

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CWP No. 23496 of 2016 (O&M)**

Reserved on : 08.01.2024

Date of Decision : 19.01.2024

Dr. Bhupinder Pal Singh Gill

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Petitioner – Dr. Bhupinder Pal Singh Gill in person.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

Mr. Jagdish Mitter, Advocate, for respondent no. 5.

SANJEEV PRAKASH SHARMA, J.

The petitioner has preferred this writ petition praying for consideration for promotion to the post of Deputy Director in the Department of Health and Family Welfare with effect from the date his juniors were promoted with all consequential benefits.

2. The petitioner appeared in person and was heard. The judgment was reserved.

3. The facts which are required to be noticed for adjudication of the present case are that the petitioner had been promoted as Senior Medical Officer in the year 2008 and was in the zone of consideration for promotion to the post of Deputy Director. The petitioner has chequered history. In the year 2010, he was posted as Senior Medical Officer when he was served with a charge sheet dated 31.05.2010 under Rule 10 of Punjab Civil Services Punishment and Appeal Rules,

1970. He filed a reply to the same on 09.11.2010. Thereafter, the respondents did not decide the said charge-sheet. He preferred CWP No. 12410 of 2012, which was disposed of on 05.07.2012 with a direction to the respondents to decide the charge-sheet and pass a final order on the charge-sheet within three months. Respondent no. 2 did not decide the charge-sheet. The petitioner was called for personal hearing but no decision was taken, he, therefore, preferred COCP No. 3188 of 2012. The respondents thereafter passed an order punishing the petitioner with penalty of censure and also directed for making payment of Rs. 4459/-. The contempt petition was rendered infructuous. The petitioner preferred an appeal against the order of recovery. The State Government dismissed the appeal upholding the punishment of censure vide order dated 11.04.2013. The petitioner challenged the said order by filing CWP No. 22064 of 2014. This Court allowed the writ petition partly and quashed the appellate order dated 11.04.2013 vide its judgment dated 23.01.2017 with a direction to pass a fresh order in appeal by applying its mind.

4. The petitioner had made certain complaints relating to a particular lab and when he was transferred vide order dated 29.03.2013, he preferred CWP No. 8040 of 2013 challenging the said transfer order, which was disposed of with liberty to move representation to the Principal Secretary, Department of Health and Family Welfare, Punjab vide judgment dated 12.04.2013. It seems that on rejection of his representation, he preferred another CWP No.14170 of 2013 challenging his transfer order. The same was dismissed by this Court on 05.07.2013.

5. The petitioner was served with another charge-sheet on 08.07.2015 under Rule 8 of the Punjab Civil Service Rules, 1970. The petitioner alleged malafide and challenged the same by filing CWP No. 15356 of 2015 wherein this

Court held that preliminary enquiry was based on wrong facts and was with a purpose to harass the petitioner. Ultimately, the writ petition was allowed by this Court quashing the charge-sheet vide its order dated 03.07.2019.

6. Since in the meanwhile the petitioner was superseded on the post of Deputy Director by the Departmental Selection Committee, which was held on 30.07.2015, he filed writ petition before this Court.

7. The petitioner submits that the benchmark for consideration of promotion has to be achieved of minimum 12 marks by a candidate whereafter the promotion is to be given on seniority basis for the post of Deputy Director. The petitioner further submits that he only scored 11 marks and consequently the doctors junior to him were promoted. It is stated that he moved an application under the RTI Act for obtaining information relating to his ACRs from the year 2011 to 2015. He found that ACR for the year 2010-2011 was very good and the ACR for the year 2011-2012 was outstanding. ACR for the year 2012-2013 was average and for the year 2013-2014 was not recorded and for the year 2014-2015 was also mentioned as average. The petitioner had very good ACRs for the years 2005-2006 and 2006-2007 but the ACRs for the period 2007-2008 and 2009-2010 were treated as 'no report certificate' (NRC).

