

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

302

Date of Decision : 01 .06.2017

1.

CWP No.3679 of 1994 (O&M)

ASI Surjan Singh

..... Petitioner

Versus

The State of Haryana and others

..... Respondents

2.

CWP No.826 of 1998 (O&M)

Surjan Singh, ASI

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Ram Niwas Sharma, Advocate and
Mr. Balbir Kumar Saini, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana and
Mr. Harish Rathee, Sr. DAG, Haryana.

AJAY TEWARI, J.

This order shall dispose of the above mentioned two writ petitions.

As per the case set up by the petitioner, on 27.08.1963 the petitioner was enrolled in the Haryana Police as Constable in District Hisar and was promoted as Head Constable on 01.04.1966. In the year 1977 while serving as a Head Constable at Police Station Sadar, Sirsa a departmental inquiry was started against him on the allegations of remaining

absent from the police station for 15 minutes and of having torn out the rojnamcha. Thereafter the Superintendent of Police, Sirsa dismissed him from services on 10.10.1977. The petitioner filed a Civil Suit against his dismissal, which was dismissed on 04.12.1985. On 24.03.1987 the order dismissing the suit of the petitioner was set aside in an appeal and it was held by the Appellate Court that the order of dismissal was illegal and void and that the petitioner would be deemed to be continuing in service and entitled to all the emoluments and other consequential benefits. On 28.09.1988 the respondents filed an appeal (RSA) which was dismissed by this Court. On 01.12.1988 consequent to the dismissal of the appeal of the State, the petitioner was ordered to be reinstated in service w.e.f. the date of dismissal i.e. 10.10.1977. On 10.05.1991, in pursuance of the representations sent by the petitioner to the respondents, regarding giving him retrospective promotion, his name had been brought on promotion list 'D' w.e.f. 01.10.1979 by the Deputy Inspector General of Police and through a separate order dated 10.05.1991, he was also promoted as ASI w.e.f. 24.10.1979 but the benefit of pay and allowances was not granted for the intervening period upto 30.11.1990. Thereafter he sent a representation dated 17.07.1991 to the respondent No.3-Deputy Inspector General of Police but no decision was taken thereon and he continued making written requests and also appeared before the concerned officers on number of occasions. In the meantime, while he was posted as ASI at the Police Station Sadar Bhiwani he arrested Sarabjit Singh Ahluwalia @ Raju in a case FIR No.107 dated 01.03.1992. However, the said Sarabjit Singh Ahluwalia @ Raju happened to be the son-in-law of Shri J.S.Kand, retired D.G.P.

Although the said arrest was on the basis of a non-bailable warrants issued by the Judicial Magistrate, yet Shri J.S.Kand, retired D.G.P. felt deeply offended and he complained to the respondent No.2-Director General of Police, Haryana. The respondent No.2- Director General of Police, Haryana thereafter ordered a departmental inquiry against the petitioner. In the said departmental inquiry the petitioner brought to the notice of the Inquiry Officer that the arrest of Sarabjit Singh Ahluwalia @ Raju was on the basis of the non-bailable warrants issued by the Judicial Magistrate, Bhiwani. Thereafter another departmental inquiry was ordered against the petitioner on the ground that in his application dated 14.01.1993 he had used improper language against the Director General of Police. The said departmental inquiry was filed by the Superintendent of Police, Bhiwani as the Inquiry Officer exonerated him. On the basis of the first departmental inquiry arising from the arrest of Sarabjit Singh Ahluwalia @ Raju, the then Deputy Inspector General of Police on his own, recorded adverse remarks for the period from 02.05.1992 to 25.09.1992 wherein it was mentioned that the petitioner was an irresponsible officer and that his behaviour towards the public was bad and also there was complaint of corruption against him and that on allegations of misconduct an inquiry against him was pending even though the Reporting Officer-Superintendent of Police, Bhiwani-respondent No.4 had recorded the ACR report as 'Good'.

On 16.09.1993 his representation against those remarks was rejected by the Director General of Police. These adverse remarks referred to a departmental inquiry which had been ordered against the petitioner by the Director General of Police (however this inquiry was later on dropped).

A representation made by the petitioner for the grant of arrears of pay and allowances due to his promotion from retrospective effect and seniority was pending at that time with the then Director General of Police for the last more than three years. Further during the period when the petitioner was out of service one person junior to him i.e Pohp Singh was promoted upto the post of Inspector.

The petitioner challenged the action of the then Deputy Inspector General of Police recording adverse remarks against him and for not fixing his seniority properly and seeking relief of retrospective promotion w.e.f. the date his junior Pohp Singh was promoted as well as the pay and allowances by way of present petition (CWP No.3679 of 1994) which was admitted on 25.08.1994.

Thereafter on 24.10.1994 he was permitted to cross the efficiency bar w.e.f. 01.04.1992. He continued to serve but on 11.03.1997 notice was issued to him that he would be retired after the expiry of 3 months and ultimately by order dated 11.06.1997 (Annexure P-17) he was compulsory retired. He challenged the order of compulsory retirement by way of connected writ petition bearing CWP No.826 of 1998.

