

2025:PHHC:066033



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

244

CWP-34481-2024
Date of Decision: 16.05.2025

DEVENDER KUMAR

... Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

... Respondents

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

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Jangjit Singh Dahiya, Advocate
for the petitioner.

Mr. Aman Bahri, Addl. A.G., Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Aggrieved of being repeatedly and unjustifiably overlooked for promotion to the post of 'B' Class Tehsildar for vested interests, the instant writ petition has been filed.

Counsel for the petitioner submits that the respondents had, vide notification dated 31.12.2021, initiated the departmental process for filling up the posts of 'B' Class Tehsildars by way of promotion. The eligibility criteria, as per the said process, required that the candidate(s) possess five years of experience as a Kanungo. The petitioner, fully satisfying the prescribed requirement, submitted his application within time. However, in a glaring act of administrative apathy — if not deliberate omission — the respondents refrained from making any recommendation solely on the ground that the petitioner was the only eligible candidate for the two vacant posts. This, counsel contends, is

both illogical and untenable in law. It is further submitted that the rejection of the petitioner's candidature on 21.03.2022, citing negligible or non-receipt of sufficient recommendations, is a mere facade deployed to justify an otherwise undefendable action.

FACTS

The petitioner was appointed as a Patwari on 09.06.1997 and later promoted to Field Kanungo and then to Office Kanungo. Vide office order dated 01.06.2016, he was given charge of Sadar Kanungo. He worked as such till 04.10.2016 when the post was filled up by promotion of one Shiv Dass. Ram Pal, who was senior to the petitioner was to be promoted to the post of Naib Sadar Kanungo but he gave up his promotion. While Shiv Dass, Sadar Kanungo was suspended. He retired on 31.03.2017, so the charge of the post was given to the petitioner w.e.f. 24.03.2017 and he continued to work as such and he also discharged duties against the vacant post of Naib Tehsildar. The petitioner was officially promoted as Naib Sadar Kanungo vide order dated 22.06.2017 and as Sadar Kanungo vide order dated 17.07.2018.

Vide Memo dated 31.12.2021 applications for selection to the post of 'B' Class Tehsildar were invited from eligible candidates, which *inter alia* required 5 years' experience as District Kanungo.

The case of the petitioner was forwarded by D.C., Sonipat vide Memo dated 08.01.2022 showing that total experience of the petitioner was five years and one month and of his ACRs of last 10 years- 8 were 'outstanding' and 2 were 'very good'. The same was also forwarded by the Divisional Commissioner Rohtak vide Memo dated 11.02.2022. The matter was informed to be closed vide memo dated 21.03.2022 due to negligible recommendation

and service book of the petitioner was returned. Needless to mention that in the recommendation of the petitioner it was clearly reported that no vigilance proceedings were pending against the petitioner.

Vide Memo dated 15.04.2022, applications were invited yet again for 'B' Class Tehsildar. Case of the petitioner was recommended yet again by the D.C. vide Memo dated 11.05.2022 and reporting that no departmental, criminal or civil action or any complaint or charge sheet was pending against him and that there was no adverse entry.

Interviews for the post were fixed for 15.06.2022 but no intimation was received by the petitioner whereupon he sent a letter dated 08.06.2022 to the F.C.R. A communication was received regarding pending of FIR No.5 dated 08.12.2021 under Sections 167, 218, 420, 467, 468, 471, 120-B IPC registered at Police Station S.V.B., Rohtak against the petitioner. An explanation was sought from the petitioner by the D.C. Sonipat on 09.06.2022 to which reply was sent on the same day that petitioner is not an accused in the said FIR and that he had only received a notice under Section 160 Cr.P.C. to produce record of mutation Nos. 774 and 775 dated 25.05.1970 of Village Sultanpur and the same was provided on 10.03.2022. The mutations were sanctioned much before the petitioner entered service in 1997.

The clarification was immediately sent by the D.C. to the FCR on 10.06.2022 about allegation of involvement of the petitioner were incorrect and there had been no concealment.

But as no action was taken, hence, the petitioner filed CWP-13489 of 2022 titled as 'Devender Kumar Versus State of Haryana' wherein this Court directed provisional consideration of the petitioner. The result was produced on

15.09.2022 and it was informed that there were 2 vacant posts of 'B' Class Tehsildar, out of 16 and that petitioner was at No.3.

The counsel submits that the respondents had deliberately not given details of the available vacancies in the advertisement but in any case, one more person had already retired on 13.09.2022 i.e. before even the result was declared.

