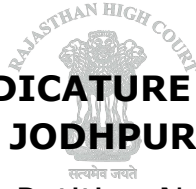




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**



S.B. Civil Writ Petition No. 17915/2019

Jota Ram S/o Daya Ram, Aged About 49 Years, B/c Meena, R/o Rodala, Tehsil Ahore, District Jalore (Raj.)

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary To The Government, Department Of Revenue, Government Of Rajasthan, Secretariat, Jaipur-302005.
2. Board Of Revenue For Rajasthan At Ajmer, Through Its Registrar.
3. The Divisional Commissioner, Jodhpur Division, Jodhpur-342001.
4. District Collector, Jalore.
5. Secretary (Land Record), Board Of Revenue For Rajasthan At Ajmer.
6. Rajasthan Kanungo Sangh, Board Of Revenue Through Its President At Alwar Rajasthan.

----Respondents

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For Petitioner(s) : Mr. M.R. Choudhary  
For Respondent(s) : Mr. Mrigraj Singh Rathore

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**JUSTICE DINESH MEHTA**

**Judgment**

**Reportable**

**24/05/2023**

1. Instant writ petition lays a challenge to the seniority lists Nos.15201, 15244 and 15289 dated 01.11.2019, published by the Board of Revenue Ajmer (hereinafter referred to as "the Board"), whereby seniority positions of Inspector Land Records (ILRs) as on 01.04.2015, 01.04.2016 and 01.04.2017 has been notified and petitioner's seniority as Inspector Land Records has been reckoned from the year 2014-2015.



2. Mr. M.R. Choudhary, learned counsel for the petitioner while informing the background facts submitted that the petitioner who was appointed on the post of Patwari as a Scheduled Tribe candidate by way of order dated 07.10.1993, joined the services on 08.10.1993.

3. During his tenure as a Patwari, some disciplinary proceedings were initiated against the petitioner and pending such proceedings, his case for promotion was considered by the Departmental Promotion Committees for years 1999-2000 and onwards but the result was kept in sealed cover.

4. Thereafter a punishment order came to be passed on 22.08.2008.

5. The petitioner claims to have made various representations to the competent authority/respondents with a request to open the sealed envelope and accord him the due promotion. Petitioner's request was ultimately given ears to in October 2014, when by way of order dated 14.10.2014, he was promoted against the vacancies of 2008-2009.

6. As the petitioner was less than 45 years of age on 14.10.2014, he was sent for training, as required under Rule 301(4) of the Rajasthan Land Revenue (Land Records) Rules, 1957 (hereinafter referred to as "the Rules of 1957"). The petitioner underwent 9 weeks' training for the period between 16.02.2015 and 19.04.2015, whereafter per-viam order of the District Collector dated 06.05.2015, the petitioner was given posting as an Inspector Land Records. It is noteworthy that while issuing order of posting, his year of promotion was reflected as 2014-15.



7. When, the seniority lists of ILRs as on 01.04.2015, 01.04.2016 and 01.04.2017 were issued on 01.11.2019, petitioner's name was shown along with the promotees of 2014-15, which is the cause of concern for the petitioner.

8. Mr. Choudhary, learned counsel for the petitioner made two-fold submissions. While pointing out petitioner's predicament that after passing of the penalty order dated 22.08.2008, though the petitioner had been pursuing the respondents to open the sealed envelope and give him promotion, but for six years the respondents did not pay any heed and promoted him as late as on 14.10.2014, he contended that the petitioner cannot be made to suffer on account of delay on the part of respondents. Learned counsel argued that the respondents have wrongly placed the petitioner along with the ILRs who were promoted against the vacancies of year 2014-2015.

9. His Second argument has been that since the basic order of promotion has been passed by the Divisional Commissioner, Jodhpur on 14.10.2014, considering his promotion to be from 2008-2009, the Collector by way of order impugned dated 06.05.2015, could not have changed it to the vacancy year 2014-2015.

10. Mr. Mrigraj Singh, learned counsel for the respondents, on the other hand, argued that the respondents have committed no error of law in reckoning petitioner's seniority with effect from 2014-2015.

