



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

**CWP No.29006 of 2023
Date of Decision:22.05.2024**

Vikas Sharma

....Petitioner

VS.

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

**Present: Mr. Rajeev Anand, Advocate
for the petitioner**

**Mr. Paul S.Saini, Senior Panel Counsel
for the Union of India**

**Mr. Himanshu Sharma, Advocate
for respondents No. 2 and 3**

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of orders dated 05.09.2023 (Annexure P-18) and dated 30.09.2023 (Annexure P-19) passed by respondent No. 3 whereby his request for re-consideration for promotion has been rejected.

2. The grievance of the petitioner is that he was awarded Grade 'Very Good' in the APAR of 2020-21. His marks in the said APAR were



considered 75 i.e., minimum of the range of marks in the rating of 'Very Good', resultantly, he could not be promoted.

3. Mr. Himanshu Sharma, Advocate submits that petitioner's APARs of five years were considered. He was awarded 75 marks in APAR of 2020-21 and even if he is awarded 89 marks i.e. maximum of the range of marks in the rating of 'Very Good', he would not be able to achieve marks obtained by the last selected candidate.

4. Faced with this, Mr. Rajeev Anand, Advocate submits that marks awarded of 2020-21 APAR are going to affect his future prospects, thus, cause survives and matter needs to be re-considered. Similarly, marks awarded for APAR of 2021-22 are 75 which would also affect his future prospects.

5. Mr. Himanshu Sharma, Advocate submits that a candidate is promoted not merely on the basis of APAR whereas 50% marks are of interview and group discussion.

6. I have heard the arguments and perused the record with their able assistance.

7. Supreme Court in **State of Jharkhand vs. Linde India Limited, (2022) 107 GSTR 381** while dealing with scope of interference of High Court under Article 226 of the Constitution of India in such matters has observed:

"7. As per the settled position of law, the High Court in exercise of powers under article 226 of the Constitution of India is not sitting as an appellate court against the findings recorded on appreciation of facts and the evidence on record. The High Court ought to have appreciated that there was a detailed



inspection report by a six members committee who after detailed enquiry and inspection and considering the process of manufacture of steel specifically came to the conclusion that the work of oxygen is only of a "refining agent" and its main function is to reduce the carbon content as per the requirement. The said findings accepted by the assessing officer and confirmed up to the Joint Commissioner-revisional authority were not required to be interfered with by the High Court in exercise of powers under article 226 of the Constitution. The High Court lacks the expertise on deciding the disputed questions and more particularly the technical aspect which could have been left to the committee consisting of experts."

8. Supreme Court in case of **Caretel Infotech Limited vs. Hindustan Petroleum Corporation Limited, (2019) 14 SCC 81** has observed that Constitutional Courts ought not to substitute their view against administrative decision. The relevant extracts of the judgment read as:-

"38.....It has been cautioned that Constitutional Courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute their view for that of the administrative authority. Mere disagreement with the decision-making process would not suffice."

9. Concededly, weightage of APAR is only 50% marks whereas 50% marks are of interview and group discussion. The petitioner has secured less marks than the last selected candidate. He is not primarily successful because of lower marks in interview and group discussion. Nevertheless, the

scope of interference of High Court in specialized domain i.e. evaluating the competence of an employee is very limited.

10. In view of the above facts & circumstances and judgments of Supreme Court, this Court is of the considered opinion that present petition is bereft of merit, thus, deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

22.05.2024
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:		No