

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

CWP No.7162 of 2011

Date of decision: 20.07.2016

Balbir Singh Khokha

...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. Rajeev Atma Ram, Senior Advocate,
with Mr. Bhavpreet S. Dhatt, Advocate,
for the petitioner.

Mr. Rajesh Gaur, Addl. A.G., Haryana.

Mr. Animesh Sharma, Advocate,
for respondent Nos. 3 and 4.

Ritu Bahri, J.

The petitioner is seeking a writ of certiorari for quashing the order dated 28.03.2011 (Annexure P-18), whereby he has been promoted as HFS w.e.f. 06.03.2000 and his inter se seniority has been fixed above Sh. Shakti Singh (Sr. No.28) and below Sh. Satbir Singh Dahiya (Sr. No.27).

The petitioner was appointed as Forest Ranger in the year 1982 and was promoted as HFS Class-II with effect from 29.10.1999 on regular basis vide order dated 17.12.2002. In the year 1999, a charge sheet was issued to the petitioner. After conducting a departmental enquiry, penalty of stoppage of one grade increment without cumulative effect and recovery was imposed upon him vide order dated 22.12.1999 (Annexure P-1). The

petitioner was promoted as HFS Class-II on adhoc basis vide order dated

10.03.2000. Thereafter, the petitioner filed a representation dated 02.02.2001 seeking retrospective promotion w.e.f. 29.10.1999 on the basis of instructions dated 19.07.1973 issued by the State of Haryana, but to no avail. Then, he filed CWP No.3244 of 2001, which was disposed of by this Court vide order dated 06.03.2001 by giving directions to the respondents to decide his representation. Vide order dated 17.12.2002 (Annexure P-4), the petitioner was promoted from the date when his juniors were promoted i.e 29.10.1999. This order was challenged by way of CWP Nos.17901 of 2002 and 934 of 2003 by affected persons. These petitions were disposed of by this Court vide order dated 03.04.2005 giving direction to decide the representations of those petitioners by speaking orders. The representations of the petitioners were rejected by the State of Haryana vide order dated 16.02.2005 (Annexure P-5). On 18.03.2008, a tentative seniority list was circulated, in which, present petitioner was shown at serial No.21, whereas respondent No.3 was shown at serial No.26. At that time, objections were also called from the affected persons. After hearing the objections, final seniority list was finalized on 05.12.2008 (Annexure P-7), in which, the petitioner figured at serial No.22 and respondent No.3 at serial No.27. In the year 2010, when the promotions were to be made from HFS Class-II to the Indian Forests Service, father of Satyapal Singh Dahiya-respondent No.3 made a representation dated 15.03.2010 claiming seniority for his son. Petitioner also submitted a representation before the competent authorities. Thereafter, the State Government passed an order dated 16.11.2010 (Annexure P-9), vide which, petitioner has been placed at serial No.26 and respondent No.3 has been brought at serial No.25. Further, the date of regular appointment of the petitioner has been changed from 29.10.1999 to

on account of his close proximity with former Chief Minister, the aforesaid order has been passed. He further alleged that no opportunity of hearing was afforded to him before passing this order. The petitioner challenged the order dated 16.11.2010 by filing CWP No.21362 of 2010, which was disposed of on 03.02.2011 (Annexure P-14). Vide this order, a direction was given to the respondents to hear both the parties and thereafter, pass a fresh order. Pursuant to the aforesaid order, respondent No.2 has passed the order dated 28.03.2011 (Annexure P-18), whereby order dated 17/19.12.2002 (Annexure P-4) has been withdrawn and the petitioner has been promoted as HFS-II w.e.f. 06.03.2000 instead of 29.10.1999. Further, his seniority has been fixed below respondent No.4.

