



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

112

CWP-35111-2024 (O&M)

Date of decision: 20.02.2025

Naresh Kumar

...Petitioner

VERSUS

State of Haryana and others

...Respondents

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

Present :- Mr. Ram Darshan Yadav, Advocate for the petitioner(s).

VINOD S. BHARDWAJ, J. (Oral)

1. Challenging the order dated 22.08.2024 vide which the claim of the petitioner for promotion to the post of Superintendent w.e.f. 21.06.2010 alongwith other consequential benefits has been declined and praying that promotion be granted to the petitioner with effect from the date when his juniors have been promoted.

2. Learned counsel appearing on behalf of the petitioner contends that father of the petitioner was working with the respondent-department when he expired on 01.08.1988, while in service. After obtaining sanction from the Chief Secretary on 15.01.1990, the petitioner was offered appointment whereupon he joined the respondent-department on 08.05.1990. The petitioner was later promoted as an Accountant on 27.10.2008. He has been performing his duties very honestly and diligently to the complete satisfaction of the superiors. He submits that one-Sh. Ratti Bhan Chopra, who belongs to the reserved category, was also appointed and had joined as

Clerk in the Department on 21.05.1990 i.e. after the appointment of the petitioner and he was promoted to the post of Accountant on 25.11.1998 against reservation. The respondent-Department issued final (amended) seniority/gradation list of Clerks/Accountant/Information Centre Assistant (District Cadre) as per the instructions issued by the Chief Secretary, Haryana vide letter dated 20.02.2013, as on 01.04.2016 wherein the name of the petitioner was mentioned at Sr. No.10 alongwith his date of entry into Government service as 08.05.1990 whereas name of Sh. Ratti Bhan Chopra was mentioned at Sr. No.11 being junior to the petitioner. Accelerated promotion was granted to Sh. Ratti Bhan Chopra since he belonged to a reserved category and he was later promoted to the post of Superintendent on 21.06.2010 against reserve roster point.

3. Learned counsel appearing on behalf of the petitioner contends that Sh. Ratti Bhan Chopra cannot be granted accelerated seniority over and above the petitioner and that on being promoted to the post of Accountant, the petitioner was to be placed above Sh. Ratti Bhan Chopra. He further contends that the issue as regards scale of pay to be commensurate with the seniority came up before this Court in **CWP-5956-2008** titled as '**Charan Dass vs. State of Haryana**', which was decided in favour of the petitioner therein vide judgment dated 18.11.2008. In compliance thereto, the State of Haryana issued instructions dated 05.03.2009 and 23.11.2009 for stepping up of pay of senior general category employees at par with the junior counter-parts of reserved category and decided to give the benefit of stepping up of pay to the general category employees. He submits that notwithstanding the petitioner being senior to Sh. Ratti Bhan Chopra, he was

however, promoted to the post of Accountant on 27.10.2008 and that as per the catch-up Rule, he was required to be given his seniority above Sh. Ratti Bhan Chopra and thereafter to be promoted to the post of Superintendent. He also claimed that the arrears of enhanced pay w.e.f. 25.11.1998 i.e. the date when Sh. Ratti Bhan Chopra was promoted to the post of Accountant be also released to him. Since no action was taken by the respondent(s) on the claim raised by the petitioner, CWP-7422-2016 was filed before this Court, which was disposed of vide order dated 25.04.2016 directing the respondents to take a decision on the legal notice dated 26.11.2015 served by the petitioner.

4. In compliance thereto, the respondent-Department rejected the prayer of the petitioner by relying on the instruction dated 18.12.2013 holding that any official cannot claim seniority towards further promotion merely on the basis of stepping up of his pay which is given notionally from the date of actual promotion of his junior belonging to reserved category. The said order of rejection dated 17.11.2016 was again impugned by the petitioner by filing CWP-27122-2016 with a further prayer that the petitioner be promoted to the post of Superintendent, being senior to Sh. Ratti Bhan Chopra, in light of the law laid down in the matter of **Ajit Singh Januja-II and others Vs. State of Punjab and others** reported as **1999 (7) SCC 209**. The said writ petition, however, was dismissed by this Court vide order dated 23.12.2016 being pre-mature.

