



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

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**CM-17973-CWP-2025 in/and
CWP-5903-2015 (O&M)
Decided on : 09.12.2025**

NARINDER SUDAN

...Petitioner

Versus

UNION OF INDIA AND OTHERS

... Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI**

PRESENT: Mr. Rishav Sharma, Advocate for the petitioner.

Mr. Praveen Chander-Goyal, Senior Panel Counsel
for the respondents-UOI.

HARSIMRAN SINGH SETHI, J. (Oral)

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The present application has been filed by the applicant-petitioner for fixing the actual date of hearing of the present writ petition as the case was heard and admitted on 30.03.2015.

Keeping in view the averments enumerated in the present application, which are duly supported by an affidavit, the same is allowed. Consequently, the main writ petition (**CWP-5903-2015**) is taken up on board for hearing today itself.

CWP-5903-2015

1. In the present petition, the challenge is to the impugned order dated 08.10.2014 (Annexure P-4) passed by the respondent No. 5- Central Administrative Tribunal, Chandigarh Bench, Chandigarh, (hereinafter referred to as 'the Tribunal'), by which, the claim of the petitioner for appointment to the post of Inspector (Central Excise) with effect from the



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year 1992 instead of 2004 when the other candidates including one Satish Rawat pursuant to the same advertisement dated 04.04.1992 were appointed to the post of Inspector (Customs & Central Excise) against sports quota, has been dismissed.

2. Certain facts needs to be noted for the correct appreciation of the issue at hand.

3. An advertisement for making the recruitment to the post of Inspectors (Customs & Central Excise) against sports-quota, was issued by the respondents on 04.04.1992. Out of the total advertised posts, two posts were earmarked for sportsperson relating to the sport of Football. After the selection process, the interviews of the selected candidates were held on 03.08.1992 and one Satish Rawat was given appointment to the post in question under the sports quota in the field of Football on 01.09.1992, whereas, the petitioner was declined the said benefit of selection/recruitment.

3. Thereafter, the petitioner challenged the said selection/appointment of Satish Rawat, immediately in the year 1992 by filing an original application No. 1018-CH-92 on the ground that the said Satish Rawat had failed in the field test and was thus not eligible for the interview, but still he has been selected for the post in question and vide order dated 06.06.2000 (Annexure A-13), the said original application of the petitioner was allowed by the Tribunal and the selection of said Satish Rawat for the post in question was set-aside and direction was also issued to the respondents to consider the petitioner for the appointment to the post in question.



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4. The review application number 35 of 2000 was filed by the department and Satish Rawat against the said order of the Tribunal dated 06.06.2000 (Annexure A-13) in this Court, which was dismissed by the Tribunal vide separate orders both dated 03.11.2000.

5. Against the order of quashing of the selection dated 06.06.2000 (Annexure A-13), a civil writ petition bearing No. 15858 of 2000 was filed by Satish Rawat, which was also dismissed by this Court vide order dated 23.11.2000. Keeping in view the dismissal of the aforesaid writ petition, Satish Rawat was relieved from service vide Establishment order No. 71/2001 dated 07.06.2001.

6. As the claim also related to the appointment of the petitioner to the post in question, but he was not being given the said benefits, the petitioner again filed an Original Application bearing number 1069/CH/2001 before the Tribunal for considering his claim. In the meantime, in a civil appeal No. 133 of 2001 filed by Satish Rawat challenging termination of his services keeping in view the order passed by the Tribunal which was upheld by this Court, the Hon'ble Supreme Court of India passed an order dated 12.02.2002 *that both Satish Rawat as well as the petitioner herein be appointed or absorbed in service.* Relevant portion of the order dated 12.02.2002 is as under:-

“Having examined the matter, we think it will be appropriate for the Government to work out the method by which both the appellant and respondent No. 3 be appointed or absorbed in service.”



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Satish Rawat was again given appointment vide order dated 17.04.2003 with benefits w.e.f. the year 1992. Thereafter, the petitioner came to be appointed on 08.01.2004.

8. As, Hon'ble Supreme Court of India directed that both Satish Rawat and the petitioner herein be appointed or absorbed in service, an anomaly arose as Satish Rawat was allowed appointment to the post in question from 17.04.2003 and benefits w.e.f. the year 1992 whereas, the petitioner was being treated appointed in service from the year 2004 i.e. after a period of 12 years, for removal of which anomaly, the petitioner approached the Tribunal by way of filing of Original Application No. 670/PB/2013 with the grievance that he should also be given appointment from the year 1992.

