IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 7757 of 1995
Date of decision : 16-03-2016

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Inder Kumar Jain

...........Petitioner

Versus

State of Haryana and others

..........Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Sudhir Aggarwal, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The petitioner is seeking directions to the respondents to promote the petitioner from the date his junior was promoted with all consequential benefits.

The petitioner joined the respondent-Department as a Clerk. In the year 1981, a Charge Sheet under Rule 7 of the Punjab

Civil Services (Punishment and Appeal) Rules (hereinafter referred to as `the Rules) was served upon the petitioner (Annexure P-1). On account of initiation of the disciplinary proceedings, the promotion of the petitioner to the post of Assistant was withheld. Vide order dated 15.3.1991 (Annexure P-2), he was exonerated of the charge and was warned to be careful in future and vide order dated 22.10.1993 (Annexure P-3), he was allowed to cross his efficiency bar w.e.f 1.4.1983. Another charge sheet was issued to him on 30.4.1986 (Annexure P-4) under Rule 7 of the Rules on the allegation that the petitioner prepared the service book of Mool Chand, Peon in the year 1973 and had entered his date of birth as 31.3.1924 on the basis of affidavit and without verification of his educational certificates or discharge certificate issued to him by the Military authorities. The petitioner gave his detailed reply and thereafter an enquiry officer was appointed who vide his report dated 20.10.1986 exonerated the petitioner. The Deputy Excise and Taxation Commissioner, Rohtak, however, proceeded to impose a penalty of stoppage of 4 annual increments with cumulative effect on the petitioner vide his order dated 6.11.1986. The petitioner feeling aggrieved by the order dated 6.11.1986 filed an appeal before the Commissioner, Excise and Taxation, Haryana, who vide his order dated 17.2.1988 quashed the order dated 6.11.1986 on the ground that there was no note of dissent and copy of the enquiry report had not been supplied and no notice has been issued to the petitioner for proposing the punishment and the case was remanded back for a fresh decision.

After remand by respondent no.2, the matter was taken up by the Deputy Excise and Taxation Commissioner, Rohtak but he again reiterated his earlier order of stoppage of four annual increments with cumulative effect of the petitioner vide order dated 11.10.1989 (Annexure P-5). An appeal was filed on 24.1.1990 (Annexure P-6) by the petitioner before the Commissioner, Excise and Taxation Department, Haryana. No final decision was taken on the appeal.

The petitioner filed CWP No. 1916 of 1993 challenging the action of the respondents in not promoting the petitioner from the date his juniors were promoted. In reply, the respondents stated that promotion case of the petitioner is under process and will be finalized shortly. The writ petition was disposed of vide order of this Court dated 22.11.1993 (Annexure P-7) with a direction to the respondents to take a final decision with regard to petitioner's promotion to the next higher rank expeditiously. Even after passing of the order, respondent had not taken any action to finalize the promotion case of the petitioner. The petitioner filed COCP No. 691 of 1994. This contempt petition was dismissed vide order dated 6.3.1995 (Annexure P-9) passed by this Court in view of the promotion of the petitioner as Assistant vide order dated 4.8.1994 (Annexure P-8) passed by the respondents. While dismissing the contempt petition, liberty was granted to the petitioner to challenge the above said order in an appropriate Forum. By way of the present writ petition, the petitioner is seeking promotion from the date his juniors were promoted to the post of Assistant in the year 1975, to the post of Taxation Inspector in the year 1981 and to the post of Superintendent in the year 1986-87.

The respondents in the written statement have taken a stand that vide order dated 11.10.1989 (Annexure P-5), the punishment of stoppage of four annual increments with cumulative effect has been imposed upon the petitioner. As per the Instructions of the Chief Secretary, Govt. of Haryana dated 18.11.1971 (Annexure R-1), where on a preliminary investigation of a complaint a prima facie case is found to exist against a Govt. employee and it is proposed to take action against him under Rule 7 or 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, then he should not be promoted to a higher post until after disciplinary action against him has been completed and he has been exonerated. In the instructions, It is further stated that in a case in which a charge sheet has been served but the explanation in response to the charge sheet has not been received and as a result an enquiry officer has not been appointed, the case of promotion should be kept pending until decision has been taken as to whether a regular departmental enquiry should or should not be held. If it is decided that such an enquiry should be held, then the Govt. employee should not be promoted until he has been exonerated in the enquiry. If he is ultimately exonerated of all the charges without the imposition of any penalty or is only administered a warning then he should, if otherwise fit for promotion in every respect, be promoted with retrospective effect i.e from the date on which he was due for promotion and an official junior to him was promoted. In the present case, record of the petitioner for further promotion was not found up to the mark i.e. 70% satisfactory. Petitioner had filed an appeal before respondent no.2 against the order dated 11.10.1989 (Annexure P-5). He was given personal hearing on 21.9.1994 in this case by respondent no.2 and after hearing him, his appeal was rejected on the same date as there was no force and merit in it. The promotion of the petitioner was with-held on account of the charge sheet (Annexure P-1). During the pendency of this case, another charge sheet under Rule `7' was issued to him for the irregularities committed by the petitioner. The charge sheet (Annexure P-1) was finalized vide order dated 15.3.1991 (Annexure P-2) and the petitioner in view of the instructions (Annexure R-1) could not be promoted before 15.3.1991. Pursuant to the orders passed by this Court dated 22.11.1993 (Annexure P-7), the petitioner was promoted on 4.8.1994 (Annexure P-8) from the post of clerk to the rank of Assistant. It was further submitted in the written statement that no junior to the petitioner got the promotion for the post of Assistant in the year 1975. Vide seniority list (Annexure R-2) maintained up to 1.7.73, the petitioner was junior and placed at Sr. No.119 of the seniority list and hence the petitioner had no right for promotion as Assistant at that time. Even in the list maintained up to 1976, the petitioner figures below the names of person mentioned by him in para 15 of the writ petition (Annexure R-3).