Learned senior counsel for the petitioner has argued that the petitioner was charge-sheeted and was given minor punishment of stoppage of one increment without cumulative effect. The punishment could relate back to the date of cause of action and lapse committed by the Government servant. As per Service Rules, promotion to the next post was to be made on the basis of seniority-cum-merit. Minor punishment could not be a ground to deny him the benefit of promotion with effect from the date, when his juniors were promoted as per instructions dated 19.07.1973 (Annexure P-2). As per these instructions, an official whose grade increments have been stopped, should be considered eligible for promotion during the period of stoppage of increments, if his over all record is suitable for promotion. Vide order dated 17.12.2002 (Annexure P-4), the respondents had given regular promotion to the petitioner w.e.f. 29.10.1999 at par with his juniors without any financial benefits. The subsequent instructions dated 31.05.2006 (Annexure P-19), according to which, no promotion can be

cannot be made applicable in the case of the petitioner because order dated 17.12.2002 (Annexure P-4) was passed as per instructions dated 19.07.1973. Hence, the impugned order dated 28.03.2011 (Annexure P-18) is liable to be set aside. In support of his arguments, learned counsel for the petitioner has referred to the judgment passed by this Court in **Major Singh Gill Vs. The State of Punjab**, 1992 (1) SCT 436, which has been upheld by the Division Bench in **State of Punjab Vs. Major Singh Gill**, 1994 (1) SCT 811.

Mr. Animesh Sharma, learned counsel for respondent Nos.3 and 4 has vehemently argued that representation dated 15.03.2010 submitted by father of respondent No.4 has been rightly considered in view of the judgment passed by the Hon'ble Supreme Court in **State of T.N. Vs. Thiru K.S. Murugesan and others**, 1995 (3) RSJ 271, wherein it has been held that unless the period of punishment gets expired by efflux of time, the claim for consideration for promotion during this period cannot be taken up. The punishment had been awarded to the petitioner on 22.12.1999 (Annexure P-1) and retrospective promotion had been granted to him w.e.f. 29.10.1999. Granting of promotion even on a date prior to the date of punishment would amount to premium of misconduct, which is impermissible under the Rules. He has further argued that the order dated 17.12.2002 (Annexure P-4) had been withdrawn by passing an order dated 16.11.2010 (Annexure P-9). This order was challenged by the petitioner by filing CWP No.21362 of 2010, which was disposed of by this Court on 03.02.2011 (Annexure P-14) by giving direction to the respondents to give an opportunity of hearing to the petitioner and pass appropriate orders in accordance with law. Pursuant to the aforesaid direction given by this Court, the impugned order dated 28.03.2011 (Annexure P-18) rejecting the claim of

has been fixed above Shakti Singh (Sr. No.28) and below Sh. Satbir Singh Dahiya (Sr. No.27). As per the guidelines issued by the Chief Secretary, Haryana, on 18.11.1971, an employee who has been issued a charge sheet should not be promoted until the enquiry has been completed and he has been exonerated. If he is ultimately exonerated of all the charges without imposition of any penalty or is only administered a warning (whether with a copy on the personal file or not) 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. He has referred to the judgment passed by the Hon'ble Supreme Court in Union of India etc. etc. Vs. K.V. Jankiraman etc. etc., AIR 1991 Supreme Court 2010 (1), whereby it has been held that promotion to a post, more so, to a selection post would depend on circumstances. The minimum requirement is that an employee should have an unblemished record. An employee found guilty of misconduct cannot be placed at par with other employees and his case has to be treated differently. Denial of promotion till the disciplinary proceedings are finalized is not a penalty, but a necessary consequence of his conduct.

Learned counsel for the petitioner has further argued that other persons namely Sh. R.K. Verma, Sh. Partap Singh and Sh. Jagmohan Sharma were also charge-sheeted along with the petitioner and underwent the departmental enquiries arising out of the same facts and after imposing minor penalties of stoppage of one increment without cumulative effect, they have been promoted. It has been further stated that even though the petitioner was punished on 22.12.1999, but he had been promoted on 06.03.2000, whereas his juniors, who had faced the departmental enquiries

has referred to the case of Sh. Jagpal Singh, who was also issued a charge sheet. After conclusion of enquiry, penalty of stoppage of one annual increment without cumulative effect was imposed upon him. However, he had been promoted to the post of HFS-II on 29.12.2000 as per promotion order Annexure 'C'. Similarly, in the case of Sh. Gurmeet Singh, he was imposed minor punishment of censure as per punishment order 16.04.2003.

