

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

Sr. No.: 115

Civil Writ Petition No.16933 of 2026**Date of Decision: May 26, 2026**Union of India & others

..... PETITIONER(S)

*VERSUS*Suresh Kumar & another

..... RESPONDENT(S)

CORAM: **HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**
 HON'BLE MR. JUSTICE DEEPAK MANCHANDA

PRESENT: - Ms. Bhavana Datta, Senior Panel Counsel for Union of India.

HARSIMRAN SINGH SETHI, J (Oral)

1. In the present petition, challenge is to order dated 16.11.2022 (Annexure P-1) passed by the Armed Forces Tribunal (in short, the Tribunal), by which benefit of notional promotion to respondent to the rank of Naib Risaldar from the date his juniors were granted promotion, has been granted, is incorrect.
2. Learned counsel for the petitioners argues that the respondent did not have in his credit the required benchmark keeping in view his annual confidential report alongwith the fact that he had failed to pass the departmental examination which was required to be cleared for grant of promotion, which facts have not been considered by the Tribunal in the correct perspective.
3. We have heard learned counsel for the petitioners and gone through the record with her assistance.
4. A finding has been recorded by the Tribunal that the annual confidential report pertaining to respondent which has been taken into consideration by the petitioner so as to non-suit the respondent for promotion,



was never conveyed to him during the course of his service. The Tribunal has relied upon the settled principle of law that any such uncommunicated report cannot be used to the disadvantage of the employee concerned. Learned counsel for the petitioners has not been able to dispute either the fact that none of the adverse reports pertaining to respondent was ever communicated to the respondent as well as that the settled principle of law that any uncommunicated adverse report cannot be relied upon to deny a benefit to such employee. Hence, the said finding given by the Tribunal by basing the same on aforementioned facts and settled principles of law that the rejection of the claim of the respondent for grant of promotion was bad, has gone un rebutted.

5. The further argument raised by learned counsel for the petitioners is that apart from the annual confidential report of the respondent, the employee was called to pass the departmental examination required for promotion, which he never passed. It may be noticed that the said argument is not correct. As per the impugned order passed by the Tribunal, it has already come on record that though initially in the year 2010, respondent did not pass the said departmental examination but, later on, he had passed the same, benefit of which was not given to him. In the year 2011, while the respondent was posted in 16 Armoured Regiment, he was declared having passed the said examination which fact has also not been rebutted by learned counsel for the petitioners. Hence, the argument that the eligibility of the respondent to get promotion was disputed, is incorrect.

6. The last argument which has been raised is that no benefit of retrospective promotion can be granted as per the judgment of the Hon'ble



Supreme Court in Diary No.43488 of 2023, titled ‘Government of West Bengal & others v. Dr. Amal Satpathi & others’, decided on 27.11.2024 wherein it has been categorically held that retrospective promotion cannot be granted. It may be noticed that the said judgment will not be applicable in the present case as the primary question in the said judgment is that a person recommended for promotion before his retirement but did not receive actual promotion to higher post due to administrative delay is not entitled to the promotional post after his retirement so as to grant retrospective promotion, whereas in the present case, juniors of the respondent were granted benefit of promotion which was denied to him. Hence, any junior who has been granted promotion while ignoring a senior eligible candidate available for promotion, creates a right in favour of such senior employee to claim promotion with effect from the date his juniors were promoted. Therefore, the benefit which has been granted by the Tribunal is perfectly valid so as to grant promotion to the post of Risaldar to the respondent from the date his juniors were promoted on basis of parity, and therefore, the judgment in Dr. Amal Satpathi’s case (supra) will not be applicable in the facts and circumstances of the case.

7. Learned counsel for the petitioners has also raised an argument that while the respondent was in service, he did not raise any grievance and the same was only raised when he was discharged. It may be noticed that once the benefit admissible to respondent was wrongly denied, and employee(s) junior to him were promoted in preference to the respondent, the grant of relief in the facts and circumstances of the case is perfectly correct, especially, when the eligibility for promotion and the method adopted



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to declare the respondent ineligible was incorrect, which fact has gone
unrebutted.

8. No other argument has been raised.

9. Dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

May 26, 2026
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<u>Whether Speaking/ Reasoned:</u>	<u>Yes</u>
<u>Whether Reportable:</u>	<u>No</u>