8. The petitioner further submits that the ACR for the year 2013-2014 was marked as outstanding by the Reporting Officer but the report was not provided for the year 2014-2015. The Reporting Officer marked him as very good but the same was reduced to average by the accepting authority without giving any reasons. The petitioner submits that for the year 2012-13, report was marked as average but the same was not communicated to him. For the year 2011-2012, he

was graded outstanding by the Reporting Officer but the accepting authority did not sign it. For the year 2010-2011, the ACR was recorded as very good. Thus, the petitioner submits that for the year 2012-2013 where the ACR was recorded as average, he was given only 1 mark, although said ACR could not have been looked into as the same was not communicated.

9. The petitioner further submits that he had been granted outstanding ACR by the Reporting Officer but merely that the Accepting Authority did not sign the ACR, it was not accepted. His ACR could not have been ignored for the year 2011-2012 and he ought to be given full marks for the said year. ACR for the year 2012-2013 was also not communicated to him whereas for the next year his ACR was recorded as outstanding by the Reporting Officer. Thus, the petitioner submits that if correct assessments were accepted, he would clear the benchmark and would be entitled for promotion as presently he has 4 outstanding, 3 very good, 2 good and 1 average. He submits that for each outstanding remarks, he is entitled to 4 marks, for very good remarks he is entitled to 3 marks, for good remarks he is entitled to 2 marks and 1 for average remarks. If so calculated, he would, therefore, get 12 marks and would achieve the benchmark and as per seniority, he would have been entitled for promotion in the year 2015.

10. Per contra, learned counsel for the respondents submitted that the case of the petitioner was considered in terms of Rule 18-B of the Punjab Civil Medical (State Service Clas-1) Rules 2003, which provides benchmark in Group-A post, as under:-

“(b) For promotion to the post falling in Group ‘A’ other than Head of Department, the minimum benchmark will be ‘Very Good’ as per

the instructions issued by the Government from time to time. There shall be no supersession on the basis of merit.”

11. ACR assessment has to be done in terms of Department of Personnel, Punjab, circular dated 06.09.2001 and as per instructions the system of evaluation of annual confidential reports provides as under:-

<i>Outstanding</i>	<i>4</i>
<i>Very Good</i>	<i>3</i>
<i>Good</i>	<i>2</i>
<i>Average</i>	<i>1</i>

12. It is stated that the petitioner was considered for promotion to the post of Deputy Director by the DPC which met on 24.08.2015 but he was not found fit for promotion as he did not fulfil the requisite benchmark. For the said purpose, last 5 ACRs were considered. It is stated that the petitioner was again considered for promotion to the post of Deputy Director in the subsequent year by the DPC which met on 20.09.2016 but he was again unable to clear the benchmark. The ACR for the years 2015-2016 was also considered and he was given 2 marks for grading of good. It is further submitted that ACR for the year 2012-2013 was not filed by the petitioner. It is also stated that ACR for the year 2013-2014 was received late and held not valid.

13. I have heard the petitioner in person and counsel for the respondents and also perused the written submissions of the petitioner.

14. It is a case where the ACRs of the petitioner have been downgraded for the period 2011-2012 and 2013-2014. For the year 2011-2012, the Reporting Officer recorded his ACR as outstanding and for the year 2012-2013, his ACR was downgraded as average along with an adverse remark. The same was accepted by

respondent no.2- Principal Secretary but was not countersigned by the Reviewing Authority/ respondent no.3/ the Director. The same was also not communicated to the petitioner. For the year 2013-2014, ACR was graded as outstanding by the Reporting Officer but on the premise that since it has been received late, the same was treated as NRC. No reasons have come forward for treating the ACR as NRC. The subsequent ACR of 2014-2015 was also graded as very good by the Reporting Officer but downgraded by the Accepting Authority to average. However, the downgrading was not communicated to the petitioner. ACR for the year 2014-2015 has not been checked by the Reviewing Officer.

15. In *Gurdial Singh Fijji vs The State of Punjab and others* 1979 (2) SCC 368, the Supreme Court held as under:-

“16. The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified. In these circumstances, it is difficult to support the non-issuance of the integrity certificate to the appellant. The chain of reaction began with the adverse report and the infirmity in the link of causation is that no one has yet decided whether that report was justified. We cannot speculate, in the absence of a proper pleading, whether the appellant was not found suitable otherwise, that is to say, for reasons other than those connected with the non-issuance of an integrity certificate to him.”

16. In **Dev Dutt vs Union of India and others** 2008(8) SCC 725, the Supreme Court held that annual confidential reports, both good or adverse, should be communicated to the public servant. It was held as under:-

“45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.”

17. In **Sukhdev Singh vs Union of India and others** 2013(9) SCC 566, the Larger Bench of Supreme Court while following the judgments in **U.P. Jal Nigam vs Prabhat Chandra Jain** 1996(2) SCC 363, **Dev Dutt** (supra) and **Abhijit Ghosh Dastidar vs Union of India** 2009 (16) SCC 146 held as under:-

“8. In our opinion, the view taken in *Dev Dutt* that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period.

9. The decisions of this Court in *Satya Narain Shukla vs. Union of India and others* 2006 (9) SCC 69 and *K. M. Mishra vs. Central Bank of India and others* 2008(9) SCC 120 and the other decisions of this Court taking a contrary view are declared to be not laying down a good law.”

18. In ***Kulwant Singh vs State of Punjab and others*** 2014 (1) SCT 361, this Court following the judgment of Supreme Court in *Dev Dutt*’s case (supra) held as under:-

“13. Firstly, such down-graded report was never brought to the notice of the petitioner. Even though, the Reviewing Officer has assessed the petitioner to be 'B' (Average) and the same, on the face of it, cannot be termed as adverse, but it is not the nomenclature that would be relevant. It is the effect which such down-graded Annual Confidential Report has, would in turn determine as to whether it is an adverse entry or not. In other words, it is the rigors of the entry which is important and not the phraseology. In the facts of the present case, the

down-graded report for the period in question i.e. 2006-2007 from 'B+' (Good) to 'B' (Average) has worked to the clear detriment and prejudice of the petitioner inasmuch as on account of such down-gradation, he has failed to secure the benchmark of 12 which he otherwise would have secured and thereby has been denied the benefit of promotion to the post of Executive Engineer. As such, even such down-graded report i.e. 'B' (Average) would be seen as adverse insofar as the service career of the petitioner is concerned and the same was required to be communicated to him. To such extent, there has been a complete negation of the principles of natural justice. A reference in this regard may be made to the judgment of the Hon'ble Supreme Court in Dev Dutt v. Union of India and others", 2008(3) SCT 429."

19. Keeping in view the aforesaid settled law, it is apparent that adverse remarks entered in the ACR for the year 2012-2013 and the downgrading of ACR for the year 2012-2013 could not be taken into account. The petitioner had already been given outstanding ACR for the previous year. In view of the law laid down in U.P. Jal Nigam (supra), the subsequent downgraded ACR, therefore, was required to be ignored. Similarly after the outstanding ACR for the year 2013-2014 and very good ACR for the year 2014-2015 could not have been downgraded to average and the said downgraded part of the ACR has to be ignored. The petitioner would, therefore, be entitled to count benchmark on the basis of the report given by the Reporting Officer.

20. It is apparent that the respondents have also not considered the ACR for the year 2013-2014 although the same was outstanding and treating it to be NRC because the same has been received late. There is no rule coming forward which has been brought to the notice of this Court that if the ACR is received late,

the same has to be treated as NRC. It is not the case where the officer has written the ACR after retirement.

21. In view of the above, this Court is satisfied that the petitioner achieves the benchmark and would be, therefore, entitled to be considered for promotion. It is also an admitted position that persons junior to him have been granted promotion in the year 2015-2016.

22. Keeping in view the above facts and circumstances, the present writ petition is allowed. The petitioner would be considered for promotion from the date his juniors were so promoted in the year 2015. Accordingly, he shall be entitled for revision of his pay as well as retiral benefits.

23. Since the petitioner has not worked on the higher post, he would be entitled to notional benefits for the period from 2015 to 2017 till he retired. However, after fixation of his salary on the higher post and notional increments, his pension shall be re-fixed and actual arrears of pension on re-fixation shall be released including that of gratuity and earned leave, etc. The entire arrears shall be released to him within a period of three months.

24. All pending applications shall stand disposed of.

25. No costs.

19.01.2024
vs

(SANJEEV PRAKASH SHARMA)
JUDGE

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No