In the written statement filed by the Under Secretary to Government of Haryana, Forest Department, on behalf of respondent Nos. 1 and 2, it has been submitted that the claim of the petitioner for promotion w.e.f. 29.10.1999 was rejected vide order dated 29.05.2001 (Annexure P-3) and thereafter, on a second representation made by him, he was promoted on adhoc basis w.e.f. 29.10.1999 i.e. the date when his juniors were promoted. Thereafter, the seniority of the petitioner was placed at serial No.22, above respondent No.4. This seniority list was issued on 05.12.2008 (Annexure P-7). Thereafter, respondent No.3 made a representation for his son namely, Satbir Singh Dahiya-respondent No.4 to the Chief Minister, Haryana. A simultaneous representation was made by the petitioner on 29.06.2010. The representations were decided by the respondent-department by following the ratio of the judgment passed by the Hon'ble Supreme Court in **Thiru K.S. Murugesan's** case (supra). In compliance of the order dated 03.02.2011 passed by this Court in CWP No.21362 of 2010, opportunity of hearing was given to both the parties and thereafter, the order dated 28.03.2011 was passed, whereby the earlier order dated 17/19.12.2002 has been withdrawn. The petitioner was deemed to be promoted as HFS w.e.f 06.03.2000 and in the inter se seniority, he was fixed below Sh. Satbir Singh Dahiya, who was at serial No.27.

the facts of the case, the claim of the petitioner has to be examined as per instructions dated 18.11.1971 and 19.07.1973. As per instructions dated 19.07.1973 (Annexure P-2), it has been clarified that where the officials have been awarded punishments and have become eligible for consideration for promotion, in such cases the appointing authority/administrative departments themselves can take decision at their level. It has been further clarified as under:-

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(3) Withholding of increments or promotion:- In respect of such officials whose promotion has been stopped for a specific period, there is no need to give any clarification in such matters. For the officials whose one or more than one grade increments have been stopped and if his turn comes for promotion during the currency of the stoppage of grade increment/increments, his total record is to be considered and only then a decision may be taken whether he is eligible for promotion or not. It is correct that if a decision is taken to promote such an official, then the punishment awarded to him regarding stoppage of grade increment becomes ineffective but such matters are always necessary to be kept in view that the official is having a total very good record and the matter regarding his promotion is not under consideration and he is awarded punishment of stoppage of grade increments before some time when he becomes eligible for promotion. If such an official is debarred from promotion during the period of stoppage of grade increments then its effect can be that another official whose grade increments were stopped earlier and his period of punishment has ended then he will be in a beneficial position in comparison to the first official though his overall record is inferior than the record of the first official. Therefore, an official whose grade increments have been stopped, should be considered eligible for promotion during the period of stoppage of grade increments, if his overall record makes him suitable for promotion.”

As per above instructions, during the currency of punishment of stoppage of increment, the case of an employee for promotion should be considered, if his over all record makes him suitable for promotion. It is on

17.12.2002 (Annexure P-4) and promoted the petitioner w.e.f. 29.10.1999 i.e. the date when his juniors were promoted. Hence, as per these instructions, after imposition of punishment on 22.12.1999 (Annexure P-1), the petitioner had a right to be considered for promotion.

During the period of stoppage of grade increment, the petitioner had rightly been promoted after imposition of penalty on 06.03.2000. Now, vide order dated 28.03.2011 (Annexure P-18), the respondents have interfered with his seniority and placed him below Sh. Satbir Singh Dahiya-respondent No.4. This order has been passed on account of the instructions dated 13.02.2006, which were issued on the basis of the judgment passed in **Thiru K.S. Murugesan's** case (supra). Further, as per instructions dated 31.05.2006 (Annexure P-19), it has been decided that no promotion will be allowed to any employee during the currency of stoppage of increment. Vide these instructions, the earlier instructions dated 18.11.1971 & 19.07.1973 were modified.

The instructions dated 31.05.2006 (Annexure P-19) are to be applied prospectively. Moreover, the petitioner had been promoted during the currency of punishment on 06.03.2000. Hence, he had been extended the benefit of earlier instructions dated 19.07.1973 (Annexure P-2). As per these instructions, the petitioner was promoted on 06.03.2000 during the pendency of punishment dated 22.12.1999 (Annexure P-1). Thereafter, his case for promotion with effect from the date his juniors were promoted to HFS was taken up by the respondents and vide order dated 29.05.2001 (Annexure P-3), a decision was taken that promotions of Balbir Singh Khokha-petitioner and his junior Ved Parkash were on adhoc basis against the posts meant for direct recruitment. At the time of promotion, their