5. The petitioner thereafter preferred another detailed representation on 06.04.2017 requesting that he be promoted to the post of Superintendent, being senior to Sh. Ratti Bhan Chopra, considering that 19 posts of Superintendents were lying vacant, hence, the name of the petitioner

too could be included for promotion. As no decision was taken on the same, the petitioner alongwith other similarly situated co-employees approached this Court vide CWP-28658-2017 titled as 'Padam Lata and others Vs. State of Haryana and others'. During the pendency of the said writ petition before this Court, the respondents passed an order dated 21.02.2022 promoting the petitioner alongwith 16 other employees to the post of Superintendent (District Cadre) in the pay-scale of Rs.9300-34800+4200 Grade Pay with immediate effect. The name of the petitioner figured at Sr. No.1 in the order. Even though the claim of the petitioner was for grant of promotion to the post of Superintendent w.e.f. 21.06.2010, however, through the impugned order, the petitioner was promoted w.e.f. 21.02.2022. The above CWP-28658-2017 was accordingly disposed of as having been rendered infructuous and liberty was granted to the petitioners to file an appropriate representation and directions were issued to the respondents to decide the same in accordance with law, vide order dated 29.04.2022.

6. A detailed representation was submitted yet again claiming promotion to the post of Superintendent (District Cadre) w.e.f. 21.06.2010 i.e. when his junior Sh. Ratti Bhan Chopra, a candidate of reserved category, was promoted. The respondents, however, did not take any decision on the same whereupon CWP-4206-2024 was filed before this Court, which was disposed of vide order dated 23.02.2024 with a direction to the respondents to decide the said representation dated 29.08.2023. However, despite the same, decision was not taken compelling filing of COCP-2594-2024 before this Court. It was during the pendency of the above COCP, that the impugned order dated 22.08.2024 has been passed by the respondents, which

is now a subject matter of challenge in the present writ petition.

7. Learned counsel appearing on behalf of the petitioner contends that the impugned order is liable to be set aside since the petitioner is entitled to grant of promotion to the post of Superintendent w.e.f. 21.06.2010 whereby his junior had been granted promotion. He further submits that the petitioner being senior to Sh. Ratti Bhan Chopra, hence, he becomes senior on his promotion under the catching up formula. He further submits that the action of the respondents in not promoting the petitioner to the post of Superintendent on 21.06.2010 despite being senior to Sh. Ratti Bhan Chopra was contrary to law and that the respondents have deliberately given undue benefit to the private respondents. It is accordingly prayed that the order of granting promotion w.e.f. from the date of the order be modified, the benefit of promotion w.e.f. date when his junior was promoted be extended to the petitioner.

8. No other argument has been raised nor any judgment cited.

9. I have heard the learned counsel appearing on behalf of the petitioner and have gone through the impugned order as well as the documents appended thereto.

10. It is evident from a perusal of the order under challenge that even though the petitioner was senior to Sh. Ratti Bhan Chopra (Superintendent retired), however, Sh. Ratti Bhan Chopra was promoted to the post of Accountant in the pay-scale of Rs. 5000-7850/- revised to Rs.9300-34800+3200 Grade Pay having been granted benefit of reserved category on 25.11.1998 while the petitioner was promoted to the post of Accountant on 25.10.2008 i.e. nearly after about 10 years. Subsequently,

Sh. Ratti Bhan Chopra was promoted to the post of Superintendent in the pay-scale of Rs.9300-34800+4200 Grade Pay vide order dated 02.04.2010. On his promotion, the petitioner was also given the stepping up of pay at par with Sh. Ratti Bhan Chopra notionally w.e.f. 25.11.1998 i.e. the date on which Sh. Ratti Bhan Chopra had been promoted. Sh. Ratti Bhan Chopra was further promoted to the post of DIPRO in the pay-scale FPL-8 +200/- Spl. Pay on 19.06.2020 while the petitioner was promoted to the post of Superintendent in the pay-scale FPL-7 on 21.02.2022. Hence, as on the date when the petitioner was promoted to the post of Superintendent, Sh. Ratti Bhan Chopra i.e. the junior of the petitioner had already been promoted to the next higher post. It was also recorded by the competent authority that the Govt. of Haryana had issued instructions vide letter No.22/10/2002-3/GSIII dated 16.03.2006 and had provided for the benefit of accelerated seniority to the Scheduled Caste employee. The same was found to be in consonance with Clause 4A of Article 16 of the Constitution of India entitling consequential seniority to the promoted reserve category employee as well. Hence, being a reserved category candidate, the said employee got entitled for benefit of accelerated seniority, as a necessary consequence of promotion under reservation policy, and thus became senior to the petitioner w.e.f. 21.06.2010 and he was further promoted to the post of DIPRO as per his own seniority. It is also noticed by the competent authority that as per the applicable service rules, for being promoted to the post of Superintendent (District Cadre), an experience of 10 years as an Accountant was required to be possessed by a person. When the petitioner was promoted to the post of Accountant on 25.10.2008, he had an experience of 01 year and 07 months

25 days as Accountant and thus did not fulfill the eligibility criteria for the post of Superintendent as on 21.06.2010. He was thus ineligible for further promotion to the said post. The relevant part of the impugned order reads thus:-

“7). The main grievance of the petitioner is re-fixation of the date of his promotion from 21.02.2022 to 21.06.2010 to the post of Superintendent (District Cadre) and consequential benefits thereof. The said claim is being raised by the petitioner on the ground that Sh. Rati Bhan Chopra, a reserved category candidate who is junior in service to him, was granted promotion to the said post of 'Superintendent (District Cadre)' w.e.f. 02.04.2010.