11. In support of his contention aforesaid, he relied upon Rule 171-A(2) of the Rules of 1957 and submitted that the seniority of the Inspector Land Records is required to be reckoned from the



date of continuous officiation on the post of Inspector Land Records. He submitted that the petitioner can be considered as Inspector Land Records, only when he started officiating or working as Inspector Land Records and hence, the petitioner cannot be given seniority from the year 2008-2009, particularly when he did not work as Inspector Land Records prior to 06.05.2015.

12. Heard learned counsel for the parties and perused the material available on record.

13. Initially, petitioner's case for promotion remained pending on account of disciplinary enquiries until the same culminated into order of penalty dated 22.08.2008. Whereafter the respondents have considered petitioner's case for promotion for the vacancy year 2008-2009, about which there is no quarrel.

14. For the reasons beyond petitioner's control and solely attributable to the respondents, the petitioner's result of DPC remained lying in the sealed envelope for six long years and the same was opened only in October, 2014. The petitioner was promoted to the post of Inspector Land Records by the order of Divisional Commissioner issued on 14.10.2014, indicating his promotion to be against the vacancies of year 2008-2009.

15. Be that as it may. The Divisional Commissioner, Jodhpur had reckoned petitioner's year of promotion as 2008-2009. The order of the Divisional Commissioner (being the appointing authority of the petitioner) is final in this regard. The District Collector cannot sit over the order passed by his higher authority, namely, the Divisional Commissioner and change petitioner's seniority or year of promotion from 2008-2009 to 2014-2015.



16. The order of the Collector dated 06.05.2015 is, therefore, clearly without jurisdiction besides being illegal.

17. The respondents' stand that the petitioner's year of seniority has been reckoned as 2014-2015 in view of the provisions of Sub-Rule (2) of Rule 171-A of the Rules of 1957 cannot be countenanced being misconceived. The petitioner had completed his 9 weeks' training on 19.04.2015 and, therefore, on the basis of such arguments, petitioner's seniority ought to have been considered from 06.05.2015, when he joined after the promotion or from the year 2015-2016.

18. Petitioner's seniority from the year 2014-2015 appears to have been reckoned considering that he was sent for training along with the ILRs who were promoted against vacancies of 2014-2015.

19. True it is, that the petitioner came to be posted as Inspector Land Records on 06.05.2015, after completion of his training on 19.04.2015 but for this, the petitioner cannot be blamed. The facts are clear that despite petitioner's request, the respondents did not open petitioner's sealed fate and the same languished in the almira of the respondents for six years.

20. In the opinion of this Court, had the petitioner's case been considered immediately, when the order dated 22.08.2008 was passed, a formal order of promotion could have been passed in the year 2008-2009 itself and the petitioner could have been given posting after being sent for training at the relevant time.

21. True it is, that as per Sub-Rule (2) of the Rule 171-A of the Rules of 1957, the Inspector Land Records is to be deemed promoted on the day he starts officiating on such post, but in the



present factual backdrop, since the respondents themselves were at fault, a literal interpretation of sub-rule (2) of Rule 171-A of the Rules of 1957 would be iniquitous and violative of petitioner's rights. Such view of the matter would leave the petitioner to grumble for no fault of his.

22. Rule 171-A of the 1957 Rules prescribes the method of determination of seniority of Inspector Land Records. Rule 171-A as it originally stood, reads as under:-

*"171-A. Seniority.-(1) The seniority of Inspectors, Land Record working in the various districts will be interlaced by the Board of Revenue and the Secretary (Land Records) Revenue Board will maintain an up-to-date list of seniority of the Inspectors. Land Records working in the Department.*

*(2) The seniority of the Inspector, Land Records will be determined from the date of their continuous officiation on the post of Inspector Land Records in the Land Records Department and/or Inspector in the Settlement/ Consolidation/Colonization Department or any other equivalent post in such Departments provided such officiation was not fortuitous or ad hoc in nature and subject to the condition that they possess a diploma of having passed the Girdawar Qanungo Examination."*

