



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

**LPA No.91 of 2018 (O&M)  
Date of Decision: 08.01.2025**

Dharam Pal Sharda

.....Appellant.

Versus

State of Punjab and others

.....Respondents.

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA  
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

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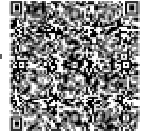
Present:- Mr. Pawan Kumar, Senior Advocate with  
Ms. Vidushi Kumar, Advocate and  
Mrs. Seema Rani, Advocate  
for the appellant.

Ms. Arundhati Kulshreshtha, AAG, Punjab.

**SANJEEV PRAKASH SHARMA, J.(Oral)**

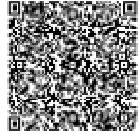
This is an appeal preferred against the judgment passed by the learned Single Judge dated 03.02.2017 as well as the order dated 15.12.2017 passed in review petition by the learned Single Judge upholding the judgment.

2. Learned Senior counsel for the appellant submits that the appellant is entitled for consideration of the case for promotion in terms of the Circular dated 29.12.2000 which laid down a criteria for consideration for promotion to the posts with pay scales less than Rs.12000-16350, the benchmark would be 'Good' because the vacancy which was to be



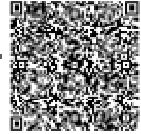
considered had occurred on 01.05.2001. He submits that the learned Single Judge had erred in relying on the subsequent Circular dated 06.09.2001 for assessing the case of the petitioner as the said Circular dated 01.05.2001 was issued after the occurrence of the vacancy and would not apply while considering the case of the petitioner for the said vacancy.

3. Learned Senior counsel submits that while applying the Circular dated 06.09.2001, the learned Single Judge has further erred in applying the criteria of promotion of merit-cum-seniority which was only available for Head of the Department and has wrongly noticed that the minimum of 15 marks were required whereas even as per the new Circular dated 06.09.2001, the minimum benchmark was to be at least 12 marks with a very-good for Group-A posts. Keeping in view the above, he submits that the order passed by the learned Single Judge deserves to be set-aside. He further submits that the petitioner had been granted 2.5 marks in his ACR for the year 1993-94 which should be rounded off to 3 and was to be treated as 'Very Good' and not 'Good' as assessed by the respondents. The appellant-petitioner had remained out of service for a long period and for the year 1993-94, the ACR had been wrongly recorded with the integrity 'doubtful' which was set aside by the learned Single Judge in earlier *CWP No.7900 of 1999* which was allowed on 12.11.2014. Learned Single Judge had directed the average of ACRs recorded prior to 01.04.1993 and after 31.03.1994 upon calculating the average based on the 12 ACRs recorded, the respondents had given 2.5 marks which should be



treated as 'Very Good' as the marks which were to be assessed for 'Outstanding' is 4, 'Very Good' is 3, 'Good' is 2 and 'Average' is 1. He, therefore, submits that even as per the new Circular which was issued on 06.09.2001, the petitioner would be eligible for consideration for promotion against the vacancy which fell vacant on 01.05.2001 and he should be granted promotion on the post of Joint Chief Auditor. The learned Senior counsel, therefore, prays for setting aside the judgment passed by the learned Single Judge as well as the order passed in review petition.

4. Per contra, learned State counsel has taken this Court to the DPC proceedings where the petitioner's case was considered for the post of Joint Chief Auditor. The petitioner did not fulfil the conditions prescribed in the Service Rules of the Department regarding experience of working for two years as Deputy Chief Auditor and he had been promoted w.e.f. 05.04.1999. It is also submitted that the petitioner does not come within the four-corners of the Circular dated 06.09.2001 which is the Circular in force and would be taken into consideration for considering his case for promotion against the vacancy which had fallen in the year 2001-02. The minimum benchmark of 12 for the ACRs was not achieved by the petitioner as the average for the year 1993-94 was calculated and it was found on the basis of total ACRs prior to and after the year in question, to an average of 2.5 which if added, does not bring him within the benchmark of 12 for the year in question. It is also stated that the assessment and

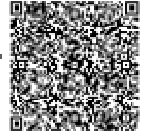


consideration were done for each year and till the year 2010-11, he could not reach the benchmark and it was only in the year 2016 that he was promoted as Joint Chief Auditor on seniority-cum-merit basis.

