

2024:PHHC:007084
CWP-12898-2000 (O&M)
Date of Decision: 19.01.2024

...Petitioner

Vs.

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present None for the petitioner.
Mr. Charanpreet Singh, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. No one appears for the petitioner.
2. This writ petition is pending since 2000 and after 2019 no one has put in appearance on behalf of the petitioner.
3. The petitioner by way of this writ petition has prayed to treat him senior to respondent No.4, on the post of Naib Tehsildar on the ground that he was promoted temporarily on 01.12.1992 as Naib Tehsildar and was enlisted in Register-C on 21.10.1994 while respondent No.4 was enlisted in Register-A on 16.02.1993 under the priority category of handicapped. After the petitioner was promoted as Naib Tehsildar on 01.12.1992, respondent No.4 was also promoted on 12.01.1993 and he joined on 14.01.1993. Thus the petitioner claims that he should be treated senior to respondent No.4 in the seniority list circulated on 11.02.1994. However, the petitioner was shown at Sr. No.17 amongst officiating Naib Tehsildars while respondent No.4 was not shown in the said seniority list. The respondent No.4 was physically handicapped person with 65% disability and the same was reduced to 60% subsequently. In the seniority list published on 09.03.1998, petitioner

was shown at Sr. No.2 while respondent No.4 was shown at Sr. No.3 in the order of seniority. To the said seniority list, representation was submitted by respondent No.4 wherein he had alleged that the petitioner should be granted seniority w.e.f. 21.10.1994 and not w.e.f. 01.12.1992, as no deeming enlistment could have been done. The said representation was considered by the respondents and was rejected vide order dated 19.05.1998 by the Commissioner. Again it appears that the Commissioner has reexamined the matter and took a decision that there is no provision under the rules for deeming enlistment and the petitioner would have to be treated as promoted from 21.10.1994 and not the deemed date granted as 01.12.1992.

4. The petitioner has submitted that in CWP-3894-1996 and CWP-5011-1993, decided on 10.01.1997, the deemed date of petitioner's promotion as 01.12.1993, had been upheld. Thereafter, the petitioner preferred CWP-16452-1998, decided on 21.12.1999, wherein the petitioner and respondent No.4 were directed to appear before the Financial Commissioner, who would dispose of the matter in accordance with law. Whereafter the Financial Commissioner, passed an order on 07.08.2000, holding that the petitioner could not have been given deemed appointment from 01.12.1992, as there was no regular post of District Revenue Accountant on 01.12.1992 and further respondent No.4's appointment on the physically handicapped category did not require an independent advertisement and the appointment was against quota of physically handicapped. He further held that the petitioner is entitled to seniority w.e.f. 21.10.1994 i.e. the date of his regular appointment.

5. The petitioner further submits that there was a vacancy available as on 01.12.1992 and on that basis the petitioner had been promoted on temporary basis. He was promoted against the 18th roster point and therefore, submits that the Financial Commissioner committed an error in deciding the representation in favour of respondent No.4. The petitioner further prays for granting him all consequential benefits. It is further submitted that once this Court had already passed an order in favour of the petitioner, there was no occasion to again disturb the appointments.

6. The respondents have filed their reply and have submitted that appointment of the petitioner w.e.f. 01.12.1992 was contingent upon availability of post of Naib Tehsildar, falling to the quota of District Revenue Accountant and he therefore has no right of seniority from that date. He was, thus, promoted in excess of quota available for the employees seeking promotion. It is stated that an order was passed on 20.01.1993, which clarified that the petitioner will not claim quota under Rule 16 of the Punjab Naib Tehsildar Class-III) Service Rules, 1984, as he was promoted against the quota available for Kanugo and since no Kanugo was available, promotion was granted on ad hoc basis. The respondents have also pointed out that as per Rule 16 of the Rules, 1984 note, seniority of a person appointed on provisional basis was to be determined as and when he was regularly appointed.

7. This Court having noticed the respective submissions finds that the petitioner was regularly appointed/promoted on the post of Naib Tehsildar on 21.10.1994, whereupon his name was entered in Register-C under Rule 8 of the Rules, 1984 for his deemed enlistment. Thus, he would

be treated to have been regularly appointed from 01.12.1992. Since the quota of Kanugo was not available, it cannot be said that there was no vacant post available on the said date merely because the said post was to be originally filled by direct recruitment, a person promoted against a substantive vacant post would be entitled to claim his seniority from the said date. This Court also notices that in the earlier seniority list (supra), the petitioner has always been shown above respondent No.4 and the said seniority list was never challenged by respondent No.4. Hence, no change in the inter se seniority could have been done as their inter se seniority stood crystallized.

8. The judgment passed by this Court in CWP-3894-1996 and CWP-5011-1993, on 10.01.1997, granting similar benefit to one Baru Ram, who was also posted as Naib Tehsildar against the vacancy meant for the Kanugo and was therefore treated above the respondents therein, a different approach had been adopted in the case of the petitioner, which cannot be allowed. In view thereof, the petitioner cannot be said to have been wrongly allowed seniority from 01.12.1992.

9. The writ petition, therefore, deserves to be allowed and is accordingly allowed. The petitioner would be entitled to all consequential benefits.

10. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

19.01.2024
rajesh

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| 1. Whether speaking/reasoned? | : | Yes/No |
| 2. Whether reportable? | : | Yes/No |