9. The said original application filed by the petitioner was dismissed by the Tribunal vide impugned order dated 08.10.2014 (Annexure P-4) only on the ground that as, there was no direction to appoint the petitioner from the retrospective date in the order passed by the Hon'ble Supreme Court of India dated 12.02.2002, the benefit of notional appointment from 1992 cannot be granted and therefore, the grant of appointment though in pursuance to the same advertisement dated 04.04.1992 from the year 2004, cannot be ante dated to 1992. The said order passed by the Tribunal dated 08.10.2014 (Annexure P-4) has been impugned in the present petition.

10. Learned counsel for the petitioner submits that once, the advertisement dated 04.04.1992 for the post in question, in pursuance to



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which, the petitioner as well as Satish Rawat was selected is one and the same and both were allowed to be appointed or absorbed in service by the Hon'ble Supreme Court of India vide order dated 12.02.2002 and when the said order was passed by the Hon'ble Supreme Court of India, neither the petitioner nor Satish Rawat was in service, once, on the basis of the order passed by the Hon'ble Supreme Court of India, Satish Rawat has been given appointment to the post in question in the year 2003, from the year 1992 denial of the same benefit to the petitioner by the Tribunal is incorrect as the said act creates anomaly.

11. Learned counsel for the petitioner further submits that the selected candidates from the same advertisement under the same quota are to be treated alike so as to avoid any discrimination and once, it is a conceded fact that both petitioner and Satish Rawat came to be appointed to the post in question arising out from the same advertisement and on the basis of the order dated 12.02.2002 passed by the Hon'ble Supreme Court of India, parity has to be maintained qua the date of appointment between Satish Rawat and the petitioner and therefore, once, Satish Rawat has been given appointment from the year 1992 for all intents and purposes, the petitioner should also be given the same benefit.

12. Learned counsel appearing on behalf of the respondents contends that though, the appointment of Satish Rawat was set-aside by the Tribunal vide order dated 06.06.2000 (Annexure A-13) and that order of the Tribunal was upheld by this Court vide order dated 23.11.2000 and Satish Rawat was also relieved from service in 2001, but once, Satish Rawat was



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allowed to be appointed by the Hon'ble Supreme Court of India, he was given appointment from his initial date of joining in the year 1992 i.e. 01.09.1992 whereas, the petitioner has been appointed to post in question only in the year 2004 and therefore, the parity being claimed by the petitioner for the grant of retrospective appointment is incorrect as both the petitioner and Satish Rawat had different facts on the basis of which the action has been taken by the Department.

13. Learned counsel for the respondents further submits that the order was passed by the Hon'ble Supreme Court of India on 12.02.2002 on the ground that the petitioner has already been given appointment whereas he was not given appointment, hence, once, on the basis of the order passed by the Hon'ble Supreme Court of India dated 12.02.2002, the petitioner was subsequently given appointment to the post in question on 08.01.2004, the benefit so granted has rightly been appreciated by the Tribunal while passing the impugned order so as to dismiss the original application, hence, the said order dated 08.10.2014 (Anneuxre P-4) may kindly be upheld.

14. Learned counsel for the respondents further submits that as the petitioner has approached the Tribunal after a delay of 08 years from the date of his appointment to the post in question, the benefit could not have been given as, the same should have been agitated by the petitioner in the year 2004 when he was appointed to the post in question.

15. We have heard learned counsel for the parties and have gone through the case file with their able assistance.

16. The question, which arise before this Court is "Whether, once,



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two appointments are made in pursuance to the same advertisement/selection, the appointees can be assigned different dates of appointment, keeping in view the facts and circumstances of the present case.”

17. It is a conceded fact that on an original application No. 1018-CH-92 filed by the petitioner, the appointment of the selected candidate namely, Satish Rawat was set-aside by the Tribunal vide order dated 06.06.2000 (Annexure A-13), which, order was also upheld by this Court while passing order dated 23.11.2000 (Annexure A-12) but was modified by the Hon’ble Supreme Court of India vide order dated 12.02.2002 to hold that both the petitioner and Satish Rawat be absorbed or appointed in service. On the basis of the said order dated 12.02.2002 passed by the Hon’ble Supreme Court of India, Satish Rawat who was already relieved from service in the year 2001, was again reinstated in service in the year 2003 and was given seniority from the year 1992. It is also a conceded position that on the basis of the same order dated 12.02.2002 passed by the Hon’ble Supreme Court of India, the petitioner was also given appointment keeping in view the findings recorded by the Tribunal qua his entitlement. That being so, there cannot be any differentiating facts especially when both the petitioner and Satish Rawat were directed to be appointed or absorbed in service in pursuance to the order dated 12.02.2002 passed by the Hon’ble Supreme Court of India.

18. It may be noticed that once, the respondents themselves allowed the retrospective appointment in favour of Satish Rawat from the year 1992, after reinstating him in service in the year 2003, the said benefit should



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have been extended to the petitioner as well so as to avoid any discrimination.

