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

**CWP No.23067 of 2021 (O&M)
Date of Decision: 13.04.2023**

RAMESH KUMAR

.....Petitioner

Vs

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Dharmender Singh Rawat, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, D.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari, quashing the order dated 28.07.2021 vide which the respondents have refixed the pay of the petitioner (Senior General Category Employee) w.e.f. 30.06.2006 by withdrawing the benefit of stepping up of pay granted to the petitioner at par with his junior Sh. Raghubir Singh (Junior roster point promotee Scheduled Caste Category Employee) being in violation of principles of natural justice.

[2]. The petitioner was initially appointed as Field Assistant

on 24.06.1988 on regular basis. One Lilu Ram belonging to Backward Class category was appointed as Field Assistant on 30.07.1988 on regular basis and Sh. Raghubir Singh belonging to Scheduled Caste category was also appointed as Field Assistant on 19.08.1988 on regular basis. As per seniority list on 01.01.2008, the petitioner was placed at serial no.20 whereas aforesaid Lilu Ram and Raghubir Singh were placed at serial nos.21 and 23 respectively. The petitioner was senior to the aforesaid employees.

[3]. The next promotional post from the post of Field Assistant is Statistical Assistant/Inspector NSS. The aforesaid Lilu Ram (BC category) and Raghubir Singh (SC category) were promoted as Statistical Assistant/Inspector NSS w.e.f. 25.02.1991 on regular basis in view of their roster point. The petitioner was promoted on his turn as Statistical Assistant/Inspector NSS on regular basis on 05.06.2001 and thereafter he was given notional promotion on the said post w.e.f. 23.09.1997 on regular basis.

[4]. The next promotional post from the post of Statistical Assistant/Inspector NSS is the post of Assistant District Statistical Officer/Assistant Research Officer/Research Assistant. The aforesaid Lilu Ram and Raghubir Singh were further promoted to the post of Assistant District Statistical

Officer/Assistant Research Officer/Research Assistant in their respective category w.e.f. 03.07.2003 and 01.07.2002 respectively. The petitioner was further promoted to the post of Assistant District Statistical Officer/Assistant Research Officer/Research Assistant on 30.06.2006 on regular basis on his turn and seniority.

[5]. In view of **Ajit Singh Janjua & others vs. State of Punjab & others, 1999(4) RSJ 211 (SC)**, a reserved category employee can be promoted to a higher post on the basis of roster point but whenever senior General Category employee is promoted in the promotional cadre/higher post, he would be declared senior to his juniors in the feeder cadre, who were promoted on roster point. The respondent-Department was pleased to grant seniority to the petitioner in the promoted cadre as per **Ajit Singh Janjua & others's** case (supra) but did not grant stepping up of pay of the petitioner at par with his juniors belonging to reserved categories employees to whom the petitioner was made senior on the basis of catching up phenomenon on the promotional post.

[6]. On the basis of representations filed by the petitioner for application of Principle of Catch Up for stepping up his pay, the respondent-Department vide order dated 23.08.2010 accepted the request of the petitioner for stepping up of his pay

at par with the pay of his junior namely Raghubir Singh (SC Category). Accordingly, the pay of the petitioner was fixed at par with the pay of Raghubir Singh. Thereafter the petitioner was promoted to the post of District Statistical Officer/Planning Officer on 06.08.2015 by treating him as senior to Raghubir Singh and Lilu Ram, who were promoted on 01.10.2015 i.e. after the promotion of the petitioner.

[7]. On the basis of the aforesaid status of the petitioner, seniority list of District Statistical Officers/Planning Officers was circulated on 08.02.2016 after appreciating the Principle of Catch Up and in the said seniority list, the petitioner was shown at Sr. No.80, whereas Lilu Ram was shown at Sr.No.81. By that time Raghubir Singh had already expired on 09.09.2011, therefore, his name was not included in the said seniority list.

[8]. Vide order dated 28.07.2021, the impugned order has been passed thereby withdrawing the benefit of stepping up of pay of the petitioner just two days prior to his retirement. The reason for withdrawal of benefit of stepping up of pay was that the petitioner had foregone his promotion to the post of Statistical Assistant on *ad hoc* basis on two occasions. Firstly, the petitioner was offered *ad hoc* promotion vide order dated 22.01.1992 to the post of Statistical Assistant and thereafter again on 04.12.1992, the petitioner was offered promotion on

ad hoc basis to the post of Statistical Assistant. On both counts, the petitioner did not avail the promotional avenue on *ad hoc* basis with the obvious reason that the post of Statistical Assistant was a direct quota post and being purview post, the petitioner would have been asked to vacate the same on arrival of regular recruited person on the said post. The aforesaid aspect of forgoing the promotion on *ad hoc* basis has been taken to be a ground for withdrawal of benefit of stepping up of pay of the petitioner which according to him is totally illegal in the light of settled principle of law.

[9]. In support of his contention, learned counsel for the petitioner by referring to **CWP No.428 of 2003 titled 'Amar Nath vs. State of Haryana and another' decided on 14.07.2003** and **Union of India & Ors. vs. Manju Arora & Anr., 2022(1) SCT 344** contends that non-acceptance of promotion on *ad hoc* basis of a post belonging to direct quota/vacancy cannot be made the basis for denial/withdrawal of benefit of stepping up of pay because the petitioner could never have been promoted substantively against the vacancy belong to quota of direct recruits. Since the petitioner could availed his substantive right of promotion only against his own quota, therefore, even if, he had foregone the right of *ad hoc* promotion, the same cannot be taken to be a ground for

withdrawal of benefit of stepping up of pay and the impugned order besides being erroneous is totally unsustainable in law.

[10]. In view of aforesaid settled position, the impugned order dated 28.07.2021 passed by the respondent No.2 is found to be totally illegal and his hereby quashed. The writ petition is allowed. The respondents are directed to pass an appropriate order in the context of restoration of original status of the petitioner to grant consequential retirement benefits within a period of two months from the date of receipt of certified copy of this order.

April 13, 2023

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No