



CWP-18413-2024

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

(120)

CWP-18413-2024

Date of Decision : August 06, 2024

Harpal Singh

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Naveen Sharma, Advocate, for the petitioner.

Mr. Amarpreet Singh Bains, Assistant Advocate General,
Punjab.**HARSIMRAN SINGH SETHI J. (ORAL)**

1. In the present writ petition, the prayer of the petitioner is that the petitioner has not been granted promotion to the post of Head-Warder though the same has been given to his junior hence, as the petitioner is senior, he has a preferential right of promotion as compared to the junior to the post of Head-Warder.

2. Learned counsel for the petitioner submits that in the impugned order dated 30.06.1995 (Annexure P-3), it has been mentioned that the record of the petitioner was such that it did not warrant the suitability of the petitioner for promotion to the post of Head-Warder and therefore, keeping in view the Annual Confidential Report of the petitioner for the relevant years, the claim of the petitioner for the grant of promotion already stands rejected whereas, the petitioner claims that he was not given the ACR which

have been treated adverse so as to make representation.

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3. Notice of motion.

4. Mr. Amarpreet Singh Bains, learned Assistant Advocate General, Punjab, who is present in the Court, accepts notice on behalf of the respondents.

5. Learned counsel for the respondents submits that no representation was ever received from the petitioner qua raising any grievance qua adverse confidential report and therefore, once the record of the petitioner, which stands as of now, is found to be adverse, the claim of the petitioner has been considered for promotion to the post of Head-Warder and the petitioner has not been found suitable for promotion and therefore, the petitioner cannot make any grievance.

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

7. It is a conceded position that as of now, keeping in view the annual confidential record of the petitioner, the claim of the petitioner was considered for promotion along with juniors but the petitioner was not found suitable and therefore, he was not granted promotion, which act on the part of the respondents, cannot be treated as arbitrary or illegal.

8. The second question which arises for consideration is whether, un-communicated Annual Confidential Report can be treated as adverse. Keeping in view 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***, in case any confidential record of an employee is being treated adverse, he/she is to be given opportunity to represent against the same and in case, the representation is accepted, the

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benefit is to be extended. The relevant paragraph 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.”

9. Keeping in view the above, the petitioner is given liberty to file appropriate representation raising grievance qua the recording of the Annual Confidential Report of the years 1992 to 1995 and in case after considering the said representation, the State upgrade the said confidential report, the consequential benefits be also given to the petitioner otherwise due speaking order on the claim of the petitioner be passed giving reasons for arriving at the conclusion.

10. The present writ petition is disposed of in above terms.

August 06, 2024*harsha***(HARSIMRAN SINGH SETHI)****JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No