As regards the adverse remarks, the contention raised on behalf of the petitioner is that once those adverse remarks were based on the inquiry and that inquiry was filed the adverse remarks themselves had to be expunged. It is also prayed that the non-payment of salary for the period between the deemed date of promotion as ASI upto 30.11.1990 was clearly illegal. It is further the contention that the petitioner is entitled to be promoted w.e.f. the date his junior was promoted. It is also averred (with

respect to CWP No.826 of 1998) that the petitioner was compulsory retired only on the basis of the adverse remarks and once those adverse remarks are expunged there would be no ground to compulsory retire the petitioner.

The contention of the respondents on the other hand, as regards the issue of promotion is that the petitioner was given ante-dated promotion as ASI (from 24.10.1979 i.e. the date his junior was promoted) because in the interregnum he had cleared the necessary courses, further promotion could not be granted because he never cleared the necessary courses. As regards the ACR it has been explained that inquiry was instituted into an individual incident and though the same was dropped yet the general remarks were based on the personal knowledge of the reviewing officer and therefore the mere ground i.e. an inquiry into an individual allegation was dropped could not lead to the conclusion that the adverse remarks were illegal and liable to be expunged. As regards the order of compulsory retirement it was brought out that he had earned the following punishments :-

1. Censure in 1972
2. Censure in 1976
3. Censure in 1977
4. Censure in 1993
5. One annual increment stopped with temporary effect from 05.02.1997.

It was also brought out that originally when he was dismissed a regular inquiry had established the charges against him but the order was set aside only on the technical ground that prior sanction had not been obtained

from the District Magistrate. As regards the issue of non-payment of salary the ground taken is that the petitioner never worked on the said post. In ***Sardar Singh vs. State of Haryana 2015(2)RSJ 32*** this Court held as follows :-

“In the present case, it is not a situation where there was dispute regarding seniority and promotion could not have been given because of uncertainty on the issue of seniority as per the law laid down by Hon'ble the Supreme Court in the case of State of Haryana v. O.P.Gupta, 1996 (2) SCT 294: (1996) 7 SC 533. However, Hon'ble the Supreme Court in the case of State of Kerala v. E.K.Bhaskaran Pillai, 2007(2) SCT 757: (2007)6 SCC 524, has held that the principle of 'no work no pay' cannot be regarded as a rule of thumb and grant of full back wages in certain eventualities is inoperative particularly when promotion is wrongly denied. In Para 4, their Lordships have made reference to various judgments rendered by the Supreme Court in the cases of Paluru Ramkrishnaiah v. Union of India, (1989) 2 SCC 541; Virender Kumar v. Avinash Chandra Chadha, (1990)3 SCC 472; A.K.Soumini v. State Bank of Travancore, 2004(2) SCT 315; (2003) 7 SCC 233; Union of India v. Tarsem Lal, 2006(4) SCT 355: (2006) 10 SCC 145; Union of India v. K.V.Jankiraman, 1991 (3) SCT 317: (1991(4) SCC 109; State of A.P. v. K.V.L. Narasimha Rao, 1999(2) SCT 684: (1999)4 SCC 181; Vasant Rao Roman v. Union of India, 1993 Supp. (2) SCC 324; State of U.P. Vinod Kumar Srivastava, (2006) 9 SCC 621; and O.P.Gupta's case (supra) and held as under:

“.....So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back

wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

A consideration of the entire factual matrix would lead the Court to the conclusion that only the prayer regarding payment of salary from 1979 to 1990 can be accepted in view of the judgment in ***Sardar Singh's case (supra)***. As regards the other pleas the contention of the respondents has to be accepted. It is not disputed that for promotion beyond the post of Sub Inspector and beyond certain courses have to be passed by the employees and without passing those courses promotion cannot be granted. The petitioner admittedly did not pass the courses. Consequently, his claim for further promotion cannot be accepted. Even as regards the Annual Confidential Report the explanation given by the respondents cannot be disregarded only because the petitioner had levelled un-substantiated allegations of malafide against the reviewing authority.

Further once that Annual Confidential Report is maintained the order of

compulsory retirement cannot be held to be illegal in the circumstances of the case.

Thus the only relief which can be granted to the petitioner is that of salary and allowances for the period from 24.10.1979 till 30.11.1990. Since these were unjustly denied, I deem it appropriate to grant petitioner token interest of 5% p.a. on the arrears w.e.f. 30.11.1990 till the date of payment. The other claims are rejected. The respondents are directed to work out the amounts now to be paid to the petitioner and transmit them to him within a period of three months from the date of receipt of a certified copy of this judgment, failing which the petitioner would be entitled to claim the same with interest @ 8% p.a. w.e.f 30.11.1990.

Petitions stand disposed of.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

01.06.2017
pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No