



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

1210

CWP-11001-2009 (O&M)

Date of decision: 19.05.2025

Duni Chand

....Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ishaan Bhardwaj and Ms. Meenakshi Thakur, Advocates
for the petitioner

Mr. Charanpreet Singh, AAG Punjab

AMAN CHAUDHARY, J. (ORAL)

1. Learned counsel submits that the petitioner has not been granted the ACP benefit on completion of 32 years of service, on account of the fact that he did not have 2 good ACRs out of 3, as required. In this regard, he submits that the petitioner was suspended on 04.08.2000 till 04.07.2002 and as per their own showing in para 2 of the counter affidavit dated 28.06.2010 filed by Deputy Director Administration, Department of Technical Education and Industrial Training, Punjab, it has been mentioned that for the year, 2001-2002, no ACR was recorded, being under suspension on the same analogy for 2000-2001, also this should have been the case instead of showing it as Average. Had this been done, his two ACRs for the year 1999-2000 and 2003-2004, could have been taken into consideration which were infact Good.

2. The average ACR(s) also ought to have been conveyed and if not 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 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 re-consider 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 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 would not be averse to having a relook at the matter and decided afresh, uninfluenced by the order impugned within a period of 6 months,, 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.

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.

(AMAN CHAUDHARY)
JUDGE

19.05.2025

M.Kamra

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