

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

Date of decision: 19.05.2016

CWP No.7892 of 2016

Surjit Singh

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vipin Mahajan, Advocate, for the petitioner.

Mr. Vaibhav Sharma, DAG, Punjab.

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

RAJIV NARAIN RAINA, J. (ORAL)

On 28.04.2016, this Court passed the following ad interim order:

“Notice of motion returnable by 19.05.2016.

Mr. Inqulab Nagpal, AAG, Punjab accepts notice on behalf of the respondents-State and waives service upon them.

Mr.Mahajan will supply three sets of paper-book to the office of Advocate General, Punjab and one extra copy of the paper-book to Mr.Nagpal during the course of the day.

Mr.Nagpal would produce the sealed cover of the DPC convened in the year 2012 together with affidavit explaining why sealed cover should not be opened by virtue of dropping of disciplinary proceedings.”

Today Mr. Vaibhav Sharma, learned DAG, Punjab, has obviated the necessity of producing the sealed cover as indicated in the order dated 18.05.2016 by producing an order promoting the petitioner to the post of Deputy Ranger w.e.f. 12.09.2012. However, Mr. Vipin Mahajan when supplied with a copy of the office order in Court at the time of hearing points out his reservation when the order has been made on notional basis which means the petitioner would stand deprived of monetary benefits accruing from promotion in 2012. The legal position resulting from dropping of disciplinary proceedings and the charge-sheet or exoneration is that person is entitled to all consequential benefits from the due date in view of the law laid down by the Supreme Court in **Union of India & others Vs. K.V.Jankiraman**, AIR 1991 SC 2010. The Supreme Court has ruled out of consideration the defence of employer relying on the principle of 'no work no pay'. Therefore, the promotion order is good when it promotes, but is bad when it denies the consequential benefits and limits them to be read notionally. The attested copy of the promotion order produced by Mr. Sharma is taken on record as Mark – 'A'. In view of the settled legal position, the State cannot fall back on the defence since the issue raised by the State to form the very basis of the impugned order is *stare decisis* in the binding authority of their Lordships of the Supreme Court then the civil authorities in the State of Punjab have to abide by the mandate of Article 144 and give effect to the law lest they invite contempt.

As a result, the writ petition is allowed. The promotion order will be read without the rider that the rights would only be notional. That part is quashed as offensive, arbitrary, illegal and unconstitutional by issuing a writ of certiorari. The consequential benefits flowing from ante-dated promotion are a matter of right of the petitioner and thus the same are liable to be calculated

and paid to him within a period of three months from the date of receipt of certified copy of the order. Failing which the amounts of difference of salary etc. will earn interest @ 12 % from the date of default till payment.

However, before parting, it is clarified that the second charge-sheet issued to the petitioner [as has been brought to the notice of the Court] will be taken to its logical end, but will not be read as an impediment to rights of promotion accrued and vested in 2012 as now settled. In case the second charge-sheet ends in adverse civil consequences, the result can effect only future promotions to still higher post but will not detract from the present one.

19.05.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE