

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

CWP No. 8484 of 2014

Date of decision : 18.05.2016

Jaswant Singh

....Petitioner

versus

Punjab & Haryana High Court, Chandigarh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Puneet Gupta, Advocate
for the petitioner.

Ms. Preeti Sharma, Advocate
for the respondent

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

RITU BAHRI , J.

Petitioner by way of present writ petition, is seeking a writ of mandamus, for issuance of direction to the respondent to promote him as Supdt Grade-II from the date his juniors have been promoted and further consequential promotions as Supdt. Grade-II and Assistant Registrar from the date his juniors have been promoted and further prayer is to quash order dated 11.04.2013 (P-4).

Brief facts of the case, which can be culled out from the pleadings, reads as under:-

Petitioner was initially appointed as Clerk in Sessions Division

Ropar on 03.06.1982 and was further given fresh appointment through proper channel as Clerk in Sessions Division, Chandigarh and he joined as Clerk on 12.10.1983. Further he was transferred as a Clerk in the High Court establishment on 09.09.1986 and was further promoted to the post of Sr. Assistant on 12.05.1989 and Supdt. Grade-II on 20.08.2007 and Supdt. Grade-I on 01.04.2011 and is working as such on the same post till date.

The petitioner was served with a charge sheet when he was working on the post of Sr. Assistant, to which he submitted his reply on 06.10.2005 and vide order dated 07.11.2005 (Annexure P-1), Hon'ble the Chief Justice has imposed the penalty of stoppage of one increment with cumulative effect.

Aggrieved against penalty order dated 07.11.2005, petitioner preferred the service appeal, in which a lenient view was taken and penalty of stoppage of one increment without cumulative effect was imposed upon him, vide order dated 27.04.2012 (P-2).

Subsequently, petitioner gave its representation dated 05.10.2012 (Annexure P-3) requesting that he be promoted to the post of Supdt Grade-II w.e.f 21.07.2005 from the date his junior Smt. Sharda Dogra was promoted and further he requested that he be granted all consequential benefits including promotions up to Assistant Registrar, by taking his penalty of stoppage of one increment without cumulative

effect to the date of alleged commission of the offence i.e the year 1997 or to the date of the issuance of charge sheet on 28.07.2000 i.e when the alleged offence was detected. In his representation, petitioner relied upon a judgment of ***Major Singh Gill v. State of Punjab, 1992(1) SCT 436*** and further he relied upon the decision taken in one Atma Singh Jamwal's case, Supdt. Grade-I, who was later on promoted as Assistant Registrar.

The claim of the petitioner was rejected by this Court, vide order dated 11.04.2013 (Annexure P-4).

Learned counsel for the petitioner contends that the punishment awarded to an employee relates back to the period when the offence/misconduct is committed and thus, the petitioner is entitled to be promoted to the post of Supdt Grade-II w.e.f 21.07.2005 from the date his junior Smt. Sharda Dogra was promoted and further he is entitled to all consequential benefits.

Reference has been made to ***Major Singh Gill's case (supra)*** wherein the case of the petitioner to be promoted w.e.f 01.01.1985, was rejected in the year 1989 on the ground that two enquiries relates to the year 1973 and 1988 were pending against him and it has been tentatively decided to punish him. This Court allowed the writ petition and in para 9 of the judgment, it has been observed as under:-

"9. There is no reason as to why the petitioner should not have been dealt with similarly. If at all punishment is awarded to the petitioner that would relate back to the date of cause of action for the punishment i.e. 1973 or 1975. This enquiry certainly could not be taken into consideration against the petitioner. It is further apparent from the letter dated June, 1984 from the Financial Commissioner, Punjab to the Chairman; Punjab Public Service Commission (copy Annexure P-7) that Shri B.S. Sood was awarded punishment of stoppage of one increment without cumulative effect but was found fit for promotion by the Screening Committee. Similarly, Ram Parkash whose three grade increments were stopped with cumulative effect had also been found fit for promotion to Class-1. On the same parity even if the proposed punishment of stoppage of one increment with cumulative effect is awarded (which in fact yet to be decided) the petitioner could not have been ignored for promotions on this ground. From the remarks by the Screening Committee for ignoring the petitioner (which I have already quoted above) it is obvious that the only reason for not finding the petitioner suitable was the pendency of the 1973 enquiry. I have already held that this record pertaining to enquiry of 1973 could not have been taken into consideration as only record prior to 5 years of the promotion had to be taken into consideration. The petitioner was ignored by taking into consideration irrelevant record. I may not be taken to be laying down that the Court can go into the question of suitability of a particular officer, but the Court can certainly go into the question whether the consideration was on the relevant record/material. The adverse report for the year 1984-85 was rightly not considered by the Screening Committee against the petitioner inasmuch as the representation of the petitioner against those remarks has so far been decided by the Government.

LPA filed against the above said judgment was also dismissed by this Court on 19.10.1993, vide LPA No. 538 of 1992. In para 7, it has been observed as under:-

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

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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.

Learned counsel for the petitioner has further referred to a case of similarly situated person namely Atma Singh Jamwal, who was imposed a penalty of stoppage of one annual increment without cumulative effect on 27.07.2010. On his representation dated 15.01.2011 with regard to the promotion to the post of Assistant Registrar, the matter was considered by the Committee and his currency of punishment was directed to be treated from March, 2008 to March, 2009 i.e date of commission of lapse.

