



CWP-12037-2021

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

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CWP-12037-2021 (O & M)
Date of decision: 21.02.2025

Rajbir Singh

....Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.K.Arora, Advocate,
for the petitioner.

Ms. Shruti, AAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is for quashing the order dated 19.12.2014, 22.09.2016 conveyed on 09.03.2021, and memo dated 31.08.2020, whereby claim of the petitioner for grant of ACP benefit, had been rejected, as also for releasing the same.

2. The premise of the order, learned counsel submits, being his ACR(s) to be below average, which have not been conveyed, are liable to be disregarded at the time of re-determination, as has been held in **Dr. Gurdev Singh Bhardwaj vs. State of Punjab and others** 2013(1) RSJ 474, placing reliance on the judgment of Hon'ble the Supreme Court in **Dev Dutt vs. Union of India** (2008) 8 SCC 725, against which LPA has



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been dismissed vide order dated 20.12.2012, relevant paras thereof read thus:

“12. Following the dictum laid down by the Apex Court, it is clear that the average report relating to the year 2005-06 which clearly had an adverse effect insofar as consideration of the petitioner for purposes of promotion to the higher post of Senior Medical Officer, was required to be conveyed to him. Accordingly, it is held that the ACR for the year 2005-06 having not been communicated to the petitioner was liable to be ignored while determining the bench mark.

13. That apart, I find that the respondent-authorities have acted arbitrarily in not considering the ACR of the petitioner for the year 2007-08. The right of an employee to be considered for promotion is a fundamental right under Article 16 of the Constitution of India. It is not just a right of consideration but, in fact, an obligation cast upon the employer to afford a fair consideration to an employee in terms of the principles of service jurisprudence. It has been admitted that the petitioner had been graded 'very good' for the year 2007-08 and such report had been duly received but was not available at the time of preparation of agenda submitted before the Departmental Promotion Committee. This cannot be a basis for denying to the petitioner the grading in terms of assigning three numbers for such 'very good' report for the year 2007-08.

14. Learned counsel appearing for the petitioner would bring to my notice that the petitioner has since retired on 29.2.2012, having attained the age of superannuation.

15. Accordingly, I allow the present petition in terms of directing the respondent-authorities to reconsider the claim of the petitioner for promotion to the post of Senior Medical Officer in terms of determining the bench mark afresh by ignoring the ACR for the year 2005-06 and in terms of taking into account the five previous ACRs i.e. for the years 2008-09, 2007-08, 2006-07, 2004-05 and 2003-04. It is further directed that if in pursuance to such exercise, which shall be concluded positively within a period of



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three months from the date of receipt of a certified copy of this order, the petitioner fulfils the requisite bench mark, then orders shall be issued promoting the petitioner to the post of Senior Medical Officer on a notional basis. The petitioner in such eventuality would also be held entitled to notional pay fixation on the post of Senior Medical Officer as on the date of his superannuation and would be released the revised pensionary/retiral benefits accordingly.”

3. Hon’ble the Supreme Court allowed the appeal in **Rukhsana Shaheen Khan vs. Union of India and others** 2019(1) Apex Court Judgments (SC) 231, observing that the uncommunicated Annual Confidential Reports (ACRs), which are adverse to the appellant, should have been relied upon for the purpose of consideration of the appellant for promotion, in view of the decision of this Court in Sukhdev Singh Vs. Union of India & Ors. reported in (2013) 9 SCC 566, and thus directed the competent authority to ignore the uncommunicated adverse ACRs and take a fresh decision in accordance with law, affording an opportunity of hearing in the process to the appellant.

4. The aforesaid facts having been brought out, during the course of hearing, learned State counsel, on instructions, states that the respondents shall re-examine the matter and decide afresh, taking into account the aforesaid judgments and ignoring the uncommunicated ACR(s), within a period of 6 months, uninfluenced by the orders impugned in the present case, which this Court has no reason to believe the authorities would not address in a just, fair and reasonable manner.

5. The aforesaid satisfies the learned counsel for the petitioner.

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6. The matter stands disposed of accordingly and if the petitioner is found entitled, grant the benefit forthwith. Needless to say, if the orders are adverse to his interest, the same may be passed after granting opportunity of hearing to him and shall contain reasons, whereupon he shall be free to seek legal redress thereupon.

21.02.2025

parveen kumar

(AMAN CHAUDHARY)
JUDGE

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