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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-25250-2013

Date of Decision:06.12.2023

BHISHAMBER DUTT

..... Petitioner

Versus

UNION OF INDIA & ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Amtiaz Sandhu, Advocate for
Mr. Nilesh Bhardwaj, Advocate
for the petitioner.

Ms. Anita Balyan, Senior Panel Counsel
for the respondents- UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 07.07.2011 (Annexure P-6) and order dated 03.07.2013 (Annexure P-12) whereby petitioner has been denied promotion to the rank of ASI (GD).

2. The petitioner was recruited as Constable (GD) on 11.07.1987. On 21.01.1992, he was promoted to the rank of Lance Naik. The next promotion was to the post of Naik (GD). The petitioner was empanelled for promotion vide order dated 16.11.1995, however, he was not promoted as he was found HIV positive. The petitioner preferred CWP No.5153 of 2001 which came up for consideration before a Coordinate Bench of this Court. Vide judgment dated 11.11.2009, the petition was allowed and respondents were directed to promote the

petitioner to the post of Naik (GD) w.e.f. 12.12.1995 i.e. the date when juniors to petitioner were promoted. The relevant extracts of the judgment dated 11.11.2009 are reproduced as below:

“This fact has not been disputed in the reply filed. The Government instructions reproduced here-in-above and the policy of the Government of India clearly provides for continuance of HIV Positive personnel in the job in Para Military Forces, except those falling in unfit category. From the reply of the Minister of State for Ministry of Defence in the Rajya Sabha and the Government instructions, no room is left to say that mere HIV Positive itself is not sufficient to deny service or even promotion to a member of the Para Military Forces. To the contrary, the service and promotions are protected in such cases where the ailment is Asymptomatic. The petitioner also appeared in person before this Court today. He appears to be quite young, hale and hearty and apparently, a healthy person. In any event, he has been retained in service. Even though he was detected HIV Positive in the year 1995, but he continues to be in service till date. There is no reason to deny him the promotion.

In view of the, above, this petition is allowed. Respondents are directed to promote the petitioner to the post of NK (GD) w.e.f. 12.12.1995, the date when persons junior to him were promoted. He shall be entitled to all the consequential benefits, including the emoluments of the promotional post, seniority etc. and to be considered for further promotion, if any.”

3. Learned counsel for the petitioner submits that petitioner is entitled for promotion to the post of ASI (GD), however, claim of the petitioner has been rejected vide order dated 03.07.2013 (Annexure P-12). The respondent in view of order dated 11.11.2009 passed by this

Court in the case of petitioner itself as well as order dated 05.07.2023 passed by this Court in *CWP No.14495 of 2021* titled as *Kamaljit Singh Vs. Union of India* were bound to extend benefit of promotion to the petitioner.

4. Faced with the judgment dated 11.11.2009 passed by this Court in CWP No.5153 of 2001 and order dated 05.07.2023 passed by this Court in *Kamaljit Singh* (supra), learned counsel for the respondent expressed her inability to controvert the applicability of aforesaid judgments to the facts of the present case.

5. In the wake of afore-cited judgments, the petition stands disposed of with a direction to respondents to consider claim of the petitioner for promotion as per his entitlement.

(JAGMOHAN BANSAL)
JUDGE

06.12.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No