Since the issue was raised only in a note to the result, the petitioner filed a replication to the said effect and also apprised that 8-9 posts had become vacant before consideration and issuance of appointment letters on 13.09.2022. Details of 06 persons promoted as DRO on the same date i.e. 13.09.2022 alongwith retirement of Joginder Bhutani; Pyare Lal and Ramesh Chand Tehsildar from September 2022 to July 2023 were also furnished. The CWP-13489-2022 was disposed of vide order dated 04.01.2024 directing the State to consider the claim of the petitioner for promotion and to pass appropriate order.

The State, however, submitted that no one has been appointed to the post of 'B' Class Tehsildar, whereupon it was directed that as and when promotion is made, the claim of petitioner shall be considered.

State also, however, later issued appointment orders of 2 persons on 14.10.2024 ignoring the specific direction of the High Court in its order dated 04.01.2024 and despite vacancies being available. The petitioner immediately submitted a representation to consider him and to appoint him on 23.10.2024 but instead of acceding to the same, the respondent issued fresh advertisement on 11.11.2024 for filling up posts of 'B' Class Tehsildars. The names were to be sent by 01.12.2024. The record of the petitioner was, however, with the respondents as appointment to earlier two candidates were

issued only on 14.10.2024 and not sent to the D.C. The same was returned only in the last week of December i.e. after the last date of applying to disallow the petitioner to apply again. Hence, the present writ petition.

ARGUMENTS BY PETITIONER

Learned Senior Counsel has emphatically argued that this Hon'ble Court, vide a reasoned order dated 04.01.2024, was pleased to dispose of the CWP-13489-2022 by directing, in unequivocal terms, that the petitioner's claim for promotion could not be negated merely on account of the pendency of a vigilance inquiry, especially when no such bar exists under the applicable Service Rules. Furthermore, a clear and binding direction was issued to the effect that as and when promotions to the post of 'B' Class Tehsildar are made, the case of the petitioner shall be considered strictly on merits, and no adverse inference shall be drawn against him solely due to the pendency of any vigilance inquiry.

It is thus submitted that the respondents, having been bound by the said order of this Hon'ble Court, are duty-bound to consider the petitioner's candidature before issuing appointment to two persons on 14.10.2024 without invoking extraneous and legally untenable objections. The operative part of the direction issued by this Court in its order dated 04.01.2024 is extracted as under: -

"Keeping in view the above, a direction is issued to the respondents-State to consider the claim of the petitioner with regard to the promotion of the petitioner to the post of 'Class B-Tehsildar and pass appropriate order."

In case, the petitioner makes-up for promotion to the post of 'Class B-Tehsildar' according to the merit obtained, the benefit of promotion to the post of 'Class B-Tehsildar' be granted to the petitioner alongwith other similarly situated candidates who were found eligible for promotion to the post of 'Class B-Tehsildar', with all consequential benefits such as seniority as well as the pay-scale of 'Class B-Tehsildar'.

Learned counsel for the respondents-State submits that as of now, no one has been appointed on the post of 'Class B-Tehsildar'. That being the factual position qua promotion it is directed that as and when the promotion to the post of 'Class B-Tehsildar' will be made, the claim of the petitioner will be considered on merit without there being any objection qua the pendency of any vigilance report so as to withhold the promotion of the petitioner to the post of 'Class B-Tehsildar'.

In case the petitioner is found eligible and meritorious enough for the post of 'Class B-Tehsildar', he will be promoted to the post of 'Class B-Tehsildar'.

The present petition is disposed of in above terms.

The original record which have been kept as Annexure-A starting from page No. 130 to page No.143 alongwith the paper book of this Case is returned back to the State counsel which has been further handed over to Mr. Sunil Sangwan, Assistance, office of FCR & ACS, Revenue and Disaster Management Department, Chandigarh in the Court today itself for considering the claim of the eligible candidates for the promotion to the post of 'Class B-Tehsildar' in accordance with the recommendations of Departmental Promotion Committee and the photocopy of the said record be retained as Annexure-A with the present case for further purposes."

(Emphasis supplied)

Learned Senior Counsel for the petitioner further submits, with considerable anguish, that the respondent-authorities proceeded to initiate the process of recruitment to the post of 'B' Class Tehsildar, perpetuating a cycle of arbitrary exclusion and administrative indifference. The petitioner asserts that, at the time of initiation of the said recruitment process, a total of six posts were admittedly lying vacant, and the petitioner stood at Serial No. 3 in the seniority list. Yet, in complete disregard of the petitioner's rightful entitlement, the respondents chose to recommend only two candidates—those at Serial Nos. 1 and 2—while deliberately omitting any recommendation in respect of the petitioner, despite the availability of four unfilled vacancies.