On notice, a reply has been filed by the respondent stating therein that initially the Committee vide recommendation dated 21.07.2005 was of the opinion that a penalty of stoppage of four increments with cumulative effect be imposed upon the delinquent official/petitioner and Hon'ble the Chief Justice vide order dated 23.08.2005 approved the same for major penalty. Subsequently , petitioner was issued show cause notice dated 06.09.2005 (R-2) that why a penalty of stoppage of four increments with cumulative effect be not imposed upon the petitioner. However, Hon'ble the then Chief

Justice imposed the penalty of stoppage of one increment with cumulative effect, vide order dated 24.10.2005 and vide Court's memo dated 07.11.2005 (P-1), the aforesaid penalty was imposed upon the petitioner.

Further, the service appeal filed by the petitioner was considered by the Hon'ble Committee in its meeting held on 27.04.2012 (P-2) and the service appeal of the petitioner was dismissed but by taking a lenient view, the punishment of stoppage of one increment with cumulative effect was reduced to forfeiture of one increment without cumulative effect. Thereafter, the representation dated 31.08.2012 for modification of order dated 27.04.2012 filed by the petitioner was declined by Hon'ble the Acting Chief Justice on 20.09.2012.

Thereafter the representation dated 05.10.2012 filed by the petitioner was placed before Hon'ble the Chief Justice, which was placed before Hon'ble Grievance Committee. The Hon'ble Committee vide its meeting held on 05.03.2013 rejected the representation of the petitioner, which was further approved by Hon'ble the Chief Justice on 07.03.2013 and informed to the petitioner, vide memo dated 11.04.2013.

Learned counsel appearing for the High Court submits that in the service appeal filed by the petitioner, he chose to give up his claim on merit and pleaded for leniency on the quantum of punishment,

which was accepted by the then Chief Justice and his punishment was reduced. Thus, the present petition filed by the petitioner deserves to be dismissed.

Learned counsel for the respondent further submits that the petitioner cannot claim parity with Atma Singh Jamwal's case, Supdt. Grade-I, as his case was decided on its own merits.

Learned counsel further submits that during the currency of punishment which became effective on 01.05.2006, 28 vacant posts of Supdt. Grade-II were to be filled and the case of the petitioner was not considered as he was facing departmental enquiry on 02.03.2007. finally, vide order dated 10.05.2007, 41 officials were promoted as Supdt Grade-II.

Heard learned counsel for the parties.

The question for consideration before this Court would be whether after imposing major penalty of stoppage of one increment with cumulative effect, if a lenient view is taken and the punishment is reduced to stoppage of one increment without cumulative effect, then can the petitioner be denied the benefit of promotion, in view of **Major Singh Gill's case (supra)**?

In **Major Singh Gill's case (supra)**, it has been clearly held that punishment relates back to the period when the offence/misconduct is committed and once the similar relief has been granted to

Atma Singh Jamwal, who was initially imposed a penalty of stoppage of one annual increment without cumulative effect on 27.07.2010 and he gave a representation dated 15.01.2011 with regard to the promotion to the post of Assistant Registrar and the Committee considered his matter and his currency of punishment was directed to be treated from March, 2008 to March, 2009 i.e date of commission of lapse.

In the present case, petitioner was charge sheeted on 28.07.2000 and after holding an enquiry, he was awarded a penalty of stoppage of one increment with cumulative effect, vide order dated 24.10.2005 and vide Court's memo dated 07.11.2005 (P-1). Petitioner filed service appeal and on 27.04.2012 (P-2), the service appeal of the petitioner was dismissed but by taking a lenient view, the punishment of stoppage of one increment with cumulative effect was reduced to forfeiture of one increment without cumulative effect.

The ratio of ***Major Singh Gill's case (supra)*** is directly applicable to the facts of the present case, as in the present case as well the petitioner was issued charge sheet on 28.07.2000 and his punishment is to relate back to the year 2000 and he should have been considered for promotion after 01.04.2001. The petitioner has no right to claim promotion during the period 01.04.2000 to 01.04.2001 and further once the department has considered this aspect that the punishment will relate back to the act of misconduct and extended the

benefit to Atma Singh Jamwal by relying upon ***Major Singh Gill's case (supra)***, the similar benefit should have been given to the petitioner.

The respondent cannot merely state that the case of Atma Singh Jamwal was based on its own fact once they had admitted that he was extended the benefit of ***Major Singh Gill's case (supra)***. Even if the punishment of the petitioner was reduced by showing a leniency, the punishment would relate back to the date of lapse on the part of the petitioner, which in the present case would be on the date of issuance of charge sheet to the petitioner i.e 28.07.2000.

For the reasons stated above, order dated 11.04.2013 (P-4) is hereby set aside and respondent is directed to pass appropriate orders of promotion w.e.f 21.07.2005 i.e from the date his junior Smt. Sharda Dogra was promoted as Supdt Gr II. Petitioner is entitled to all consequential benefits.

In view of the aforesaid observation, the present writ petition is allowed.

18.05.2016

G Arora

(RITU BAHRI)
JUDGE