19. The law on the said issue is well settled that the selected candidates of the same advertisement should be treated *alike* so as to avoid any discrimination.

20. As per the law settled by the Hon'ble supreme Court of India while passing judgment in *Civil Appeal Nos. 1993-95 of 2020 titled as C. Jayachandran v. State of Kerala and others, decided on 04.03.2020,* wherein it has been held that the relevant date for determination of seniority would be the date from which other candidates in the same selection process were appointed. In case, anyone has wrongly been excluded from the appointment and the appointment was subsequently made, the compensatory action has to be taken to give notional appointment from retrospective effect.

The relevant paragraphs of the said judgment is as under:-

“35. The earlier writ petition filed by the appellant was allowed on 13th September, 2010. The Division Bench of the High Court has directed to re-cast the seniority amongst the seven shortlisted candidates. The appellant was one of them. The challenge to the said order by three affected candidates remained unsuccessful when SLP was dismissed by this Court on 8th October, 2010. The 22 SLP was filed by the candidates who were granted benefit of moderation of marks. Once the direction of the Division Bench has attained finality, the appellant was entitled to



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seniority as per the select list to be revised as per merit of the candidates. In terms of Rule 6(2), the seniority is to be determined by the serial order in which the name appeared in the appointment order. The argument of learned counsel appearing for respondent No. 5 that the appellant was not appointed by the same appointment order, therefore, the appellant cannot claim seniority is not tenable. The appellant was entitled to be appointed along with other three candidates but because of the action of the High Court in adopting moderation of marks, the appellant was excluded from appointment. The exclusion of appellant from appointment was on account of an illegal act by the High Court which has been so found by the judgment dated 13th September, 2010. Since the select list has to be revised, the appellant would be deemed to be the part of the appointment along with other candidates in the same select list. As the actual date of appointment was on 24th February, 2011, the appellant cannot actually be treated to be appointed on 30th March, 2009 but is entitled to notional appointment from that date and consequential seniority.

36. ***In Sanjay Dhar***, a three-Judge Bench of this Court held as under: “16. For the foregoing reasons the appeal is allowed. The judgment under appeal is set aside. It is



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directed that the appellant shall be deemed to have been appointed along with other appointees under the appointment order dated 6-3-1995 and assigned a place 23 of seniority consistently with his placement in the order of merit in the select list prepared by J&K PSC and later forwarded to the Law Department...”

37. *In Lakshmana Rao Yadavalli, this Court held as under:*

“13. For the reasons recorded in Lakshmana Rao Yadavalli v. State of A.P. [Set out in paras 1 to 13, above.] , the present appeals are allowed and it is directed that the High Court as well as the respondent State will do the needful for giving appointment to the appellant with retrospective effect i.e. from the date on which she ought to have been appointed, however, she shall not be paid salary for the period during which she has not worked as a District and Sessions Judge. We are sure that the respondents will do the needful for the appointment of the appellant at an early date.”

38. *In view of the above, the appellant having been participated in the same selection process and in view of the direction of the Division Bench of the High Court, was rightly placed by the High Court by giving him revised select list placing him at Sl. No. 41 by pushing Badharudeen from general category candidate to OBC*



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category candidate at Sl. No. 42.

39. *The appellant was wrongfully excluded from the process of appointment on account of an illegal and arbitrary grant of moderation of marks. The Government in its Order dated 22nd December, 2010 cancelled the appointment of three District and Sessions Judges who were granted benefit of moderation. Badharudeen was earlier assigned general category seat but since the appellant was higher in merit, Badharudeen was pushed down and adjusted against OBC category seat at Sl. No. 42. 24 Badharudeen has not challenged his pushing down at Sl. No. 42 either before the learned Single Bench of the High Court or before the Division Bench of the High Court or even before this Court. Therefore, as respondent, he cannot be permitted to dispute the grant of seniority to the appellant at Sl. No. 41. The judgment referred to by learned counsel is not helpful to the arguments raised as the appellant therein sought seniority as direct recruit from the time when the vacancies occurred. To raise such an argument, reliance was placed upon judgment of this Court reported in Union of India & Ors. v. N.R. Parmar & Ors. 9 , wherein this Court held that a person is disentitled to claim seniority from the date he was not borne in the service. The said finding is in the context of*



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the claim of the appellant to claim seniority from the date of availability of the vacancies; whereas in the present case, the appellant is claiming seniority from the date the other candidates in the same selection process were appointed but the appellant is excluded on account of an illegal act of the High Court of the moderation of marks. Therefore, the said judgment is not of any help to the arguments raised.