It is submitted that although the said recommendations were made on 14.10.2024, the respondents, in a conspicuously hasty and unexplained manner, initiated a fresh selection process on 11.11.2024. The last date for submission of applications under this new process was 01.12.2024. However, the service record of the petitioner—which was in the possession of the respondent-authorities—was not returned to him in time to enable submission of a formal application. The petitioner contends that his service record was returned only on 26.12.2024, rendering it practically impossible for him to comply with the application requirements within the stipulated time.

Consequently, the petitioner was unlawfully precluded from applying for the said post, not due to any lapse on his part, but solely due to the administrative conduct of the respondents. Even thereafter, despite the fact that as many as nine persons were recommended for promotion to the post of 'B'

Class Tehsildar in March 2025, the petitioner's claim was once again entirely ignored.

The purported justification offered by the respondents that the petitioner did not submit an application is, it is submitted, wholly unsustainable in law and fact. Learned Senior Counsel points out that the petitioner's service record was already with the authorities, who were thus fully aware of his eligibility, seniority, and credentials. In this regard, reliance is placed on the decision of a learned Single Judge of this Hon'ble Court in **Vinod Kumar v. DHBVN Ltd., CWP No. 3403 of 2015**, decided on 02.08.2016, wherein under analogous circumstances, it was held that non-submission of a formal application cannot be treated as fatal when the employer already possesses the complete service record of the employee and is otherwise duty-bound to consider all eligible candidates for promotion.

It is thus contended that the repeated exclusion of the petitioner, under the garb of technicalities manufactured by the respondents themselves, is a classic case of denial of legitimate expectation, arbitrariness, and hostile discrimination, warranting the urgent and unequivocal intervention of this Hon'ble Court. The relevant extract of the same is reproduced hereinafter below: -

“4. The only reason assigned to deny the petitioner promotion is that he did not submit his representation for promotion by the cutoff date i.e. July 31, 2011. This is a specious plea based on an improper premise that one must ask for promotion like a beggar otherwise he will be denied consideration. Since all the material facts relating to the petitioner are in his service book and available in custody of the promoting authority it remains under bounden

duty to place his name in the DPC for its consideration to make recommendations. In any case, in the matter of seniority and promotions there can be no discrimination in passing by names without valid reason. The right to seniority is a shared right with others. In the impugned order it is not disputed that respondents No.5 & 6 are junior to the petitioner. It is no argument or defence that the petitioner's name was added in the revised ranking list of 2011 after he made a representation in the matter. The petitioner has been wrongly ignored for promotion when his juniors were considered and promoted.

5. *Accordingly, the writ petition is allowed with costs assessed at Rs.10,000/- to be paid to the petitioner. The impugned order is thereby quashed by writ of certiorari issued. The petitioner is held entitled to consideration for promotion from the date when his juniors were promoted to the higher post with all consequential benefits flowing therefrom. A direction is issued to the respondent-Nigam to pass corrective orders immediately and promote the petitioner as Junior Engineer, if there is nothing else against him, which seems unlikely in the face of the impugned order, and thereafter calculate the monetary benefits arising and pay the same to him within one month from the date of receipt of a certified copy of this order. Copy of this order be sent to the respondents for due compliances.”*

Learned Senior Counsel for the petitioner further submits that the legal position enunciated in Vinod Kumar v. DHBVN Ltd., which forms the cornerstone of the petitioner's argument, has attained finality and binds the respondent-authorities. It is submitted that the judgment rendered by the learned Single Judge in the said case was challenged by the employer in LPA No. 205 of 2017 before a Division Bench of this Hon'ble Court, which came to be dismissed vide order dated 09.08.2017. Thereafter, a further challenge was laid

before the Hon'ble Supreme Court by way of SLP No. 502 of 2018, which too was dismissed vide order dated 02.02.2018.

In light of the above, it is contended with emphasis that the ratio decidendi laid down in the case of Vinod Kumar (supra) to the effect that non-submission of an application cannot be made a ground to deny promotion when the employer already has the service record of the candidate and is aware of his eligibility, now stands affirmed up to the level of the Hon'ble Apex Court.

Therefore, the petitioner's claim for consideration to the post of 'B' Class Tehsildar could not lawfully have been rejected merely on the ground that he did not submit a fresh application in response to the recruitment process initiated on 11.11.2024, particularly when such non-submission was directly attributable to the delay on the part of the respondent-authorities in returning his service record. It is thus submitted that the respondents, by failing to consider the petitioner for promotion despite full knowledge of his eligibility and entitlement, have acted in patent contravention of the binding precedent, and in derogation of the principles of fairness, equity, and justice.

