

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

**C.W.P. No. 17824 of 2013
Date of decision : 21.04.2016**

Subhash Chander

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Manjeet Singh, Advocate,
for the petitioner.

Mr. M.S. Sidhu, Addl. A.G., Haryana.

RITU BAHRI, J. (Oral)

The petitioner is seeking direction to the respondents to consider his claim to the post of Superintendent Jails in accordance with the provisions contained in Punjab Prisons Service (Class-II) Rules, 1963.

The petitioner is serving as Deputy Superintendent, Jails and as per seniority list, his name is figured at serial No.2. Two posts of Superintendent, Jail, fell vacant in the year 2013 and respondent No.3 forwarded a panel of Deputy Superintendents for consideration for promotion, in which petitioner's name was at serial No.2. Vide judgment of conviction dated 07.09.2010 and order of sentence dated 08.09.2010 (Annexure P-1), petitioner along with five other accused was convicted under Sections 323, 327, 506 read with Section 34 IPC and was sentenced

Singh, who was convicted along with the petitioner, approached this Court by way of CRM-M-34961-2010 seeking stay of conviction. This Court vide order dated 22.12.2010 (Annexure P-2), stayed the operation of the judgment dated 07.09.2010, whereby petitioner along with other officials was convicted. Thereafter, the petitioner was charge-sheeted under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules. After going through the reply filed by him, the department awarded the punishment of censure vide order dated 03.06.2013 (Annexure P-3). A meeting of the Departmental Promotion Committee (DPC) was convened on 18.04.2013 for filing up the posts of Superintendents, Jails Department. After considering the records of all the officers, the Committee had recommended names of Sh. Balak Ram, who was at serial No.1 and Sh. Deepak Sharma, who was at serial No.4 in the zone of consideration vide proceedings dated 18.04.2013 (Annexure P-4). The case of the petitioner was not considered for promotion on the ground that he stood convicted and disciplinary proceedings under Rule 7 of Haryana Civil Services (Punishment & Appeal) Rules were pending against him. The petitioner did not challenge the recommendation of DPC. Moreover, the proceedings of the DPC were not recommended by the Government. A second DPC was to be convened on 18.04.2013. The petitioner was apprehending that respondent No.4, whose service record was not good, was to be considered by the DPC for being promoted to the post of Superintendent, Jails. Therefore, the petitioner made a representation (Annexure P-7) dated 16.07.2013 to respondent Nos. 1 to 3. By way of present petition, the petitioner is seeking direction to the respondents to consider his claim for promotion to the post of Superintendent, Jails.

While issuing notice of motion on 16.08.2013, it was observed that the case of petitioner be kept in a sealed cover to await the final conclusion of the criminal proceedings.

Upon notice, written statement on behalf of respondent Nos. 1 and 2 has been filed, wherein it has been stated that in compliance of the order dated 16.08.2013, the recommendations of the DPC held on 18.04.2013 have not been given effect to. It has been further stated that copy of the order dated 16.08.2013 was received in the office on 29.08.2013, whereas the meeting of the DPC had already been held on 16.07.2013 (Annexure R-1). In this meeting, respondent No.4 was found eligible for promotion with the condition that if, Sh. Subhash Chander, Deputy Superintendent, Jail (petitioner) is found fit for promotion, then Sh. Surender Singh Dalal-respondent No.4 will have no right of seniority over him and in case the charges levelled in FIR were dropped, then Sh. Surender Singh Dalal would be reverted to the post of Deputy Superintendent of Jail without any notice. The recommendations of the DPC have been approved by the competent authority and thereafter, promotion orders have been issued on 13.09.2013 (Annexure R-2).

In a separate written statement filed by respondent No.3, it has been stated that Sh. Shamsheer Singh, who had been convicted and sentenced along with the petitioner, had filed Crl. Misc. No.34961 of 2010 before this Court and his conviction was stayed vide order dated 22.12.2010 (Annexure P-2). Pursuant to the above said order, the Government vide memo/order dated 26.07.2012 had decided that the conviction of the officer had only been stayed and not set aside. It had been advised to closely follow up the progress of the case and take immediate appropriate action as and when

required. No adverse action for suspension or dismissal from service was taken against the petitioner. The appellate Court at Bhiwani, vide order dated 06.11.2013 (Annexure R-1) had set aside the conviction of petitioner and others for non compliance of mandatory provisions of Section 191 Cr.P.C. and remanded the case back to the Court of learned Chief Judicial Magistrate, Bhiwani. It has been further stated that on account of pendency of criminal case, he cannot be promoted. On 21.11.2013, a charge-sheet under Rule 10 of the Punjab Jail Department Executive Staff (Punishment & Appeal) Rules, 1943 read with Rule 17 of the Punjab Jail Service (Group B) Rules, 1963 has been issued to the petitioner on a complaint made by a female employee regarding sexual harassment.

Learned counsel for the petitioner has informed the Court that vide judgment dated 12.03.2015 passed by the Chief Judicial Magistrate, Bhiwani, the complaint has been dismissed and the petitioner has since been acquitted of the charges levelled against him.

Since the petitioner has now been acquitted on 12.03.2015, the question for consideration would be, “whether the petitioner had a right to be considered for promotion on 13.09.2013 when Surender Singh Dalal-respondent No.3 was promoted as Superintendent, Jail.”

Admittedly, Surender Singh Dalal was junior to the petitioner and the petitioner had been ignored only on account of the judgment of conviction dated 07.09.2010 (Annexure P-1). The circumstances changed when the Additional Sessions Judge, Bhiwani set aside the conviction of petitioner vide judgment dated 06.11.2013 and remanded the case back to the Court of learned Chief Judicial Magistrate for a fresh decision. Further, vide judgment dated 12.03.2015 passed by the learned Chief Judicial

Magistrate, Bhiwani, the complaint has been dismissed and the petitioner has been acquitted of the charges levelled against him. Hence, in view of the judgment of acquittal, the petitioner has a right to be considered for promotion from the date when Surender Singh Dalal was promoted as Superintendent, Jail. Punishment of censure has been inflicted upon the petitioner on account of disciplinary proceedings initiated against him, which cannot be made a ground for not considering his case for promotion to the post of Superintendent, Jail. Even till date, no final decision has been taken on the charge-sheet dated 21.11.2013. Therefore, he has a right to be considered for promotion as he has now been acquitted in the complaint case vide judgment dated 12.03.2015.

Learned counsel for the State has further informed that against the judgment of acquittal, the State has filed an appeal before this Court, which is pending.

The pendency of appeal against the judgment of acquittal is no ground to ignore the case of the petitioner for promotion.

In view of the above, this petition is allowed and the respondents are directed to consider the case of the petitioner for promotion to the post of Superintendent, Jail, with effect from the date when Surender Singh Dalal-respondent No.4 was promoted.

21.04.2016
ajp

(RITU BAHRI)
JUDGE