

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5927 of 2011

DATE OF DECISION: OCTOBER 16, 2015

D.S.JASSAL

...PETITIONER

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. G.S.BAL, SR. ADVOCATE
WITH MS. MANJU SHARMA, ADVOCATE
FOR THE PETITIONER.

MR. VIVEK SINGLA, ADVOCATE
FOR RESPONDENTS NO.1 & 2-UI.

M. JEYAPPAUL, J.

1. Aggrieved by the dismissal of the Original Application by Central Administrative Tribunal, Chandigarh Bench (for short 'Tribunal'), the present writ petition has been filed by the petitioner.

2. The writ petitioner joined Indian Defence Estates Service through UPSC in the year 1985. He was promoted to the Senior Time Scale in the year 1991. Persons junior to the writ petitioner were granted Junior Administrative Grade in the year 2003 and the decision on the claim for promotion made by the writ petitioner was put in a sealed cover in March, 2003 by the DPC as he was involved in a disciplinary case.

3. For the irregularity committed by the writ petitioner on 27.8.1990, he was charge-sheeted on 21.6.1993 and penalty of 'censure' was

imposed on him on 18.5.1998. No DPC meeting was held from the year 1999 to 2002 with an intention to thwart the grant of promotion to the writ petitioner.

4. During 1989-90 another irregularity was detected by the Authorities. He was charge-sheeted on 8.10.2002 after a lapse of 13 years. As he was found guilty, penalty of Censure was imposed by the disciplinary Authority on 8.11.2005. The writ petitioner submitted a revision petition before the competent authority, but the same was dismissed. Though his promotion was due from 2000, no DPC was held and he was not considered for promotion prior to the issuance of charge-sheet on 8.10.2002.

5. The writ petitioner seeks promotion from the year 1999-2000 on the ground that had the DPC been held on annual basis, he would have been considered for promotion when no disciplinary proceedings were pending by then. The writ petitioner also attacks the impugned order passed by the disciplinary Authority under Annexure A-1 and the impugned order passed by the competent authority in the Revision Petition under Annexure A-2 on the ground that the disciplinary proceedings had been initiated after a period of 13 long years for alleged irregularity he committed in the year 1989-90. The writ petitioner also challenges the impugned orders passed by the Disciplinary Authority and the Revisional Authority under Annexure A-1 and A-2 on the ground that the entire disciplinary proceeding was vitiated by delay and laches. The writ petitioner also attacks the impugned order passed by the above Authorities on the ground of *malafides* as the proceedings had been initiated by the Disciplinary Authority just 2 or 3 months prior to the proposal to hold the DPC.

6. The writ petitioner has prayed that the impugned orders passed by the Disciplinary Authorities under Annexures A-1 and A-3 be quashed and a Review DPC be ordered for considering his promotion against the vacancy which occurred during the year 1999-2000. In the alternative, the writ petitioner has prayed for giving effect to the impugned order under Annexure A-1 w.e.f. the date when the alleged misconduct was committed by the writ petitioner. Consequently, he sought for promotion w.e.f. the date when his immediate junior was promoted with all consequential benefits.

7. The official respondents have contended that the writ petitioner while functioning as Cantonment Executive Officer, Cantonment Board, Jalandhar Cantonment, placed supply order upon M/s Prem Narain & Company, G.T. Road, Jalandhar for supply of certain automobile equipments and released 100% advance payment without waiting for the delivery of equipments. Neither the equipments were delivered nor was the advance amount with interest refunded by the above company. Therefore, Cantonment Board was compelled to file a suit in the Court of Sr.Sub Judge, Jalandhar against the company. Although the company refunded the advance amount alongwith interest subsequently, the action on the part of the writ petitioner had landed the Cantonment Board into unnecessary litigation. Therefore, a charge-sheet was issued to the writ petitioner on 8.10.2002 for the above alleged misconduct committed by him. There was no *malafides* in the disciplinary action initiated against the writ petitioner. The matter remained under correspondence with the Directorate, Defence Estates, Western Command, Ministry of Defence, New Delhi and Central Vigilance Commission from June, 1994 to August, 2002. The writ

petitioner also took 1 year and 5 months to reply to the show cause notice.

