

CWP-25729-2017

2025:PHHC:017488



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

206

CWP-25729-2017

Date of decision: February 04, 2025

DEVA NAND

....Petitioner

Versus

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

**Present:- Ms. Anju Arora, Advocate
for the petitioner.**

Mr. Tapan Kumar, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 9.5.2017 (Annexure P-6), to the extent, whereby, the monetary benefits of promotion to the post of Assistant Revenue Clerk have not been granted to the petitioner w.e.f 4th December 2007. The prayer of the petitioner is for grant of all consequential benefits including monetary benefits and inclusion in the name of seniority list of Assistant Revenue Clerk w.e.f the date of his promotion i.e 4th December 2007.

Learned Counsel for the petitioner submits that the petitioner is a physically handicapped person, who suffers from a permanent medical disability to the extent of 40%. She contends that the respondents circulated a seniority list of the Canal Patwaris wherein the name of the petitioner is reflected at serial number 1234 in the physically handicapped category and his date of joining as regular Canal Patwari has been specifically mentioned as 1st October 1997. She



submits that various persons have been promoted amongst Canal Patwaris to the rank of Assistant Revenue Clerk vide office order No.2984/A-II/NGE-III/2007 dated 4.12.2007. A total of 192 persons were promoted as Assistant Revenue Clerks vide the said order and persons till Sr. No.705 in the seniority list of Canal Patwaris as on 1.11.2007 were considered and promoted.

It is argued by the counsel for the petitioner that the respondent-Department did not follow the roster with respect to the promotion for the persons belonging to the other physically handicapped category, accordingly, CWP-924-2014 titled 'Deva Nand Vs. State of Haryana and others' was filed and the same was allowed by a Co-ordinate Bench of this Court vide order dated 27.5.2016 directing the respondent-Department to consider the case of the petitioner for promotion to the post of Assistant Revenue Clerk in the light of the judgement of Hon'ble the Supreme Court in the case of **Ajit Singh and Others Versus State of Punjab and Others 1999 (7) SCC 209** directing the Govt departments to reserve 3% posts for promotion for the disabled persons in terms of the guidelines issued by the Ministry of Personnel dated 20.11.1989. Counsel for the petitioner contends that despite the writ petition being allowed, the petitioner was not promoted, resultantly, the petitioner was compelled to file COCP-328-2017. During the pendency of the said contempt petition, the respondents passed an office order No.1118/A-II/NGE-III/2017 dated 9th May 2017, whereby, the promotion was granted to the petitioner w.e.f 4.12.2007 but the benefits of seniority and other financial benefits, were, however, not extended. The petitioner accordingly submitted a representation to the respondents dated 22.9.2017 for being given the said consequential benefits along with the deemed date of seniority with effect from 4th December 2007, however, no decision was taken thereupon. Hence, the present writ petition.



It was further argued by the petitioner that during the pendency of the writ petition, the respondents again initiated the process to withdraw the order of promotion that was extended to the petitioner and by virtue of an interim order, the operation of the show cause notice was stayed. She submits that the petitioner has been pursuing his right of promotion along with the consequential benefits including financial benefits and seniority, however, the same have been denied to the petitioner for no valid reasons.

Learned counsel appearing on behalf of the respondents states that it is not disputed that the petitioner has been denied the benefits as noticed above, however, he submits that the Department has already initiated the process of fixing seniority w.e.f 4.12.2007 as reflected in the status report filed by way of an affidavit of Jaideep Rao, General Manager, Irrigation and Water Resources Department, Haryana on 8.9.2023. He submits that vide letter dated 20.9.2022, the Department had called the service record of 15 Canal Patwaris including the petitioner for promotion to the post of Assistant Revenue Clerk but no other process was initiated since the promotion of the petitioner had already been stayed by this Court vide order dated 16th October 2018. It is also stated that as per the instructions dated 1.07.2022 issued by the Government of Haryana and in compliance of order passed by this Court dated 19.12.2022, the roster register of PwD category employees has been prepared in which as per above mentioned PwD Act, the name of petitioner is under consideration at Serial No.1 as the petitioner is visually handicapped. The same was submitted to the Director, Department of Social Justice and Empowerment, Haryana on 27th June 2023 for verification. After verification of the roster register and the final decision, the further action can be taken accordingly. Even on resumed hearing, counsel submits that certain queries have been posed by the Directorate of Social Justice



and Empowerment which is also in the reply and the decision is awaited. Learned State counsel further submits that the official from the Department had informed him that a decision shall be taken within a period of 45 days and that all admissible benefits shall be released to the petitioner. He contends that he is not in a position to name the employee who had come on behalf of the Department since the said employee has left without informing and waiting for the case to be taken up.