5. We have considered the case of the petitioner. The petitioner's writ petition was essentially filed for quashing the order dated 14.03.2015 by which the petitioner was granted 2.5 marks in his ACR for the year 1993-94 with the prayer that the ACR for that year should be upgraded to 'Very Good' and consequently, he should be given all benefits from the date when his juniors were promoted.

6. Learned Single Judge after considering the facts of the case found that in the previous litigation initiated by the petitioner in *CWP No.7900 of 1999* wherein the petitioner had challenged the adverse remarks entered in his ACR for the year 1993-94 had set-aside the adverse remarks with an observation that the average of ACRs for the year prior to 1993 and after may be taken for assessing the ACR of the said year. It would be appropriate to quote the relevant observations made by the learned Single Judge while deciding the *CWP No.7900 of 2019*, which are as under:-

*"In re-examining the adverse remarks in the ACR for the period 1<sup>st</sup> April, 1993 to 31<sup>st</sup> March, 1994, the Secretary, Cooperation Punjab, Chandigarh shall remain guided by the ACRs of the petitioner recorded prior to 1<sup>st</sup> April, 1993 and after 31<sup>st</sup> March, 1994 and may take the average of those remarks as guidance while passing an appropriate order*

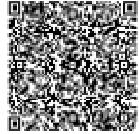


*exercising the power of review as no better solution can be found in the peculiar circumstances and the predicament Mr. C.L. Bains has placed this Court for his improper actions which law forbade.”*

7. From the perusal of the above observations, it is apparent that the respondents were required to look into the ACR immediately prior to 01.04.1993 and the ACR which may have been recorded immediately after 31.03.1994 for reaching to an average. There was, therefore, no occasion to take into consideration all the ACRs which have been written prior to 1993 and those after 1994.

8. Upon asking the learned State counsel, we have learnt that the ACR of the petitioner for the year just prior to 01.04.1993 was ‘Good’ and the next ACR which was written for the year 1997-98 was also ‘Good’. Thus, we can presume that even for the period 1993 to 1994, the ACR of the petitioner would fall in the category of ‘Good’ only and would, therefore, get marking of 2 only. However, the respondents had given marking of 2.5. We, therefore, do not find any reason to round it off to ‘3’ as prayed and asserted by learned Senior counsel for the petitioner. As the criteria in terms of the Circular dated 06.09.2001 requires the person to have benchmark as ‘Very Good’ with at least 12 marks, the petitioner does not come within the criteria for promotion to Group-A for the year 2001-02.

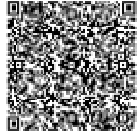
9. Faced with this situation, learned Senior counsel for the petitioner has pressed his earlier argument with regard to the application of



the Circular dated 29.12.2000 which only requires the benchmark criteria of 'Good' and not 'Very Good'. We are afraid to accede to the said request of learned Senior counsel and the reason is that so far as the Circular dated 29.12.2000 is concerned, it has been stated in the Circular of 06.09.2001, as under:-

*"I am directed to refer to the subject noted above and to say that the matter has been under consideration of the Government to review/modify the existing policy instructions contained in Circular letter No.4/6/2000-3PPI/16189, dated the 29<sup>th</sup> December, 2000. As a sequel to this, these instructions were held in abeyance vide this Department I.D. No.4/6/2000-3PPI/11173, dated the 19<sup>th</sup> July, 2001. After careful consideration of the matter by the Government, it has been decided to modify the instructions dated the 29<sup>th</sup> December, 2000, as under:"*

10. From the perusal of the above, it is apparent that the Circular dated 29.12.2000 was held in abeyance till the new Circular of 06.09.2001 was issued. The words "held in abeyance" would mean that it was never enforced nor it was applied. In other words, the Circular dated 29.12.2000 was stillborn and therefore, the said Circular is not enforceable in law. Prayer made by learned Senior counsel for the appellant for applying the said Circular, therefore, fails. We thus do not find any reason to entertain this Letter Patent Appeal. The order passed by the learned Single Judge although does not consider the aforesaid aspect, however, we do not find



any reason to grant relief to the petitioner.

11. The appeal is, accordingly, dismissed. No costs.

12. All pending civil miscellaneous applications also stand disposed of.

**(SANJEEV PRAKASH SHARMA)**  
**JUDGE**

**(MEENAKSHI I. MEHTA)**  
**JUDGE**

**January 08, 2025**  
Yag Dutt

*Whether speaking/reasoned:* Yes  
*Whether Reportable:* Yes