

(1973) 07 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 71 of 1973

Harnam Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 04-07-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (1973) 2 ILR HP 667

Hon'ble Judges : D.B. Lal, J;C.R. Thakur, J

Bench : Division Bench

Advocate : P.N. Nag, for the Appellant; B. Sita Ram, for State and S. Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—In this petition under Articles 226 and 227 of the Constitution, the Petitioner Harnam Singh has called in question the orders made by the State of Himachal Pradesh, wherein he has not been promoted as Kanungo in 1972. The Petitioner has also prayed for the consequential benefits.

2. The allegations are mainly two-fold, that the Petitioner being a Patwari was not considered for promotion in the years 1968, 1970 and 1972 and officials junior to him were promoted during the course of these years, and that whatever adverse entries existed against the Petitioner were not conveyed to him and as such these adverse entries could not be taken regard of by the departmental promotion committee. The reply of the Respondents is that the Petitioner was considered for promotion alongwith others in 1968 and in 1970. In 1972, however, papers regarding the Petitioner were not complete and some appeals were pending and hence ad hoc appointments were made with a clear direction that the claim of the Petitioner would not be affected and he would be considered for promotion as and when a regular vacancy arises. It is also contended that every month the assessment of work done by the Petitioner as well as by others similarly placed, used to be made in the meetings and the Petitioner was always

informed that his performance was either poor or bad, and he was asked to improve himself. According to Petitioner, the adverse entries were conveyed to him much late and that had really influenced the mind of the departmental promotion committee while the case of the Petitioner was considered in 1968 and 1970.

3. When disputed questions of fact are involved in a writ petition, the same cannot be decided in it. Nonetheless we have taken care to peruse the proceedings of the departmental promotion committees. There is not even an averment in the petition that the case of the Petitioner for promotion was not considered in 1970 or 1972. However, there is an averment of like nature for the year 1968. As a result to our perusal of the proceedings of the departmental promotion committee, we have come to know that the case of the Petitioner was duly considered in 1968 and 1970 and so he should not have grievance on that account. Regarding 1972, only ad hoc appointments were made and it was specifically laid down that the case of the Petitioner would be considered at the time when the regular vacancy is created. Obviously the Petitioner, if promoted in regular line, would get all service benefits with effect from the date he is ignored for promotion and an ad hoc appointment made to serve exigency of service, if not based on mala fide considerations, does not violate Article 14 or 16, more so when it is specifically laid down that the case of the Petitioner would not be prejudiced.

4. As regards the adverse entries, substantial information was conveyed to the Petitioner in the monthly meetings. Nothing further was needed. There was no right of representation, nor the Petitioner was required to be summoned in person to explain these entries. The Petitioner himself admits that the entries were conveyed but late and that has affected his case. We do not think, any such plea is at all sustainable in his favour.

5. In *B.S. Sindhu v. Union of India and Ors.* 1971 (1) S.L.R. 600 a Division Bench of this High Court has held that mere failure to convey the confidential remarks to a Government servant in time may not vitiate the decision of a selection board based on his overall performance. This decision has in fact followed a Supreme Court decision in *Prakash Chand Sharma v. The Oil and Natural Gas Commission* 1970 S.L.R. 116. The post was decidedly to be filled up after selection on seniority-cum-merit basis. As observed by the Supreme Court in *State of Mysore v. Syed Mahmood* 1968 S.L.R. 333, promotion cannot be claimed by virtue of seniority alone on the basis of such a rule.

6. For these reasons, we do not find any sufficient grounds to entertain the writ petition and dismiss the same in limine.

7. Costs on parties.