There was no intentional delay in convening the DPC as alleged by the writ petitioner. The decision taken by the DPC held in March, 2003 was kept in a sealed cover. The sealed cover could not be opened and acted upon as the writ petitioner was awarded minor penalty of 'censure' on 8.11.2005 after completion of enquiry. For the vacancy that had arisen during the year 1999-2000, the applicant was not even in the zone of consideration. During the year 2000-01 and 2001-02 though the writ petitioner was in the zone of consideration, he was not assessed as there were sufficient number of candidates senior to him against the vacancies projected during those years. The writ petitioner's claim was considered against the vacancy for the year 2002-03 and the decision of the DPC was kept in sealed cover as disciplinary case was pending against him. As the penalty of 'censure' was inflicted upon him on 8.11.2015, the claim of the writ petitioner for promotion was considered in the vacancy year 2005-06 and was promoted to the post of JAC(OG). The official respondents have sought for dismissal of the prayer sought for by the writ petitioner.

8. The Tribunal held that the claim of the writ petitioner was not considered by the Department against the vacancy that arose in the year 1999-2000 as those vacancies were utilized to promote his seniors. Sealed cover procedure was adopted as regards the decision taken by the DPC that was held in the year 2002-03 as the disciplinary proceedings were pending against him. The Tribunal also held that the official respondents had not delayed holding of DPC intentionally. Ultimately, the claim made by the writ petitioner was rejected by the Tribunal.

9. Learned counsel appearing for the writ petitioner submitted referring to a decision of this Court that penalty imposed in the disciplinary proceedings on the employee would relate back to the period when the alleged misconduct was committed or in any case when the same was detected. Referring to the irregularity allegedly committed by the writ petitioner, it is submitted that the writ petitioner allegedly committed misconduct during 1989-90. Though the charge-sheet was issued on 8.10.2002 and the penalty of 'censure' was inflicted on the writ petitioner on 8.11.2005, it shall relate back to 1989-90. Though the DPC shall be held on annual basis, no DPC was held from 1999-2000. Therefore, it is his submission that a special review DPC may be held against the vacancy which arose in the year 1999-2000 and he be considered for promotion.

10. Learned counsel appearing for the official respondents vehemently contended relying upon the decision of the Hon'ble Supreme Court that when an employee is held guilty and penalized, he shall not be given promotion retrospectively from the date when he was penalized. He also referred to the official memorandum dated 14.9.1992 issued by the Government of India, Ministry of Personnel, Public Grievance and Pensions, Department and Personnel & Training and submitted that if any penalty is imposed on the Government servant as a result of the disciplinary proceedings, the findings recorded by DPC and put in sealed cover shall not be acted upon and the case for promotion may be considered by the next DPC in the normal course. Therefore, it is his submission that the case of the applicant was taken up by the DPC that was immediately constituted in the year 2006 and the petitioner was promoted to the cadre of JAC(OG).

11. In Union of India and others vs. K.V.Jankiraman and others, (1991 4 SCC 109, three Judge Bench of Hon'ble Supreme Court has held as follows:-

“We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when, in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when, for his conduct before that date, he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a

further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct.”

12. It has been very emphatically declared by the Hon'ble Supreme Court that an employee has no right to promotion, but has a right to be considered for promotion. Unless an unblemished service has been put in by an employee, the question of promoting him to the next cadre does not arise. An employee who was found guilty of irregularity cannot claim parity with an employee who has put in excellent service to the Department *sans* any scar on his track record. It has been held in the above decision by the Hon'ble Supreme Court that different treatment given to an employee who has committed a misconduct and an employee who has rendered exceptional service cannot be attacked on the ground of discrimination. An employee who has been visited with penalty in the disciplinary proceedings conducted as against him cannot claim promotion retrospectively from the date when he committed the misconduct. But his case for promotion will have to be taken up in the DPC held thereafter, of course, considering the impact of penalty imposed on him. In the background of the above authoritative decision pronounced by the Hon'ble Supreme Court, the submission made by learned counsel appearing for the writ petitioner that claim for promotion made by the writ petitioner shall be considered retrospectively by constituting special review DPC against the vacancies that arise in 1999-2000 stands rejected.

