

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

CWP No.26742 of 2013 (O&M)
Date of decision: February 08, 2016

Balbir Singh

...Petitioner

Versus

Haryana Power Generation
Corporation Ltd. and others

...Respondents

Coram: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Ram Kumar Malik, Sr.Advocate assisted by
Mr.Mandeep Singh, Advocate for the petitioner.

Mr.P.S.Poonia, Advocate for
respondent No.1 – Corporation.

HARINDER SINGH SIDHU, J.

Balbir Singh, the petitioner has filed the present petition praying for directions to quash the punishment order dated 12.4.2010 (Annexure P-6) as also the orders dated 26.4.2011 and 13.7.2011 (Annexure P-8 and P-10), whereby, the statutory first and second appeals respectively filed by him were dismissed. He has also prayed that he be directed to be considered for promotion as Assistant Executive Engineer and Executive Engineer from the date his juniors have been so promoted.

The facts, as narrated in the petition are that the petitioner was appointed as Junior Engineer on 18.5.1984. On 18.4.2002, he was promoted as Assistant Engineer in the quota of degree holders as he had passed AMIE. Vide letter dated

13.6.2007, the petitioner was issued charge-sheet (Annexure P-1) on the allegation that he allowed to issue PTW on H2 cooler booster pump-I on 8.2.2007 without prior approval of his XEN, thus violating specific instructions and putting costly plant equipment to risk, he did not ensure at site that the inlet and outlet valves of H2 cooler booster Pump-1 B are not closed thereby stopping the flow of water to the generator for hydrogen cooling and that he did not inform the control room about the stoppage in the flow of water to the generator at site. It was also alleged that he did not take timely action to restore/regulate the supply of cooler water for H2 cooling in the generator thereby putting costly plant equipment to risk and the Unit-1 was forced tripped on 8.2.2007. The petitioner submitted his reply on 12.9.2007 (Annexure P-2). Sh.Surender Chhokar was appointed as Enquiry Officer to conduct an enquiry, who submitted his report on 16.9.2009 (Annexure P-3) in which the negligence and irresponsible attitude was proved. It was established that the consent of the Shift Charge Engineer was not taken for issuing PTW and that too in a case where no standby to the service would be available. This much was admitted by the petitioner himself in his reply to the charge sheet. No anticipatory arrangements were planned to check the emergency. But as there had been no loss to the equipment, the enquiry officer recommended that a lenient view be taken.

Show-cause notice was issued to the petitioner on 18.12.2009 (Annexure P-4) to which he submitted his reply on 12.1.2010 (Annexure P-5). After considering the same and giving

him a personal hearing, and in view of the fact that there was no loss to the equipment and taking note of the assurance of the petitioner to be careful in future, the punishing authority vide order dated 12.4.2010 (Annexure P-6) awarded him punishment of stoppage of one annual increment without cumulative effect. His ACR for the year in question was also down-graded by one step. The petitioner filed statutory appeal, which was dismissed vide order dated 26.4.2011 (Annexure P-8). His second appeal was dismissed as being not maintainable vide order dated 13.7.2011 (Annexure P-10). Regulation 13 of the Punishment and Appeal Regulations dated 13.9.1990 was relied on as per which the second appeal would lie where the appellate authority other than the Board enhances penalty inflicted by any subordinate authority. There being no enhancement of penalty in his case, the second appeal was held to be not maintainable.

The grievance of the petitioner is that his juniors were promoted as Assistant Executive Engineers vide order dated 26.6.2009 (Annexure P-11), but he was not considered on the ground that disciplinary proceedings were pending against him. However, at that time one post was kept reserved for him. The petitioner was eventually promoted as Assistant Executive Engineer vide order dated 4.1.2012 (Annexure P-12). He filed representation for considering him for promotion with effect from the date, his juniors were promoted, which was rejected vide order dated 26.11.2012 (Annexure P-14).

Hence, the present writ petition.

Upon notice, respondent- Corporation filed reply in which the punishment order as also rejection of appeals has been justified in terms of instructions dated 31.5.2006 (Annexure P-21) as per which no promotion is to be allowed to any employee during the currency of punishment of stoppage of his grade increments. It is stated that the effect of punishment dated 12.4.2010 of stoppage of one annual increment without cumulative effect was up to 11.4.2011. Immediately, thereafter, his case for promotion to the post of Assistant Executive Engineer was processed and he was promoted vide office order dated 4.1.2012.

