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

(205) **CWP No. 3632 of 1999 (O&M)**
Date of Decision : 01.10.2024

Darshan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.L. Gupta, Advocate for the petitioner.

Mr. Swapan Shorey, Deputy Advocate General, Punjab.

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Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is that the petitioner has not been granted the promotion to the post of Excise & Taxation Officer though, the same has been granted to his junior. The prayer of the petitioner is for the grant of promotion to the post of Excise & Taxation Officer from the date the employee junior to the petitioner has been promoted.

2. The respondents have filed the reply, wherein, it has been submitted that the criteria of last five years ACR was fixed for considering the suitability of an employee for promotion to the post of Excise & Taxation Officer, which is a Class-I post and the record of the petitioner was 'Average', hence, the petitioner could not be promoted as he was not found suitable by the Departmental Promotion Committee.

3. Learned counsel for the petitioner controvert the said contention and submits that the 'Average' report was never conveyed to the petitioner, hence, the same cannot be taken into consideration to the disadvantage of the petitioner.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. From the pleadings, which have been noticed here-in-before, the suitability of the petitioner was to be adjudged keeping in view the five years record prior to the consideration of the claim of the petitioner for promotion to the post of Excise & Taxation Officer. The record of the petitioner which has been reproduced in the reply clearly shows that his record was not such so as to entitled him for promotion to be treated as a suitable, hence, the findings of the Departmental Promotion Committee that petitioner is not suitable, needs no interference.

6. The argument of the learned counsel that the ACRs, which have not been conveyed to the petitioner, cannot be treated as adverse. It may be noticed that as per the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 7631 of 2002 titled as ***Dev Dutt Vs. Union of India and others,*** decided on 12.05.2008, the Annual Confidential Report which has been taken into consideration was required to be supplied to the employee in case the same is being treated adverse so that the employee can make representation against the said report and in case the said report is upgraded, the benefit of the same could be given.

7. In the present case, the reply filed by the respondents as far back as on 14.07.1999. Despite the fact that the Annual Confidential Report of the

petitioner was not brought to his notice, learned counsel for the petitioner has not been able to submit that any representation was filed by the petitioner for upgradation of his ACRs. In the absence of any such representation filed, it has to be assumed that the petitioner remained satisfied with his ACRs.

8. That being so, no ground is made out for any interference by this Court with regard to the non promotion of the petitioner to the post of Excise & Taxation Officer.

9. Dismissed.

10. Pending miscellaneous application, if any, also stands disposed of.

October 01, 2024 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No