13. Let us now take up the decisions cited by learned counsel appearing for the writ petitioner.

14. A Single Judge of this Court in Major Singh Gill vs. State of Punjab, CWP No.10359 of 1991, decided on 3.12.1991 held as follows:-

“8. xxxx. After hearing learned counsel for the parties, I find force in the submissions of learned counsel for the petitioner. The punishment when awarded would relate back to the period when the alleged offence/misconduct was committed or in any case when the same was detected. Even if any punishment is awarded to the petitioner now that would relate back to the year 1973 when the alleged misconduct/irregularities took place or the year 1975 when the charge-sheet was served (as it can be said that the irregularities were detected about that time).”

15. The above decision was put to challenge before the Division Bench of this Court by the State of Punjab and another. In the said case in State of Punjab and another vs. Major Singh Gill, 1994 (2) RSJ 100, it was held as follows:-

“8. The position, that thus emerges, is that the only material adverse to Major Singh, in his service records, is this incomplete enquiry, which, even if it were to conclude now, with the awarding of the proposed punishment of the stoppage of one increment , it would relate back to the year 1973 or at any rate 1975, when the charge-sheet was served upon him.”

16. On a careful perusal of the facts noted in the above case, it was found that 5 years service records prior to the date when the case of the employee was taken up for consideration for promotion had to be evaluated

by the DPC. As it would be unjust to direct such an employee to wait for another years from the expiry of currency of penalty to assess his service records, this Court made an observation in the special circumstances of the above case that penalty imposed would relate back to the date when the misconduct was committed. It is to be noted that in the above case this Court has never laid down a principle of law that if an employee who was found guilty and penalized is entitled to promotion retrospectively from the date when the misconduct was committed. The proposition that an employee who was found guilty and penalized should be considered for promotion retrospectively would lead to a situation where he was treated equally with an employee who had put in unblemished service. Such a premium to an employee who committed misconduct is unknown to service jurisprudence.

17. It was submitted by learned counsel appearing for the writ petitioner that the Disciplinary Authority initiated disciplinary proceedings as against the writ petitioner for the alleged irregularity committed by the writ petitioner during 1989-90 only on 8.10.2002 after a lapse of 13 long years, just before the DPC for the year 2002-03 was held. It is also pointed out that the writ petitioner was visited with penalty of 'censure' on 18.5.19989 for the subsequent misconduct he allegedly committed on 27.8.1990. Therefore, he launched two prong attacks on the disciplinary proceedings initiated on 8.10.2002. The first attack was that the delay of 13 years in charge-sheeting an employee from the date of alleged commission of misconduct suffers from incurable latches. The second attack was that the disciplinary proceedings initiated as against the writ petitioner after a lapse

of 13 long years just before holding for the year 2002-2003 smack of *malafides*.

18. Learned counsel appearing for the official respondents referring to the chronological events leading to the penalty of 'censure' imposed on the writ petitioner submitted that the matter remained under correspondence with Directorate, Defence Estates, Western Command, Ministry of Defence, New Delhi and Central Vigilance Commission from the year 1994 to 2002. It is his submission that the writ petitioner also had taken 1 year and 5 months to reply to the show cause notice. Therefore, delay has been properly explained, it was contended.

19. It was the admitted case that for the irregularity allegedly committed by the writ petitioner way-back on 27.8.1990, he was charge-sheeted on 21.6.1993 and penalty of 'censure' was imposed on him on 18.5.1999. It is not as if earlier irregularity allegedly committed by the writ petitioner during the year 1989-90 was not in the notice of the official respondents. They in fact seized of such an irregularity and launched civil proceedings before competent civil Court against the company concerned. But unfortunately, Annexure R-1 which reflects chronology of events reflecting the disciplinary proceedings initiated against the writ petitioner would go to establish that the complaint against the writ petitioner was forwarded to the Authority concerned only on 7.6.1994 after a lapse of about 4 long years. It is really shocking that an employee was charge-sheeted for the irregularity he committed after 13 long years. Such an employee may not be in a position to recall what actually transpired at the time when he allegedly committed irregularity. It would be an uphill task for

him to collect materials to defend himself. In other words, an employee who has been charge-sheeted and directed to defend will be virtually defenceless after a lapse of 13 years.

