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

CWP-22489-2020

Date of Decision: 05.03.2024

RANBIR SINGH**...Petitioner****Vs.****STATE OF HARYANA AND OTHERS****...Respondents****CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. U.K. Agnihotri, Advocate,
Mr. A.K. Agnihotri, Advocate and
Mr. Anshul Agnihotri, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the grievance of the petitioner is that though, he was found eligible for promotion to the post of Deputy Superintendent from the date employee junior to the petitioner was promoted i.e. Neerda Anand but, the petitioner has only been given promotion prospectively from 09.12.2020, which is arbitrary and illegal.

2. Certain facts may be mentioned for the correct appreciation of issue in hand. While the petitioner was working in the cadre of Assistants, he became eligible for promotion along with the other Assistants in the year 2014. The petitioner was at Serial No.03 in the seniority list in the cadre of Assistants to be promoted as Deputy Superintendent but the candidate at Serial No. 1, 2 & 3 in the seniority list namely Devinder Kumar, Sanjay Kumar and the petitioner Ranbir Singh were facing disciplinary proceedings due to which, their cases were deferred for further promotion to

the post of Deputy Superintendent and the candidate at Serial No. 4 in the seniority list in the cadre of Assistant namely Neerda Anand was promoted as Deputy Superintendent on 23.12.2014 (Annexure P-8). Thereafter, the disciplinary proceedings against all the 03 employees attained finality after which date, a fresh Departmental Promotion Committee was constituted to find out as to whether, the petitioner along with the other two candidates, who were superseded by Neerda Anand are entitled for promotion to the post of Deputy Superintendent or not, if yes, from which date.

3. The Departmental Promotion Committee in its meeting held on 09.10.2018 considered the cases of all the candidates including the petitioner as well as Devinder Kumar and Sanjay Kumar and found that Devinder Kumar was only eligible for promotion as Deputy Superintendent from 01.07.2016 after the currency of the punishment which was being faced by him was over whereas, Sanjay Kumar and the petitioner/Ranbir Singh were found entitled for promotion to the post of Deputy Superintendent from the date when employee junior to him w.e.f. 23.12.2014 was promoted.

4. In order to implement the recommendation of the Departmental Promotion Committee, Sanjay Kumar was promoted to the post of Deputy Superintendent with effect from the due date i.e. 23.12.2014 (Annex. P-8) as recommended by the Departmental Promotion Committee vide order dated 31.10.2018, copy of which has been appended as Annexure P-13 whereas, the petitioner was not promoted on the ground that there is no availability of the post in the cadre of Deputy Superintendent so as to give effect to the recommendation of the Departmental Promotion Committee

dated 09.10.2018.

5. Feeling aggrieved against the said action, the present petition has been filed with the prayer that the respondents be directed to grant the promotion to the petitioner to the post of Deputy Superintendent with effect from the date the employee junior to the petitioner were promoted though notionally as given in the case of Sanjay Kumar.

6. In reply, the respondents have again taken a stand that though the Departmental Promotion Committee found the petitioner eligible for promotion to the post of Deputy Superintendent from 23.12.2014 but as there was no post of Deputy Superintendent, the promotion could not be effected.

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

8. It may be noticed that during the pendency of the present petition, the petitioner has already been promoted to the post of Deputy Superintendent w.e.f. 09.12.2020. The only question which remains to be answered is whether, the petitioner is to be granted the retrospective promotion to the said post from 23.12.2014 notionally or not.

9. It is a settled principle of law that the promotions to the higher post are to be effected on the basis of the seniority being enjoyed by the employee concerned and it is a conceded position in the present case that the employees in the cadre of Assistant who were placed at serial no.1 to 3 in the seniority list were facing departmental proceedings due to which their cases were deferred for promotion and the employee placed at serial No. 4 in the seniority list in the cadre of Assistant namely Neerda Anand was

found eligible and was promoted on 23.12.2014.

10. After the grant of the said promotion, the departmental proceedings which were pending against the employees attained finality and after those departmental proceedings attained finality, the respondents had constituted a review meeting with the Departmental Promotion Committee so as to make appropriate recommendations *qua* the promotion of the senior employee to the post of Deputy Superintendent.

11. It is a conceded position, which is clear from Annexure P-13 that the petitioner along with Sanjay Kumar was found eligible for promotion to the post of Deputy Superintendent from 23.12.2014. The said recommendations has already been accepted *qua* Sanjay Kumar and he has already been given the benefit of notional promotion to the post of Deputy Superintendent from 23.12.2014. The non-implementation of the said recommendation *qua* the said petitioner is only on the account that no post was available.

12. It may be noticed that in case, after the said disciplinary proceedings were over and the petitioner was found eligible for promotion to the post in question he is entitled for promotion from the date he was recommended by the Departmental Promotion Committee and the grant of benefits cannot be deferred on the ground that there is no post available. In case there is no post available then the junior most employee has to make way for the senior employee, but in the present case, as the candidate at serial No.4 who was already working on the said post, in the fitness of things, the respondent should have created a supernumerrary post so as to adjust the petitioner from the said date i.e. 23.12.2014.

13. As mentioned earlier that the petitioner has already been promoted during the pendency of the present petition as Deputy Superintendent, the respondents are directed that a supernumerary post be created for the petitioner for promotion for the interregnum period for the notional promotion of the petitioner as a Deputy Superintendent and the petitioner be granted the said promotion as Deputy Superintendent from the retrospective date as recommended by the Departmental Promotion Committee i.e. 23.12.2014. It is made clear that except for retrospective promotion, no other benefit will be extended to the petitioner especially the financial benefits. Though the pay and other allowances of the petitioner will be fixed by taking into consideration the notional promotion but no arrears will be given to the petitioner for the period he did not perform the duties on the post of Deputy Superintendent. Let the order be complied within a period of 08 weeks from the date of receipt of the certified copy of the order.

12. The present petition is allowed in above terms.

(HARSIMRAN SINGH SETHI)
(JUDGE)

05.03.2024

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