dated 17.12.2002 (Annexure P-4), the petitioner was granted adhoc promotion (notional) w.e.f. 29.10.1999, the date on which his juniors were promoted, without any financial benefit. While passing this order, it has been further observed that promotion of Sarvshri Ved Parkash, Parmanant, hari Kishan, Rajesh Kumar Chugh, Surender Singh, Jagmohan Sharma, Satbir Singh Dahiya, Raj Kumar Jangra, Naresh Kumar Malik, Uma Shankar, Ishwar Chand Sharma and Waryam Singh Saini, Forest Rangers, had been given w.e.f. 29.10.1999 with a condition that the same were subject to pendency of disciplinary proceedings against Sh. Balbir Singh Khokha, Forest Ranger (petitioner). The petitioner being senior had a prior right of consideration for promotion.

At this stage, reference can be made to a judgment passed in **Major Singh Gill's** case (supra). In that case, charge-sheet was issued to the petitioner in the year 1975 and continued till 1989. The case for promotion was to be taken up for consideration w.e.f. 01.01.1985, for which, five years record prior to the date was to be taken into consideration. After completion of enquiry, no action had been taken against the petitioner till 1989 and it was tentatively decided to impose punishment of stoppage of one increment with cumulative effect. In the above facts, it was held that punishment, if awarded, would relate back to the date of the incident i.e. 1973 or 1975. For consideration of his case for promotion w.e.f. 01.01.1985, record of five years was required to be seen and this punishment, even if, awarded in the year 1989, would not make the petitioner ineligible for promotion w.e.f. 01.01.1985. The aforesaid petition was allowed by this Court. The said judgment was upheld by the Division Bench of this Court in LPA No.538 of 1992, titled as **State of Punjab Vs. Major Singh Gill**, 1994 (1) SCT 811,

“7. The position, that thus emerges, is that the only material adverse to Major Singh Gill, in his service record, 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. In this behalf, it would be pertinent to note, that while dealing with other cases, the screening committee had ignored punishments awarded to them, more than five years prior to the date of their promotion. Applying the same yardstick to the case of the writ petitioner, such punishment, even if awarded to him, could not stand in the way of his promotion.

8. Such being the circumstances, no exception can indeed be taken to the impugned judgment of the learned Single Judge holding the writ petitioner suitable for promotion to the rank of Executive Engineer w.e.f. January 1, 1985.”

In the facts of the present case, a conditional promotional order was passed in favour of juniors of the petitioners and this fact finds mention in the order dated 17.12.2002 (Annexure P-4). Hence, when the petitioner was imposed punishment of stoppage of one increment without cumulative effect, he had a right to be promoted with effect from the date his juniors have been promoted, as the punishment in the case of the petitioner would relate back to the date of charge-sheet, which was issued to him in the year 1999. Neither the conditional order of promotion nor the order dated 17.12.2002 (Annexure P-4) has been challenged. The petitioner has been promoted during the currency of penalty on 06.03.2000 as per instructions dated 19.07.1973 (Annexure P-2). However, vide order dated 28.03.2011 (Annexure P-18), he has been restored back and the order dated 17/19.12.2002 (Annexure P-4) giving seniority w.e.f. 29.10.1999 has been withdrawn, which could not be done. In view of the judgment passed in **Major Singh Gill's** case (supra), the seniority of the petitioner could not be withdrawn.

whereby the respondents have interfered with the seniority of the petitioner and placed him before respondent No.4 is liable to be set aside. This order has been passed on account of instructions dated 13.02.2006, which were issued on the basis of the judgment passed in **Thiru K.S. Murugesan's** case (supra). Moreover, as per the instructions dated 31.05.2006 (Annexure P-19), it has been decided that no promotion would be allowed to any employee during the currency of penalty. However, in the case of the petitioner, he had been promoted during the currency of punishment on 06.03.2000 as per instructions dated 18.11.1971 and 19.07.1973 (Annexure P-2) and this order has not been set aside vide impugned order dated 28.03.2011 (Annexure P-18). The order dated 17/19.12.2002 (Annexure P-4), had been passed as per instructions dated 18.11.1971 and 19.07.1973 (Annexure P-2) which were issued before the instructions dated 13.02.2006 (Annexure P-19).

In view of the above discussion, this petition is allowed and the impugned order dated 28.03.2011 (Annexure P-18) is set aside.

20.07.2016
ajp

(RITU BAHRI)
JUDGE