20. Of course, chronology of events discloses that there had been correspondence between Departments. But such correspondence which had consumed 13 long years had created adverse impact on the promotional prospects of the writ petitioner. The Department is not supposed to handle the disciplinary proceedings of an employee exhibiting such a lackadaisical attitude.

21. In the above context, it is relevant to refer to the decision of the Hon'ble Supreme Court in State of Madhya Pradesh vs. Bani Singh and another, 1990 Supp. SCC 738, wherein it has been held as follows:-

“4. The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think

that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.”

22. The Hon'ble Supreme Court has come down very heavily upon the attitude of the Authorities who had taken 12 long years in that case to initiate departmental inquiry and was pleased to affirm the judgement passed by the Tribunal quashing the disciplinary proceedings on the ground of delay and laches.

23. Of course, mere delay does not vitiate the disciplinary proceedings. Further, if the charges are grave enough to culminate in major penalty, departmental inquiry cannot be quashed. But in the instant case, there was no loss for the official respondents, inasmuch as the amount disbursed by the writ petitioner for supply of goods was repaid with interest by the supplier, of course, in the aftermath of the civil prosecution initiated by the Department as against the supplier. Under such circumstances, whopping delay of 13 long years in initiating disciplinary proceedings against the writ petitioner without acceptable explanation looms large.

24. Apart from the delay and laches pointed out by us, the charge-sheet issued against the writ petitioner just 2 or 3 months prior to holding of DPC speaks volumes of *malafides* on the part of the official respondents. An irregularity which was committed 13 years ago was intentionally taken up

by the official respondents even after the subsequent irregularity committed by the writ petitioner had culminated in infliction of penalty of 'censure' as early as on 18.5.1999. In the above background of the case, the writ petitioner has demonstrated that charge-sheet was issued on 8.10.2002 just before holding DPC for the year 2002-2003 for the misconduct allegedly committed by him about 13 years ago in order to deprive him of his due promotion against the vacancy taken up for consideration by the DPC held in 2002-03. For all these reasons, we have no hesitation to hold that the entire disciplinary proceedings which culminated in passing the final order imposing penalty of 'censure' on 8.11.2005 is liable to be set aside.

25. It was contended by learned counsel appearing for the writ petitioner that claim of promotion made by the writ petitioner should be considered against the vacancy that has arisen in 1999-2000. Learned counsel appearing for the official respondents vehemently submitted that the writ petitioner had not acquired sufficient seniority for consideration in the DPC that was held during 1999-2000.

26. On a perusal of the records, we find that none of the juniors of the writ petitioner was promoted prior to 2002-2003. Only in the DPC that was held on 2002-03, his juniors had to be promoted as the decision taken by the DPC was consigned to sealed cover. Further, his seniors had to be considered for promotion against the vacancies that had arisen prior to 2002-03. Therefore, we are of the considered view that the writ petitioner is entitled to be considered for promotion only against the vacancy that arose in 2002-03 by the DPC.

27. In the light of the above, the entire disciplinary proceedings

culminated in final order of 'censure' under Annexure A-1 dated 8.11.2005 and the subsequent order passed in the Revision Petition by the competent Authority on 1.10.2007 stand set aside and consequently, the official respondents are directed to open the sealed cover which contains the recommendation made by the DPC held in 2002-03 for promotion of the writ petitioner and consider his promotion to the post of Junior Administrative Grade over and above his immediate junior and grant him all consequential benefits.

28. The impugned order passed by the Tribunal stands set aside and the writ petition is allowed in the aforesaid terms.

(M. JEYAPPAUL)
JUDGE

October 16, 2015
Gulati

(DARSHAN SINGH)
JUDGE