the petitioner that the un-communicated average ACR cannot be included does not find favour of this Bench particularly when the judgment passed in *Dev Dutt's case (supra)* was decided on 12.05.2008. The official respondents have not considered the average ACRs as adverse to the work and conduct of the petitioner. Rather, as per the policy decision for each average ACR, one mark has been added in the assessment.

8. As regards the argument of the learned counsel representing the petitioner that the direction be issued to the respondents to consider the petitioner's case in accordance with the recommendations made by the Chief Engineer, the learned counsel representing the State has already made a statement that the same shall be considered as and when the meeting of the DPC takes place.

9. With the observations made above, the present writ petition is disposed of.

10. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

January 18, 2023
"DK"

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