

**CWP-7720-2019****1****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****(240)****CWP-7720-2019****Date of Decision : August 12, 2024****Numesh Sharma****.. Petitioner****Versus****State of Punjab and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. B.S. Patwalia, Advocate, with
Mr. Gaurav Jagota, Advocate, for the petitioner.

Mr. Amarpreet Singh Bains, Assistant Advocate General,
Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance being raised by the petitioner is that on the basis of Annual Confidential Report of the year 2015-2016, the petitioner's promotion to the post of Clerk as granted to him on 09.08.2017 (Annexure P-7) has been withdrawn by the respondents vide impugned order dated 12.03.2019, a copy of which has been appended with this petition as Annexure P-9 and the petitioner has been reverted to the post of Peon.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The petitioner was appointed as a Peon on compassionate ground on 12.04.2012. Keeping in view the capability of the petitioner, he

**CWP-7720-2019****2**

was given the current duty charge of the post of Clerk on 06.11.2015. As per the Rules for the grant of promotion to the post of Clerk, a class IV employee is required to pass type test. The petitioner passed the said type test on 27.07.2017. Thereafter, along with the others, the petitioner was promoted to the post of Clerk vide order dated 09.08.2017 (Annexure P-7). While discharging the duties of the post of Clerk, the respondents passed an impugned order dated 12.03.2019 (Annexure P-9) whereby, the promotion of the petitioner to the post of Clerk was withdrawn on the ground that there was an adverse remarks in the ACR of the petitioner for the year 2015-2016 and the appeal filed against the said adverse remarks, has been rejected by the competent authority hence, in view of the said adverse remarks, the promotion of the petitioner to the post of Clerk cannot be held to be valid and the petitioner was ordered to be reverted to the post of Peon vide impugned order dated 12.03.2019 (Annexure P-9), which order is under challenge in the present writ petition.

4. Learned counsel for the petitioner argues that the reason which has been given by the respondents to withdraw the promotion of the petitioner, is incorrect. Learned counsel for the petitioner submits that though, certain observations were made by the Reporting Officer in the ACR of the petitioner for the year 2015-2016, but his overall grading was done as 'good officer' and it is only the overall grading which is to be seen for adjudging the suitability of a candidate for promotion hence, the order dated 12.03.2019 (Annexure P-9) and therefore, is liable to be set aside.

5. Learned counsel for the petitioner further submits that against certain remarks in the ACR for the year 2015-2016, the petitioner had also

**CWP-7720-2019****3**

filed an appeal before the higher authorities and in the comments submitted by the Officer recording the ACR, it has been made clear that there was no occasion where the petitioner did not obey his seniors or was adamant or indulged in subordination hence, once the view of the recording Officer are such, the said remarks could not have been taken into account so as to withdraw the promotion given to the petitioner and that too after a period of more than one and half year.

6. Upon notice of motion, the respondents have filed the reply wherein, they have submitted that the petitioner was on probation for a period of one year and as per the promotion order dated 09.08.2017 (Annexure P-7), the promotion of the petitioner could have been cancelled at any time in light of objection or any appeal or decision of the Court cases hence, as the petitioner had filed an appeal against the adverse remarks for the year 2015-2016 which appeal was dismissed on 20.08.2018, the impugned order withdrawing the promotion and reverting the petitioner from the post of Clerk to that of Peon, is perfectly valid and legal.

7. Learned counsel for the respondents submits that the overall grading of the petitioner in the ACR for the year 2015-2016 was to be recorded as 'Average' whereas, inadvertently the same was recorded as 'Good' hence, the impugned order reverting the petitioner from the post of Clerk to that of Peon is perfectly valid and legal.

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

9. From the facts which have been narrated hereinbefore, it is clear that it is only on the basis of certain observations of the Reporting

**CWP-7720-2019****4**

Officer with regard to the conduct of the petitioner for the year 2015-2016, the promotion given to the petitioner vide order dated 09.08.2017 (Annexure P-7) to the post of Clerk has been withdrawn. The only issue which needs to be adjudicated in the present case is whether the reason given by the respondents to withdraw the promotion of the petitioner is valid or not.

10. As per the record, the overall grading of the petitioner for the year 2015-2016 is 'Good'. That being so, the passing remarks which have been given by the Reporting Officer, were not so glaring so as to withdraw the benefit of promotion to the post of Clerk from the petitioner.

11. Further, as per the comments of the Officer who has recorded the remarks, which were sought during the pendency of the appeal filed by the petitioner against the adverse remarks, the said Officer has mentioned that the petitioner never refused to carry out any work but expressed his inability of going to the Head Office due to the illness of his mother and rather, recommended that certain remarks mentioned in the ACR of the petitioner be expunged.

12. Keeping in view the said observation of the Officer who recorded the remarks, the remarks that the petitioner indulges in indiscipline and do not obey senior, cannot be made a ground to withdraw the benefit of promotion extended to the petitioner especially when, overall grading of the petitioner remains 'Good' for the year in question.

13. Further, the argument of the learned counsel for the respondents that overall grading of the petitioner was inadvertent as the same was supposed to be 'Average' and not 'Good', nothing has come on

**CWP-7720-2019****5**

record that any authority such as accepting authority or approving authority has downgraded overall remarks of the petitioner from 'Good' to 'Average'. In the absence of any such action taken by the authorities concerned, the remarks which exist on the file of the petitioner for the year 2015-2016 are to be taken into account which remarks are 'Good' hence, the reason which has been given by the respondent authority to withdraw the promotion of the petitioner is not valid.

14. Keeping in view the above, the impugned order dated 12.03.2019 (Annexure P-9) is set aside. The petitioner is held entitled for all the benefits for the period he was not allowed to discharge his duties and the promotion of the petitioner as Clerk will be considered in continuance from the date of promotion i.e. 09.08.2017. The petitioner will be given the salary of the post of Clerk for the period he could not discharge the duties due to the passing of the impugned order along with arrears.

15. At this stage, learned counsel for the petitioner submits that though he has claimed interest but as per the instructions of the petitioner, he is not pressing the said claim for the grant of interest.

16. Let the present order be complied with within a period of eight weeks of the receipt of certified copy of this order.

17. The present writ petition is allowed in above terms.

August 12, 2024*harsha***(HARSIMRAN SINGH SETHI)****JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No