

CWP No.5826 of 2014

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

Date of decision: 19.09.2016

CWP No.5826 of 2014

Rampat Bhatia

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. N.P.Bhardwaj, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Ram Chander, Advocate, for respondents No.2 & 3.

RAJIV NARAIN RAINA, J. (ORAL)

Today learned counsel for the parties are ad idem that costs imposed vide order dated 06.07.2015 be waived. It is so ordered. Reply has been filed.

Heard the respective counsel on the issues involved.

This petition has been filed by the petitioner claiming promotion from the date when his junior was promoted to the post of Assistant. One Umed Singh, who was junior to the petitioner, was promoted as Assistant with a condition that if Balwan Singh, former Assistant of the Nigam or his senior Rampat Bhatia (the petitioner) is acquitted by the Court, he will be reverted to the post of Clerk. This order was passed on 31.10.2007. It is not disputed that the petitioner is senior to both Balwan Singh and Umed Singh.

The petitioner was accused in case FIR No.06 dated 28.03.2001 registered under Sections 7 and 13(i)(d) of the Prevention of Corruption Act,

1988 read with Sections 120-B and 201 of the IPC. The criminal charge was framed against the petitioner by the Special Judge, Gurgaon on 08.10.2002. It would not be necessary to go in any detail of the criminal trial since it resulted into acquittal. In the order of acquittal, it has been recorded by the Special Judge that at the time of raid on 28.03.2001, no recovery was made from either accused Rampat Bhatia (petitioner) or accused Kuldeep though they were searched at that time by the members of the raiding party. The Special Judge held that the prosecution story was wrong and refused to accept the statements of PW-9 to PW-11, which testimonies did not prove the essential ingredients of demand and acceptance of illegal gratification. Even the suggestions put to the witnesses are proved to be incorrect. The Court held that the prosecution had failed to bring home the charge and establish guilt of any of the accused for any of the offences for which they were accused and charged. The Court acquitted the petitioner and others by giving them the benefit of doubt.

This Court has examined the order passed by the Special Judge, Gurgaon dated 28.07.2004 and do not find from the judgment that prosecution witnesses resiled or the petitioner had tampered with evidence. Simply put, the prosecution story failed and therefore the petitioner is entitled to a declaration that he is innocent of the crime and the benefit of doubt should not be used against him to deprive him of his service benefits without due reflection of mind.

Mr. Ram Chander appearing for the respondent Corporation pointed out that after acquittal from the court of Special Judge, Gurgaon, the respondents initiated disciplinary proceedings against the petitioner on the same set of circumstances as were put to trial. A domestic inquiry was held in which the charge was proven and the disciplinary authority imposed

punishment of withholding of two increments with cumulative effect on the petitioner. Against the major punishment inflicted, the petitioner preferred a departmental appeal, which was accepted and the punishment was reduced to censure. It is well settled that censure is not enough to deprive employee of his right to consideration for promotion. No such rules have been shown which bar promotion of the petitioner in the respondent – Corporation on the plea of punishment of censure. Therefore, it appears to this Court that the petitioner has been wronged in not being granted promotion by giving effect to the order dated 31.10.2003 (Annex P-2 copy).

On enquiry, whether there was any adverse entry in the ACRs of the petitioner, Mr. Ram Chander submits that ACRs during the time of registration of FIR would be material. I should think not. There is hardly any correlation between ACRs for the period when the FIR was registered and the intervening period the trial that took place. It is admitted that Umed Singh was further promoted as District Manager vide order dated 30.01.2012, endorsed on 01.02.2012 issued by way of an office order passed by the Managing Director of the Corporation. The petitioner superannuated from service on 31.03.2013 as a Clerk. The petitioner's request for notional promotion from the date the junior was promoted as Assistant and District Manager submitted by way of demand for justice dated 25.07.2010 has remained undecided till the petitioner retired from service and thereafter. The petitioner lost valuable opportunity for a decision on his representation while in service. However, amends would have to be made in this petition to correct the error of inaction.

For the foregoing reasons, I accept this petition. A mandamus is issued to the respondent – Corporation to consider promoting the petitioner notionally from the dates the admitted junior Umed Singh was

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promoted as an Assistant and further promoted as District Manager. Accordingly, further direction is issued to the respondent – Corporation to re-fix pension, pensionary benefits, terminal dues etc., as the case may be, and redraw the accruing benefits; calculate the same and pay the amounts due under this order to the petitioner within a period of two months from the date of receipt of the certified copy of this order.

19.09.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes