

CWP-6962-2016 & CWP-6984-2016

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206/1

CWP-6962-2016
Date of Decision: 29.01.2024

Narender Singh

...Petitioner

Versus

Union of India and others

...Respondents

With

CWP-6984-2016

Pawan Kumar

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Rajeev Anand, Advocate for the petitioner
(in both petitions)

Mr. Anil Kumar Chawla, Senior Panel Counsel,
for Union of India-respondents
(in both petitions)

JAGMOHAN BANSAL, J. (Oral)

1. As the issue involved is common, with the consent of both sides, both the captioned petitions are disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *CWP No.6962 of 2016*.
2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of proceedings dated

12.08.2015 (Annexure P-5) of Department Promotion Committee (for short 'DPC') whereby petitioner has not been promoted.

3. The petitioner in 1994 joined Border Security Force (for short 'BSF') as Constable (General Duty). The petitioner in 2013 was attached with Frontier Headquarter of BSF, Punjab at Jaldandhar where he was assigned duty in Accounts Branch. In August' 2015, DPC met and considered case of different candidates for the purpose of promotion to the post of Head Constable. As per prescribed procedure, every candidate was supposed to secure 50% marks in three groups. The petitioner secured 50% marks in Group-I and Group-II, however, he was awarded 12 out of 25 marks in Group-III exam which was interview based. The petitioner made various representations against awarding 12 out of 25 marks in Group-III because it made him disentitled from promotion. The petitioner was posted with Headquarter and DPC was conducted at 50 Battalion, BSF. The Headquarter vide communication dated 12.11.2015 (Annexure P-9) intimated the Battalion that DPC in respect of petitioner should be re-conducted. The relevant extracts of communication dated 12.11.2015 read as:

“5. In relation to the above subject this HQ has conducted the detailed inquiry but is unable to clarify the reasons declaring the above personnel ineligible. But as per the Presiding Officer's remarks the above personnel have been given less marks in turnout and general awareness but in the DPC the above personnel have been given half mark less in nature of employment because of which the personnel have failed. The personnel have been given correct marks in other events because of which it is unclear that on what basis the personnel have been given less marks in part 3 of Group III

(nature of employment) whereas as per nature of employment the personnel are attached in Frontier HQ Jalandhar.

6. *Therefore, in relation to above subject it is requested to you that kindly inform if the DPC in relation to the above 2 personnel for promotion to the post of Head Constable dated 12 Aug 2015 can be conducted again another unit commandant so that the personnel can be correctly assessed and be satisfied.*

7. *In relation to above subject the concurrence of Inspector General Punjab Frontier has been taken in the case file.”*

The respondent did not conduct DPC because of flux of time and dissolution of panel.

4. Learned counsel for the petitioners submits that it is a case of grave injustice because petitioners have been intentionally failed by half mark. It is going to affect their career forever.

5. *Per contra*, learned counsel for the respondent submits that DPC, at this stage, cannot be re-conducted and this Court cannot look into marks awarded by DPC. The petitioners have already been promoted in the subsequent batch and any order of this Court, in favour of the petitioners, would adversely affect seniority of those candidates who have already been promoted. There are possibilities that many candidates have been further promoted to the post of ASI.

6. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

7. From the perusal of record it comes out that petitioner was supposed to secure 50% marks in all the three groups. He secured 22 out of 35

marks in Group-I and 40 out of 40 marks in Group-II. Group-III was interview based exam and he was awarded 12 out of 25 marks. He flunked by half mark.

8. This Court is not oblivious of the fact that Courts cannot look into the marks awarded by DPC. It is always prerogative of members of DPC to award marks because they get opportunity to examine a candidate. The DPC has conducted interview and every interview board has right to grant marks as per their assessment of the candidates. The Courts cannot substitute opinion of the interview board. The Court further cannot set aside decision of DPC or interview board until and unless Court finds that there was violation of statutory provisions or fundamental rights or procedure followed by the committee was unknown to law.

9. In the case in hand, exam was not a competitive exam where half mark was going to affect merit of others. The petitioner has performed appreciably in Group-I & Group-II still he has been awarded 12 marks whereas minimum required marks were 12.5. The letter dated 12.11.2015 supports cause of the petitioner. In view of these facts, this Court is *prima facie* of the opinion that there seems some mistake or intentional lapse on the part of members of DPC.

10. The petitioners have been promoted w.e.f. 09.09.2018. The colleagues of the petitioners have been promoted prior to the petitioners. If the proceedings of DPC are set aside or petitioners are granted concession of half mark, it would affect seniority of other candidates. Though, this Court in view of letter dated 12.11.2015 of the Headquarter finds that there was some lapse

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on the part of DPC, yet does not find it appropriate, at this belated stage, to disturb the seniority of colleagues of the petitioners.

11. In the wake of above discussions and findings, this Court is of the considered opinion that present petitions deserve to be disposed of without any order in favour of the petitioners. Accordingly disposed of.

(JAGMOHAN BANSAL)
JUDGE

29.01.2024
Mohit Kumar

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