



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

**CWP No.9652 of 1999(O&M)
Date of Decision: 29.01.2025**

Ram Niwas

....Petitioner

VS.

The Haryana State Agriculture Marketing Board, Panchkula

....Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. R.K.Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner
Mr. Padam Kant Dwivedi, Advocate and
Ms. Mansi, Advocate
for the respondent

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 21.03.1999 (Annexure P-10) whereby his claim for further promotion has been rejected.
2. The petitioner joined respondent-The Haryana State Agriculture Marketing Board, Panchkula as Junior Engineer. He got Bachelor Degree in Engineering in August' 1990. A junior namely Anil Garg came to be promoted with effect from 12.10.1990 to the post of Sub Divisional Engineer (SDO). The petitioner preferred CWP No. 8154 of 1993 before this Court assailing promotion of Anil Garg. The said petition came to be allowed vide order dated 31.03.1994. The promotion of Anil Garg was set aside and respondent was directed to re-consider claim of the petitioner. The



respondent re-considered claim of petitioner and rejected vide order dated 18.05.1995. The respondent in the order dated 18.05.1995 noticed that petitioner is at Sr. No. 101 in the seniority list and Mr. Mukesh Arora, Shayam Sunder Arora and Ramesh Kumar Garg are at Sr. Nos. 80, 81, 94 respectively. Until and unless seniors are promoted, the petitioner cannot claim promotion. It was also noticed that there are adverse remarks in the ACR of Ram Niwas-petitioner for the year 1981-82 and 1985-86. He was not communicated adverse remarks recorded in the ACRs. On getting copy of adverse remarks, he filed representation before the authorities and vide order dated 15.12.1998, the competent authority expunged adverse remarks from his ACRs. The ACR was upgraded as "Good". He again filed representation to respondent to consider his case for promotion as per direction of this Court. The respondent again rejected his claim vide order dated 22.03.1999 on the ground that disciplinary proceedings are pending against him and his seniors are yet to be promoted. The departmental proceedings came to be dropped vide order dated 20.01.2000. The respondent during the pendency of instant petition considered claim of the petitioner and promoted him vide order dated 21.01.2000. The promotion has been made on *ad hoc* basis as a stop gap arrangement.

3. Mr. R.K.Malik, Senior Advocate submits that claim of petitioner was not considered along with case of Anil Garg. Indubitably, Anil Garg was junior still he was promoted. This Court set aside promotion of Anil Garg and directed the respondent to re-consider petitioner's claim. The respondent initially rejected his claim on the ground that there were adverse remarks in the ACRs and thereafter on the ground that there was



pending charge sheet. The adverse remarks were expunged and charge sheet was dropped, thus, he was entitled to promotion from the date his junior Anil Garg was promoted.

4. *Per contra*, Mr. Padam Kant Dwivedi, Advocate submits that there is not a single case of promotion of petitioner's junior. Anil Garg was wrongly promoted and his promotion was set aside by this Court. There were three seniors of petitioner and they were promoted in 1998. They were initially promoted on *ad hoc* basis as a stop gap arrangement and later on made permanent as soon as vacancies were found available. There was no vacancy against which petitioner can be promoted and he was promoted in 2000 as soon as departmental proceedings were dropped and vacancy was found available.

5. I have heard learned counsel for the parties and perused the record with their able assistance.

6. From the perusal of record and arguments of counsel for both sides, it is evident that petitioner's junior Anil Garg was wrongly promoted and his promotion was set aside by this Court, thus, claim of petitioner that he should be promoted from the date his juniors were promoted is unsustainable especially when there were three seniors who were not promoted alongwith Anil Garg. The petitioner was not considered at the first instance because as per order dated 18.05.1995, three seniors were available and there were adverse remarks in his ACRs for the year 1981-82 and 1985-86. The adverse remarks were expunged on 15.12.1998. There was charge sheet against the petitioner which was pending since 1993. The said charge sheet was dropped on 20.01.2000. It means the adverse remarks



recorded in ACRs were expunged on 15.12.1998 and charge sheet was dropped on 20.01.2000. In the interregnum, the seniors were promoted. They were given *ad hoc* promotion from 1991 and their *ad hoc* promotion was made regular in 1998 but with effect from 19.04.1991. The promotion is not a matter of right, however, every employee has right of consideration. The authorities are bound to consider claim of every employee in accordance with law. In a case where promotion is granted on the basis of seniority, no junior can claim promotion prior to his seniors. The petitioner is claiming promotion from the date his junior was promoted. The promotion of his junior has already been set aside and his seniors have been promoted with effect from 19.04.1991. The petitioner has been granted promotion with effect from 21.01.2000. There is nothing on record disclosing whether the promotional post was available during 1991 to 2000.

7. In the wake of above discussion and findings, the petition stands disposed of with a direction to respondent to consider whether any promotional post was available during April’ 1991 to January’ 2000. If any post was available, the petitioner is entitled to said post because he has already been exonerated in departmental proceedings and adverse remarks stand expunged.

8. The needful shall be done within six months from today.

9. Pending Misc. application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

29.01.2025
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:	Yes	