By notification dated 08.10.2014, sub-rule (2) of Rule 171-A was amended. Post amendment, sub-rule (2) of Rule 171-A reads as under:-

*"(2) The seniority of the Inspector Land Records shall be determined on the basis of recruitment year of promotion on the post of Inspector, Land*





*Records in the Land Records department and Inspector in the Settlement Department, Colonisation Department and Consolidation Department:*

*Provided that the inter-se seniority of Inspectors promoted in same recruitment year shall be determined on the basis of regular date of appointment on the post of Pawari. If the date of appointment of post of Patwari is same the seniority shall be determined on the basis of the date of birth. The employee whose date of birth stands first shall deemed to be senior. In case of same appointment date and the same date of birth, the order of the English alphabet of the name of employee shall be criterion for determination of seniority."*

23. As the petitioner was promoted against the vacancy year 2008-2009, unamended provisions of Rule 171-A of the Rules of 1957 should apply. A reading of unamended sub-rule (2) of the Rule 171-A of the Rules of 1957 suggests that generally the seniority of an Inspector Land Records should be determined from the date of continuous officiation. But this provision has a caveat in the form of proviso. The latter part of sub-rule (2) carves out an exception to the general rule in the manner that such officiation should not be fortuitous.

24. In the present case, petitioner's officiation on the post of Inspector Land Records began on 06.05.2015, as a consequence of neglect on the part of respondents and hence, it was nothing short of being fortuitous – the petitioner would have been sent for training in the year 2008-2009 itself, had he been promoted timely. In the opinion of this Court the proviso of sub-rule (2)





makes the rule flexible and suggests that substantive part of the rule can be relaxed. Present one is a fit case to harmonise the rigors of the mandate of Rule 171-A(2) of the Rules of 1957.

25. If that is not done, then, in each case of review DPC, regardless of the fact that a candidate has been promoted with back date or promoted against vacancies of earlier years, his seniority will be reckoned from the date when he completes training and joins on the post of Inspector Land Records. That apart, literal adherence of sub-rule (4) of Rule 301 would frustrate the very purpose of granting promotion from back date.

26. Though this Court has its own reservation about the applicability of amended provision of Rule 171-A qua the petitioner, but if the amended provision of Rule 171-A(2) is held applicable based on the date of petitioner's promotion (14.10.2014), as the Rule was amended on 08.10.2014, then, petitioner's case stand on a much better footing. Because according to the provision after 08.10.2014, the seniority is required to be reckoned as per the recruitment year of promotion which in petitioner's case is 2008-2009.

27. As an upshot of the discussion foregoing, the present petition is allowed.

28. The order dated 06.05.2015, passed by the District Collector reckoning petitioner's seniority from 2014-2015 so also the final seniority lists of Inspector Land Records as on 01.04.2015; 01.04.2016 and 01.04.2017 to the extent they reflect the petitioner's name with the ILRs promoted in year 2014-2015 are hereby quashed.





29. The respondents are directed to place the petitioner at appropriate place, while reckoning his seniority from the recruitment year 2008-2009, ignoring date of officiation on the post of Inspector Land Records.

30. In order to ward of possibility of/litigation, it is hereby held that the petitioner shall be kept at the bottom of the seniority list of the promoted Inspector Land Records against the vacancies of the year 2008-2009.

31. After the correction of the seniority list, the petitioner shall be conferred all consequential benefits, including promotion to the next post.

32. Review DPC for considering petitioner's case be convened within a period of 3 months from today and order of promotion (if the petitioner is found eligible and suitable) be passed by 30<sup>th</sup> September, 2023. The petitioner shall be entitled for actual benefit of pay scale etc. with effect from the date of the order or 30.09.2023, whichever is earlier. The petitioner shall be given notional benefit from the date persons junior to him have been promoted upto 30<sup>th</sup> September, 2023/actual date of promotion.

33. Stay petition also stands disposed of accordingly.

**(DINESH MEHTA),J**

4-Ramesh/-