XXXXXXXX XX XXXXX

41. *Still further, the Division Bench of the High Court has completely erred in law in holding that the appellant has delayed the challenge of his appointment vide order dated 22nd December, 2010. The appellant was appointed pursuant to a direction issued earlier by the Division Bench. The Division Bench has directed to re-cast the 26 select list and in such select list, the name of the appellant appears at Sl. No. 3 and that of Badharudeen at Sl. No. 4. The appellant has submitted the representation on 11th April, 2012 i.e. within 1 year and 2 months of his joining and submitted reminder on 18th September, 2014. It is the High Court which has taken time to take a final call on the representation of the appellant and other direct recruits. The appellant was prosecuting his grievances in a legitimate manner of redressal of grievances. Therefore,*



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it cannot be said that the claim of the appellant was delayed as he has not claimed the date of appointment as 30th March, 2009. The appellant having been factually appointed vide communication dated 22nd December, 2010, he could not assume or claim to assume charge prior to such offer of appointment. The appellant has to be granted notional seniority from the date the other candidates were appointed in pursuance of the same select list prepared on the basis of the common appointment process. ”

21. In the present case also, the petitioner was given appointment in pursuance to the same advertisement on the basis of which Satish Rawat was appointed to the post in question, which is conceded fact.

22. The controversy was whether Satish Rawat has to be appointed or the petitioner has to be appointed to the post in question, but ultimately, on the basis of the order dated 12.02.2002 passed by the Hon'ble Supreme Court of India, both were directed to be appointed to the post in question, hence, once, both were to be appointed, the benefit of appointment was required to be given to the petitioner in equivalent to the one given to Satish Rawat, who was also be reinstated in service after the order dated 12.02.2002 passed by the Hon'ble Supreme Court of India and was reinstated in service in the year 2003 and was given retrospective appointment from the year 1992, therefore, the denial of the same benefit to



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the petitioner is incorrect and said action of the respondents will amount to the discrimination and will also be contrary to the settled principles of law.

23. Further, a bare perusal of the order passed by the Hon'ble supreme Court of India dated 12.02.2002 in Satish Rawat's case, it has been mentioned that Satish Rawat is to be given the benefit of appointment from the year 1992, the respondents were also bound that both the candidates were to be absorbed /appointed in service, the said observations were also required to be adopted qua petitioner as well.

24. Learned counsel for the respondents has not been able to point out as to why, once, on the basis of the same selection process, two candidates have been appointed and that too on the basis of the same order passed by the Hon'ble Supreme Court of India, Satish Rawat has already been given the benefit of appointment w.e.f. the year 1992 by reinstating him in service in the year 2003, the other candidate has been denied the same benefits. Hence, in the absence of any such valid justification, the parity of the selected candidates out of the same selection process cannot be tempered with.

25. The learned counsel for the respondents has raised an argument that the petitioner was appointed by the respondents in the year 2004 but he raised his grievance in the year 2013 after a delay of nine years, therefore, the claim of the petitioner cannot be accepted. It may be noticed that the said delay could have been equally balanced qua the benefits to be granted. By granting a retrospective appointment to an employee, the monetary benefit could have been withheld so that the delay does not cause prejudice to the



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department in any manner.

26. Hence, keeping in view the totality of the circumstances, the petitioner is also held entitled for notional appointment to the post in question from the date when the benefit of appointment was given to Satish Rawat in view of the order dated 12.02.2002 passed by the Hon'ble Supreme Court of India i.e. from 01.09.1992, according to which order, both the candidates were required to be absorbed /appointed in service.

27. Though, the petitioner will be getting the appointment from the date when Satish Rawat was appointed to the post of Inspector (Central Excise) i.e. 01.09.1992, but the said appointment will be notional in nature. ***He will not be paid any arrear upon retrospective appointment till date he approached the Tribunal in the year 2013.***

28. On the basis of the notional appointment as Inspector (Central Excise) from 01.09.1992, fixation of the salary and seniority of the petitioner from the said date will also be extended to the petitioner but arrears upto re-fixation of salary will only be restricted upto 01.05.2013 i.e. the date of filing of the original application by the petitioner before the Tribunal. The arrears of salary will be given to the petitioner after 01.05.2013.

29. Further, keeping in view the retrospective appointment from 01.09.1992 in case, any junior of the petitioner has been promoted further, the petitioner will also be entitled for the consideration of the said promotion in case, he is found suitable on the said date when his juniors have been promoted further. But no one already promoted will be disturbed and supernumerary post will be created to grant the benefit to the petitioner.



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30. Keeping in view the above, the impugned order dated 08.10.2014 (Annexure P-4) passed by the Tribunal is hereby set-aside and the *present writ petition is allowed* in above stated terms and the same be implemented within a period of eight weeks from the date of receipt of copy of this order.

31. Pending civil miscellaneous application(s), if any, stand disposed of.

**(HARSIMRAN SINGH SETHI)
JUDGE**

**(VIKAS SURI)
JUDGE**

09.12.2025

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No