I have heard Learned counsel for the parties and gone through the paper-book.

Sh. Ram Kumar Malik Ld. Senior Counsel for the petitioner has made the following submissions:

(i) the punishment awarded to the petitioner is excessive and discriminatory. Identical charge-sheet was issued to one Balbir Singh, Foreman and charges were also proved against him, but he was only issued warning. Similarly, in case of one Harminder Singh, AEE more serious charges were alleged. He was awarded punishment of stoppage of one increment by the Punishing Authority and the Appellate Authority, but the Second Appellate Authority reduced the punishment to warning.

(ii) As per instructions dated 19.7.1973 (Annexure P-19),

stoppage of grade increments does not render an employee unfit for promotion, even during the currency of stoppage of increments, if his overall record entitles him for promotion. As per the statutory rules, the promotion to the post of Assistant Executive Engineer is to be on the basis of seniority-cum-merit, thereby, the entire service record has to be assessed and imposition of minor punishment of stoppage of one increment and downgrading of ACR of the relevant year, could not be an impediment in the promotion of the petitioner.

(iii) There was inordinate delay in disposal of the disciplinary case which has dragged on for about four years in violation of the time-line for disposal of disciplinary proceedings specified in instructions dated 13.11.2009 (Annexure P-15).

(iv) The punishment of stoppage of the annual increment without cumulative effect would relate back to the date of the alleged misconduct and not the date of imposition of punishment.

Ld. Counsel for the respondents on the other hand has justified the impugned actions.

As regards the contention of Ld. counsel for the petitioner regarding parity of punishment, it has been explained in the written statement that duties and responsibilities of the petitioner and Shri Balbir Singh, Foreman are different and distinguishable. The petitioner was an Assistant Engineer, whereas, Shri Balbir Singh was a Foreman. Evidently, the responsibilities of the petitioner would be

more than that of Shri Balbir Singh, who is lower in hierarchy. Ld. Counsel for the petitioner has not been able to explain as to how, despite the obvious differences in duties and responsibilities, similar punishment should have been awarded to the petitioner. As regards Shri Harjinder Singh, a perusal of the order dated 27.2.2010 (Annexure P-17) itself reveals that he was charge-sheeted in respect of different charges for having performed his duties negligently on 22.6.2003 resulting in feeding of wet/moist coal to the coal bunkers of Units of Stage-I and II, which led the units to run on less load resulting in tripping and loss of generation. As the charges are totally different, the claim of the petitioner regarding parity in punishment is not sustainable.

Regarding the argument of the petitioner that he could not be denied promotion on account of imposition of punishment of stoppage of annual increment without cumulative effect, it is clear that the instructions dated 19.7.1973 (Annexure P-19), have been modified vide instructions dated 31.5.2006 (Annexure P-21). As per the later instructions, no promotion should be allowed to any employee during the currency of punishment of stoppage of his grade increments. These instructions have been issued in compliance with the decision of the Hon'ble Supreme Court in **State of T.N. v. Thiru K.S. Murugesan, (1995) 3 SCC 273**, wherein, it has been held that unless the period of punishment has expired by efflux of time, the claim for consideration for promotion cannot be taken up.

Plainly, the claim of the petitioner for retrospective

promotion from the date when his juniors were so promoted is not sustainable in view of this decision.

The facts of that case were that while the respondent in that case was working as Assistant Statistical Officer, disciplinary proceedings were initiated against him for misconduct in the year 1978. By order dated 6-12-1982, punishment of stoppage of three increments without cumulative effect was imposed. This punishment was set aside in appeal in August 1984 and re-inquiry was directed. On fresh inquiry, the same punishment was imposed on 6-9-1984. The name of the respondent was not considered for promotion to the post of Deputy Director during the year 1983-84. He filed OA No.138 of 1991 in the Administrative Tribunal, Madras. The Tribunal by the order dated 16-6-1993 allowed the OA No.138 of 1991, set aside the order and directed reconsideration of his case for promotion with effect from 1983-84. The appeal was carried to the Hon'ble Supreme Court.

The question before the Supreme Court was whether non-consideration of the respondent's promotion for the year 1983-84 was in accordance with law.

