

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8329 OF 2014

Shri Satya Pal Singh ... Petitioner

Vs.

Union of India & Ors. ... Respondents

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Mr. Vicky A. Nagrani for the Petitioner.

Mr. T. J. Pandiyan for Respondent Nos. 1 to 3.

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**CORAM : S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE : OCTOBER 30, 2017.

P.C. :

1. The petitioner is seeking promotion with effect from 9th September, 2009 with all consequential benefits to the post of Assistant Security Commissioner.

2. The only contention raised before us by the petitioner's Advocate is that the petitioner was fit and eligible for promotion but was denied it wrongfully. It was argued before us that the petitioner's case ought to have been considered for promotion and in ordinary course. The petitioner says that in the year 2004, while he was posted as Inspector In-charge at the Railway Protection Force post, CST (Main) Mumbai, one Mr. C. M. George was arrested under the Railways Act, 1989 by the subordinate officers and staff of the petitioner on 20th July, 2004 for creating

nuisance in the Railway Computer reservation centre at CST and on arrest, was produced before the competent criminal Court. The said George made a false complaint of assault on him against the Railway staff which included the petitioner. It is to cover up his illegal acts that the said George implicated the petitioner. The complaint of Mr. George was forwarded by the Metropolitan Magistrate's Court to the Government Railway Police for investigation under Section 156(3) of the Code of Criminal Procedure. The case was registered as MCR No. 02/2004 for offences punishable under Sections 120(B), 307, 341 and 201 of the Indian Penal Code against the petitioner and his subordinates on 26th July, 2004. This complaint/case was registered and on completion of investigation, an application was filed seeking discharge from the criminal case on the ground that the Investigating Officer did not obtain the requisite sanction from the competent authority. This discharge application was allowed and heavy reliance is placed on the operative part of that order.

3. It is submitted that on account of discharge from the criminal case, there was nothing adverse against the petitioner. In fact, his immediate superior recommended that the petitioner be promoted. The recommendation at page 56 dated 16th September, 2011 is relied upon in that behalf. On these grounds, it is submitted that though the petitioner was eligible for promotion and with effect from 9th September, 2009, only because of the intervening criminal case, that this legitimate promotion was

denied to him. The petitioner may have retired from the services of the Railway Protection Force on attaining age of superannuation, but such a Petition as is filed and for the relief referred above can be entertained.

4. Mr. Pandiyan appearing on behalf of the respondents relied upon the affidavit-in-reply to submit that there is no acquittal from the criminal case. It is only a discharge for want of compliance with the technical requirements of obtaining sanction. This is not an exoneration from the criminal case, much less a clean acquittal. Once the petitioner was proceeded against for a serious offence punishable under Section 307 of Indian Penal Code, then, bearing in mind his overall performance and his integrity and character, he was denied promotion. Such an exercise, according to him, does not call for any interference in our writ jurisdiction.

5. After perusing the Petition and the annexures thereto, we are of the clear opinion that there is no merit in the complaint of the petitioner. It may be that the superior of the petitioner has recommended that his case be considered for promotion by reviewing earlier action, but it is clear case of a promotion which is merit based. One of the requirements of a merit based promotion is that the candidate must be deserving and truly. The petitioner has no vested right of being promoted but only of being considered for promotion. His case was considered for promotion.

This is not a matter comparable with the sealed cover procedure. This is a clear case where the petitioner claims to have been exonerated and completely from the criminal case or the charge. This is not the position emerging from the record and produced by the petitioner himself. The case was never tried so as to enable the competent criminal Court to record either a conviction or an acquittal. The case never proceeded beyond a technical requirement of obtaining sanction and which was not complied with. This technical defect was highlighted by the petitioner. on that basis, he obtained a discharge from the criminal case, but there is no provision of law brought to our notice by which we can conclude that such a discharge from the criminal case would entitle the petitioner to obtain promotional benefits and straight away. A case of this nature has been considered in an overall manner by the respondents. Their affidavit indicates that whenever the petitioner's performance was ranked higher in terms of merit, he was granted all the benefits while in service. However, the allegations in the criminal case were serious and his entire service record which was perused would denote that he was not fit for promotion. It is in these circumstances that the promotional benefit was taken away. The petitioner has already got the benefit of higher pay in the rank of ASC/RPF under the ACP scheme and the third financial up-gradation to Grade 6600/- under the MACP scheme vide order dated 16th February, 2015. It is in these circumstances that the petitioner's pay and pension has been fixed accordingly and not to his detriment, even the arrears

in terms of all these benefits are due and payable and would be released in favour of the petitioner. In the circumstances, when the petitioner having already retired from service, the exercise undertaken by the authorities, all the more, need not be interfered with. We are satisfied that the petitioner's case was considered for promotion and he was not found fit for a merit based promotion. We are not an appellate authority for interfering in such orders and discretionary exercises of the respondents. The Petition is devoid of merits and is dismissed. No costs.

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)