In the replication filed on behalf of the petitioner, it is stated that he had filed a representation against the seniority list (Annexure R-2) for the year 1973. During the pendency of the representation, the seniority list (Annexure R-3) for the year 1976 was issued. The representation filed by the petitioner was allowed vide order dated 2.1.1985 (Annexure P-12) by the Excise and Taxation Commissioner, whereby the petitioner was ordered to be placed below Sh. K.K Dube and above Sh. Onkar Singh. On that basis seniority list as on 1.1.1985 (Annexure P-13) was prepared and the petitioner has been placed below Kewal Krishan Dubey, Clerk. However, seniority in itself will not extend any benefit to the petitioner. The fact is not in dispute that the petitioner had been imposed a punishment of stoppage of four annual increments with cumulative effect vide order dated 11.10.1989 (Annexure P-5). In the writ petition, the case of the petitioner set out is that he had filed an appeal on 24.1.1990 (Annexure P-6) against the order dated 11.10.1989 (Annexure P-5), but no decision was taken at the time of filing of this writ petition.

I have heard counsel for the parties and gone through the records of the case.

In reply to paragraph 9 of the petition, respondents have stated that against the appeal filed by the petitioner he was given a personal hearing on 21.9.1994 by respondent no.2 and it was rejected. In reply to this the petitioner stated in the replication that he was called for personal hearing on 21.9.1994, but no opportunity of hearing was given to him on that date and he was never communicated any decision thereafter. The admission of the petitioner that he had gone to the office is sufficient to return a finding that the order dated 21.9.1994 rejecting his appeal was passed in presence of the petitioner. During the proceedings of the contempt petition i.e COCP No. 691 of 1994 in this Court, the petitioner was promoted w.e.f 4.8.1994 to the post of Assistant and the respondents have placed the seniority list on record in which the petitioners name is at serial no.119. The modified seniority list was prepared on 1.1.1985 (Annexure P-13) on a representation made by the petitioner against the seniority list for the year 1973 (Annexure R-2).

The respondents have filed a written statement on 30.11.1995 and the seniority list (Annexure P-13) should have been placed on record by them whereby the petitioner has been placed below K.K Dube. An attempt has been made to mislead the Court by placing on record the seniority list (Annexure R-2) in which the petitioner has been shown at Sr. No.119. Moreover another thing which the respondents have concealed from this Court that though in paragraph 9 they have stated that the petitioner was given a personal hearing and his appeal was dismissed on 21.9.1994, they have not placed on record any order when his appeal was dismissed hence by concealing the seniority list P-13 and not placing on record the appellate order 21.9.1994, a finding is being recorded that no order was passed in the appeal filed against the order dated

11.10.1989 (Annexure P-5)

Another thing which requires to be considered in the present case is that pursuant to the charge sheet dated 30.4.1986 (Annexure P-4), the enquiry officer was appointed who exonerated the petitioner. However, the Deputy Excise and Taxation Commissioner imposed the penalty of stoppage of four increments with cumulative effect. On appeal the matter was remanded back by the Commissioner, Excise and Taxation, Haryana vide order dated 17.2.1988 on the ground that the petitioner was neither given an opportunity of hearing while recording a dissent note nor a copy of the enquiry report had been supplied to him. A perusal of the order dated 11.10.1989 (Annexure P-5) shows that the report of enquiry officer dated 20.10.1986 has not been placed on record by the petitioner. A perusal of order dated 11.10.1989 (Annexure P-5) shows that the petitioner while entering the date of birth of one peon did not verify his date of birth and for this mistake, punishment of stoppage of four increments with cumulative effect has been imposed. This punishment per se is harsh and disproportionate to the charges of the petitioner. Moreover the respondents have not bothered to place on record the order dated 21.9.1994 whereby his appeal has been rejected coupled with the fact that they have not placed on record the modified seniority list (Annexure P-13). The above said facts go in favour of the petitioner.

In view of all that has been discussed above, this petition is being disposed of with a direction to the respondents to consider the case of the petitioner for promotion to the post of Assistant as per the seniority list dated 1.1.1985 (Annexure P-13) with all consequential benefits of further promotion in accordance with law.

16.03.2016 **(RITU BAHRI)**
ritu **JUDGE**