I have heard learned counsel appearing on behalf of the respective parties and have carefully perused records of the case. It is evident from perusal of the same that there is no dispute with respect to the entitlement of the petitioner to the grant of the promotional benefits with effect from 4th December 2007. The lapse, if any, was solely on the part of the respondent-Department in not adhering to the roster which was required to be determined by them. Any lapse on the part of the Administrative Department in not adhering to its own Instructions cannot be made the basis to justify denial of the benefits to an employee at the time when the same became due. Further notwithstanding that the lapse was entirely on the part of the respondent-Department itself, yet, the petitioner has been compelled to litigate. It is presumably the third round of litigation where the petitioner is seeking what was his rightful entitlement, thus, defeating the very object of extending a benevolent promotion in favour of the persons with disabilities. The conduct of the State thus reveals an inherent contradiction. While the beneficial statutory legislations have been notified by the Parliament to provide financial support and benefits to the persons who come under the disability category, however, in the actual application of the above, the officials of the respondent-State have shown complete lack of sensitivity and have been compelling the employee herein to litigate at each and every step to



claim what is his rightful entitlement. Such a ministerial attitude of the respondent-Department has been deprecated by this Court on numerous occasions.

The respondent-Department submitted before this Court during the course of the arguments, that in case no response is received from the Directorate/ the Department of Social Justice and Empowerment, yet, they shall take a decision after a period of 45 days. I see no reason as to why the appropriate procedure has not been followed right from the very beginning and over a period of nearly 8 years when this writ petition has remained pending.

The response of the State is reactionary and not proactive, whereas the statutory intent was for a proactive response and extending benefits of social welfare in favour of the employees who deserved such concessions and benefits.

The present writ petition is accordingly **disposed of** with the following directions:-

- (i) The respondent-Department shall take a decision within a period of 45 days from today in relation to the roster point fixation.
- (ii) Since, it has also been admitted in the roster that the name of the petitioner is already at serial no.1 in the Visually handicapped category and he is entitled to be promoted from the same date, hence, the admissible benefits to the petitioner on the deemed date of promotion along with consequential benefits and seniority shall be extended to the petitioner within a period of 45 days thereafter.



In case the needful is not done within the said period, the officials incharge shall be liable to pay a cost of Rs.50,000/- to the petitioner for denying the rights of the petitioner and for harassing him unnecessarily.

Apart therefrom, a litigation cost of Rs.50,000/- is also imposed upon the respondent-Department for showing complete laxity, insensitivity and non adherence to their own Instructions as well as the object of the Act. This additional cost of Rs.50,000/- shall be deposited with the PGIMER Poor Patients Welfare Fund. However, the respondent-authority shall be at liberty to effect recovery of this amount from the guilty officials.

At this juncture, the State counsel submits that he was orally informed that even if the reply is not received from the Department of Social Justice and Empowerment, they would still take a decision within a period of 45 days. He further states that since he was orally informed and the official is not present, hence, the said aspect may be scored off, however, I find myself unable to agree with the aforesaid contention. This Court has no reasons to disbelieve that the State counsel would make any statement without any intimation or information by the concerned officials. Having deputed to assist the State counsel, it is the responsibility of the official to remain present at the time when the matter is taken up. Since the said official has chosen to stay away from the Court proceedings, the Director, Irrigation Department is also directed to initiate the disciplinary proceedings against him. Let the final outcome of the disciplinary proceedings be intimated to this Court within a period of six months.



Pending misc. applications, if any, also stand disposed of accordingly.

February 04, 2025
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(VINOD S. BHARDWAJ)
JUDGE

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