It was held that the claim for consideration for promotion cannot be taken up unless the period of punishment expires by efflux of time. Otherwise, it would amount to retrospective promotion which besides being impermissible in law would also amount to rewarding the misconduct. It was affirmed that an employee found guilty cannot be treated at a par with the other employees. Such an

employee could not be promoted retrospectively *`from a date when for his conduct before that date he is penalised in praesenti'*. The argument that such non-promotion would tantamount to double jeopardy was also negatived.

Accordingly, the appeal was allowed and the order of the Tribunal was set aside. It was observed as under :

“5. We find no substance in the contentions. It is already seen that on 6-12-1982, the punishment of stoppage of two increments was imposed and it was in vogue on 6-11-1984, when the list was approved by the Government. The punishment was reiterated after fresh inquiry. Rule 3 of the Rules provides that “promotion to the posts of Director of Statistics, Deputy Director of Statistics shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal”. In other words, the claim of Assistant Statistical Officer for promotion to Deputy Director shall be considered on grounds of merit and ability alone. Unless the seniority is approximately equal, seniority has no role to play and needs to be relegated to the background.

6. A Bench of three Judges of this Court in Union of India v. K.V. Jankiraman, (AIR at p. 2018, para 8) considered thus: (SCC p. 123, para 29)

“According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. 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. In fact, while considering an employee for promotion his whole record has to be taken into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal.”

7. It would thus be clear that when promotion is under consideration, the previous record forms the basis and when the promotion is on merit and ability, the currency of punishment based on previous record stands as an impediment. Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impermissible under the Rules and it would be a premium on misconduct. Under these circumstances, we are of the opinion that the doctrine of double jeopardy has no application and non-consideration is neither violative of Article 21 nor Article 14 read with Article 16 of the Constitution.”

This judgment is a complete answer to the arguments of the Ld.

Counsel for the petitioner seeking retrospective promotion with effect from the date his juniors were promoted.

The fact that as per the Punjab State Electricity Board Service of Engineers (Electrical) Recruitment Regulations 1965, promotion to the post of Assistant Executive Engineer is on the basis of seniority-cum-merit would not make any difference as regards the applicability of the principle that there can be no promotion during the currency of the punishment of stoppage of annual increment.

The judgments of this Court cited by the Ld. Counsel for the petitioner **Major Singh Gill vs. The State of Punjab, 1992(1) SCT 436** and **Parbodh Sagar vs. PunjabState Electricity Board, Patiala, 1997(3 SCT 383)** that the punishment would relate back to the year of misconduct can be of no help the the petitioner.

In *Major Singh Gill's case (supra)*, the enquiry was started in 1973 and was completed in 1986, but even till the decision of the case only a tentative decision had been taken to impose punishment of stoppage of one increment with cumulative effect. It was in these circumstances that it was observed that if any order of punishment is awarded now, it would relate back to the year 1973 when the alleged misconduct took place.

Similarly, in *Prabodh Sagar's case (supra)*, the misconduct committed by the petitioner was of the year 1984. The charge-sheet was issued to him after a lapse of five years in 1989. The enquiry proceedings were initiated in 1991, the enquiry report was received in March, 1993 and the order stopping two increments

with future effect was passed in January, 1994 and he was ignored for promotion. Thus, there was a lapse of more than nine years in finalization of the proceedings. In these circumstances, the Court wondered how long can the ghost of 1984 continued to haunt the petitioner and directed that he be considered for promotion with effect from the date persons junior to him were promoted.

The delay in this case is nowhere comparable to that in the cited cases. Here, the alleged mis-conduct related to the year 2007, charge-sheet was issued on 13.6.2007 and the punishment was imposed on 10.4.2010.

Moreover, in the light of the decision of the Hon'ble Supreme Court in *Murugesan's case* if the disciplinary proceedings have culminated in an order of punishment, no promotion can be made during the currency of punishment.

The effect of the stoppage of one year annual increment without cumulative effect imposed on the petitioner vide order dated 12.4.2010 was up to 11.4.2011. Soon, thereafter his case for promotion to the post of Assistant Executive Engineer was processed and he was promoted vide office order dated 4.1.2012.

Thus, I see no merit in the claim of the petitioner that he should be granted retrospective promotion from the date his juniors were promoted.

Dismissed.

February 08, 2016

**(HARINDER SINGH SIDHU)
JUDGE**