ARGUMENTS BY STATE

Per contra, learned counsel for the respondent-State contends that, with respect to the initial recruitment process for promotion to the post of 'B' Class Tehsildar in the year 2021, no appointments were made, and as such, no grievance can be raised in relation thereto. It is further submitted that in the subsequent selection process initiated in April 2022, only two vacancies were notified, and appointments were made in favour of two candidates, who were

admittedly senior to the petitioner and ranked higher in the order of merit on 14.10.2024.

The learned State Counsel does not dispute that in the recruitment process commenced on 11.11.2024, the petitioner's claim was not considered on account of non-submission of a formal application by him.

Significantly, learned State Counsel is unable to contest the existence or the binding nature of the judgments cited on behalf of the petitioner, including the decision in Vinod Kumar v. DHBVN Ltd., which stands affirmed by the Division Bench of this Hon'ble Court in LPA No. 205 of 2017 and by the Hon'ble Supreme Court in SLP No. 502 of 2018. No contrary authority has been brought to the notice of this Court by the respondents to rebut the legal position so settled.

CONSIDERATION AND DECISION

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The sequence of facts as delineated above is not in dispute and stands admitted by the respondent-State itself. That the respondent-authorities have repeatedly initiated the process for promotion to the post of 'B' Class Tehsildar by convening meetings of the Departmental Promotion Committee and inviting applications on three separate occasions, prior to the institution of the present writ petition, is an undeniable and irrefutable fact on record.

The first recruitment process was unceremoniously dropped on the ostensible ground that only negligible eligible candidates were available.

Thereafter, in the second round initiated in April 2022 for filling two posts, the petitioner, though eligible, was arbitrarily excluded on the ground of pendency of a vigilance inquiry. Such exclusion, this Court noted with emphasis, was impermissible, by a learned Single Judge of this Court vide order dated 04.01.2024 passed in CWP No.13489 of 2022, wherein it was held that pendency of a vigilance inquiry did not operate as an embargo in the applicable service rules as a disqualification for consideration. Although no direction was issued to consider the petitioner in that particular round due to the absence of a formal recommendation and a statement that no one was being appointed, it was clearly directed that in any subsequent process, the claim of the petitioner must be considered on merits, without regard to the pendency of any such inquiry.

Despite such judicial determination, the respondents initiated appointment of two candidates on 14.10.2024 and a renewed selection process in quick succession on 14.11.2024 disregarding the petitioner, who stood undisputedly at Serial No. 3 in the seniority list. The stand of the respondents that only two vacancies existed and were filled accordingly, is found by this Court to be not only disingenuous but demonstrably dishonest and mischievous.

The pleadings show that the petitioner specifically pleaded about vacant posts in paragraphs No.27, 32, 36(vi) (xi) and (xii). The respondent State in its reply has chosen to maintain a conspicuous silence on the number of vacancies available. Since the burden lay on the State to show that only 2 vacancies were available, the entire vacancy position ought to have been given to support its stand. Its silence despite petitioners' emphatic and repeated arguments coupled with documentary evidence shows that the State Authorities were not being fair to the Court as well.

State, with huge resources and legal expertise at its command cannot plead lack of awareness about significance of vacancy position when State's claim about vacancy position is disputed. Withholding best information, cannot be devised as a means to delay proceedings or testing Courts and instead consequences shall fall sooner hitherto. State cannot be permitted to behave as a cunning litigant and has to remain impersonal and truthful in its replies and narratives – a quality which is found severely lacking and deficient in the everyday litigation that falls for consideration of this Court every day. The respondents admit in paragraph No.5 of the preliminary submissions that there were 9 vacant posts for which the promotion was undertaken in November 2024 – a process to which petitioner could not apply since his entire service record was retained by the respondents. The specific allegations levelled by petitioner in the writ petition about record not being returned before cutoff date in paragraph No.35 and 36(ix) are evasively replied to by saying that the preliminary submissions No.2 to 10 be read as a part of the same and even the said preliminary submissions do not dispute the claim or give the date of return of the service record and no document to prove its return has been appended. Needless to mention that entire dispatch is regularly maintained in the normal course and there was no way that this information would not be available with the respondents. The petitioner gave details of return of record on 26.12.2024 in paragraph No.5 of the replication to the preliminary submissions but yet no rejoinder countering the fact was ever filed.

