

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

(108)

CWP-7756-2024

Date of Decision : April 05, 2024

Rohtash Singh**.. Petitioner****Versus****State of Haryana and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Dilbagh Singh, Advocate, for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the challenge is to the order dated 12.01.2017 (Annexure P-5) by which, the representation filed by the petitioner in respect of the adverse remarks given in the Annual Confidential Report for the period from 01.04.2005 to 31.08.2005 has been dismissed as well as against the order dated 24.03.2023 (Annexure P-4) by which, the claim of the petitioner for the grant of 2nd ACP w.e.f. March, 2014 instead of March, 2016, has been declined.

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

3. The petitioner was working as a Helper with the respondent-Department and has since retired from service on attaining the age of superannuation while working on the post of Clerk w.e.f. 30.04.2022. The petitioner after retirement, raised a grievance that he was entitled for the

grant of 2nd ACP w.e.f. March 2014 whereas the said benefit has already been extended to the petitioner from March 2016 hence, the grant of said ACP should be antedated to March 2014 with all consequential benefits.

4. Keeping in view the service of advance copy of petition, Mr. Harish Nain, learned Assistant Advocate General, Haryana appears on behalf of the respondents and submits that keeping in view the facts and record of the writ petition, there was an adverse entry in the ACR of the petitioner in the year 2005-06 and keeping in view the said adverse entry, the record of the petitioner for the last 10 years which was to be seen for the grant of ACP, the petitioner could not be granted the benefit from the year 2014 and the same has rightly been granted from March 2016 when the said adverse ACR for the period 2005-06 remain out of the zone for consideration for the grant of ACP.

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

6. The grant of ACP is in lieu of non-promotion of an eligible employee despite being eligible in all respects. It is also a settled principle of law that 10 years record is to be seen for considering the eligibility of an employee for promotion.

7. In the present case, the petitioner is claiming the benefit of 2nd ACP from March 2014. It may be noticed that the ACR of the petitioner for the period 2005-06 was adverse. The said ACR comes within a period of 10 years in case the petitioner claims the 2nd ACP w.e.f March, 2010 hence, the petitioner was given 2nd ACP from March 2006 when the ACR for the period 2005-06, came out of the 10 years period zone. No illegality can be found in the said action.

8. The claim of the petitioner is that the said ACR was not communicated to him hence, could not have been taken into account.

9. It may be noticed that while the petitioner was in service, he had made a representation against the said ACR, which was rejected on 12.01.2017 (Annexure P-5). Once, the petitioner was communicated the said ACR and the representation against the adverse remarks had been rejected, the petitioner cannot raise a claim that stale ACR for the period 2005-06 has been taken into account for denying him the benefit.

10. Learned counsel for the petitioner submits that once the ACR was not conveyed at the time when the petitioner became eligible for the grant of benefit, the said report could not have been taken into account.

11. 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**, any uncommunicated adverse remarks cannot be taken into account and the employee needs to be given a chance to file representation against the same and in case the representation is accepted, the benefit should be extended. The relevant paragraph 48 of the judgment is as under:-

“ 48. We, therefore, direct that the 'good' entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date

of payment.”

12. In the present case, the ACR was communicated to the petitioner though after 2016 and the petitioner had also made a representation which was rejected in the year 2017 while the petitioner was in service and the petitioner choose not to challenge the said representation till he retired hence, the said ACR for the period 2005-06 has rightly been taken into account while deciding the eligibility of the petitioner for the grant of 2nd ACP from March 2014.

13. Learned counsel for the petitioner also relies upon the judgment of the Coordinate Bench of this Court in ***RSA No.1664 of 1989 titled as State of Haryana vs. Prem Parkash Gupta, decided on 05.07.1996.*** The said judgment will not help the case of the petitioner as in the present case, while the petitioner was in service, the said adverse report was communicated and even the representation was rejected.

14. Learned counsel for the petitioner submits that as per the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.5892 of 2006 titled as Sukhdev Singh vs. Union of India and others, decided on 23.04.2013,*** a direction has been given that all the entries should be conveyed to the employee concerned within a reasonable period.

15. It may be noticed that in the present case, before the present petition was filed, the adverse entry had already been conveyed to the petitioner and the same was already rejected in the year 2017. The petitioner choose not to challenge the said entry for a period of seven years before filing the present petition and only approached this Court after retirement hence, no benefit of the judgment of the Hon'ble Supreme Court of India in ***Sukhdev Singh's case (supra)*** can be extended to the petitioner.

16. No other arguments have been raised.

- 17.Keeping in view the above, no ground is made out for any interference by this Court in the present case.
- 18.The present writ petition is dismissed in above terms.

April 05, 2024(HARSIMRAN SINGH SETHI)
harshaJUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No