8). The above said contention of the petitioner is not legally tenable on the ground that Government of Haryana vide instructions having letter no. 22/10/2002-3/GSIII dated 16.03.2006, extended the benefit of 'accelerated seniority' to Scheduled Caste employees. The same was in accordance with clause 4A of Article 16 of the Constitution of India, which enables the benefit of 'consequential seniority' in promotions for Scheduled Castes Candidates. Admittedly, Sh. Rati Bhan Chopra was appointed under reserved category. Being a reserved category candidate, Sh. Rati Bhan Chopra was promoted to the post of 'Accountant' on 25.11.1998, whereas the petitioner was promoted to the post of accountant on 25.10.2008 (joined on 27.10.2008). Thus in accordance with

above said instructions, Sh. Rati Bhan Chopra was entitled for the benefit of 'accelerated seniority' as a necessary consequence of promotion under reservation policy and became senior to the petitioner. Thus claim of the petitioner regarding seniority and promotion with back date i.e. 21.06.2010 with consequential benefits is against law and facts and deserves to be rejected.

9.) The claim of petitioner for further promotion is also liable to be rejected because as per service rules applicable to the post of 'Superintendent (District Cadre), ten years of experience as 'Accountant' is required for promotion to the post of 'Superintendent (District Cadre) and on 21.06.2010 i.e. the date from which petitioner is claiming promotion he was having experience of 01 year 7 months and 25 days as 'Accountant'. The petitioner did not fulfil the eligibility criteria for promotion on 21.06.2010 and thus was ineligible for promotion to the said post. The above said position of law also gets fortified from the observations of the Hon'ble Supreme Court of India in R. Prabha Devi vs. Union of India. In that case the Hon'ble Supreme Court observed that,

"XXXXXX...Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the

post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor can override it in the matter of promotion to the next higher post."

Seniority and eligibility are distinct concepts in service jurisprudence. Seniority by itself cannot prevail where a senior lacks eligibility for promotion to a higher post (See in this context Palure Bhaskar Rao v. P Ramaseshaiah. Even if the contention of the appellant on the applicability of the catch-up rule were to be accepted, that will not obviate the requirement of his fulfilling the condition of eligibility for promotion to the next higher post, on the date when the vacancy occurred."

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11) *It may be pertinent to mention that the present petitioner challenged the promotion of Sh. Rati Bhan Chopra and claimed arrears of salary from 1998 by filing a Civil Writ Petition no. 27122 of 2016 before the Hon'ble High Court against the State of Haryana and others on the same grounds as raised by way of present representations. The said CWP was dismissed by the Hon'ble High Court being, premature, however, the Hon'ble High Court while dismissing the said petition made certain observations which is reproduced below:*

"This is a special case where 4th respondent has been promoted by operation of the rule of reservation which is

a fundamental right under Article 16(4) of the Constitution to which no one can have a complaint. Neither can second promotion of the 4th respondent to Level III be challenged because that is also on the basis of reserve roster point and if it is not on the reserve roster point, being a Class !! post, then the promotion would have come by operation of the instructions of the Haryana Government of 1980 explaining how in Haryana reservation from Class III and IV posts promotions are made against vacancies arising out of retirement, promotion, dismissal and death",

The Hon'ble High Court while rejecting the said claim observed as follows:

"But the prayer in the writ for promotion to the post of Superintendent because the 4th respondent has been promoted in 2010 is not tenable since there are 10 General Category candidates above the petitioner whose rights have to be considered first. In any case, no person junior to the petitioner in the General Category has been promoted as Superintendent. Therefore, this petition is premature and is dismissed as such."

In view of the above discussions, claim of the petitioner in his representation for re-fixation the date of promotion to the post of 'Superintendent' along with all consequential benefits from the date Sh. Rati Bhan Chopra was promoted devoid of

merit and hence liable to be rejected.

Ordered accordingly.”

11. During the course of arguments, learned counsel appearing on behalf of the petitioner has failed to refer to any instruction/office order or judgment on the basis whereof the reasons assigned by the respondents may be held to be bad, illegal or in violation of any statutory provision or law laid down by the Hon’ble Supreme Court. In the absence thereof, the present writ petition is ***dismissed in limine***.

20.02.2025

Mangal Singh

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

(VINOD S. BHARDWAJ)
JUDGE