It seems that the State is too full of pride and brimming arrogance that it has forgotten its prime role of treating all subjects with equality and compassion. It cannot wear an unlawful conduct as a badge of honour.

This Court has specifically also confronted the learned counsel for the State with the manifest incongruity in the respondent's conduct—if, as claimed, only two vacancies were available under the Group-B quota for Sadar Kanungos/District Kanungos in the October 2024 selection process, how then did the respondent-State initiate another recruitment process barely three weeks later, on 11.11.2024, for nine additional posts? No satisfactory or plausible explanation has been tendered in reply. The respondents' pleadings conceal more than they reveal and the Court cannot help but conclude that the stand of the State is *per se* dishonest, arbitrary, and actuated by malice.

The records filed do not reflect that only two vacancies existed in the cadre as claimed. On the contrary, the fact that the process to fill up nine more posts was initiated immediately on 11.11.2024—just three weeks after the recommendation of two persons—belies any claim of vacancy constraints and instead points to a calculated strategy to keep the petitioner out of the zone of consideration. This Court is persuaded to conclude that the repeated acts of exclusion of the petitioner was not accidental, but deliberate and premeditated.

Such exclusion was facilitated by the adoption of a novel and insidious methodology: the petitioner's service record was withheld by the respondents, and thereafter, the very absence of his application—arising due to the non-availability of his record—was cited as the reason to deny him consideration. The factual position remains undisputed—applications were invited on 11.11.2024 with a closing date of 01.12.2024, and the petitioner's record was returned only on 26.12.2024, weeks after the deadline had lapsed.

This conduct, far from being benign, is eloquent of the mala fide intent that governed the respondent-State's actions.

This Court cannot turn a blind eye to such administrative impropriety. The pattern of conduct adopted by the respondent-State reveals a conscious effort to subvert the process of fair consideration and frustrate the petitioner's rightful claim to promotion. It is evident that the State acted not as a neutral employer, but as a prejudiced actor, driven by considerations wholly extraneous to merit and legality. In doing so, the respondent-State has exposed its intent to undermine the rule of law and has, in effect, sacrificed fairness at the altar of institutional caprice.

In view of the fact that the final outcome of the instant recruitment process was made subject to the decision in the present writ petition, formal appearance of the private respondents was not necessary.

In view of the foregoing discussion, this Court is left with no manner of doubt that the instant writ petition is meritorious and deserves to be allowed.

Accordingly, the writ petition is allowed. The respondent-authorities are directed to consider the case of the petitioner for promotion to the post of 'B' Class Tehsildar afresh under the recruitment process initiated in April 2022 followed by appointment in October 2024. The entire break up of available vacancies as in April 2022 shall be given and if more than two posts were vacant on the said date, the order of promotion shall be issued w.e.f. 14.10.2024 when appointment was issued to two other persons. If the vacancy position was actually two posts then the claim of the petitioner be considered

under the recruitment process initiated on 11.11.2024, by treating the petitioner as a candidate fully eligible and within the zone of consideration, notwithstanding the absence of a formal application, which was occasioned solely due to the withholding of his service record by the respondents themselves. The recommendation and appointment of the petitioner be completed within two months of receipt of a certified copy of this order. The consequential benefits shall be released notionally from the date when actual promotion was made of other similarly placed persons (depending upon whether the benefit accrues as per process of 2022- culminating in 2024 or as per process of November 2024) and actually from the date of promotion or two months of receipt of certified copy of this order, whichever is earlier.

This Court cannot countenance the deliberate concealment of material facts and the mala fide exclusion of the petitioner from the promotion process, in flagrant disregard of binding judicial precedent and settled principles of administrative fairness.

As a necessary corollary and in view of the egregious conduct of the respondents, who not only failed to uphold the rule of law but also attempted to mislead this Court by withholding vital and material information, a costs of Rs.5,00,000/- (Rupees Five Lakh Only) is imposed upon the respondent-State.

The respondent-State shall, however, be at liberty to recover the said amount from the official(s)/officer(s) found responsible for such misconduct and dereliction of duty. It is further directed that 50% of the total costs shall be paid to the petitioner by way of compensation for the harassment, prejudice, and illegal exclusion suffered by him at the hands of the authorities;

and the remaining 50% shall be deposited with the Poor Patients Welfare Fund, PGIMER, Chandigarh, within a period of two months from the date of receipt of a certified copy of this order.

Compliance report be filed before the Registrar Judicial of this Court within four weeks thereafter.

Petition stands allowed in above terms.

MAY 16, 2025.
Rajender

(VINOD S. BHARDWAJ)
JUDGE

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