

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

315

CWP No.6964 of 1994
Date of decision: 17.02.2017

Mangat Ram

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present:- Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

P.B. BAJANTHRI, J. (ORAL)

In the instant petition, the petitioner has sought writ of mandamus directing the respondents to consider the name of the petitioner for promotion to the post of Sub-Inspector and Inspector from the date of his juniors' promotion with consequential benefits.

The petitioner is stated to have been promoted to the post of Assistant Sub-Inspector on 10.09.1982 pursuant to the passing of intermediate examination in the month of March, 1982 whereas respondents No.4 and 5 who have passed the intermediate course examination in the month of September 1982. They were promoted to the post of Assistant Sub-Inspector on 17.04.1984 and 22.03.1984 respectively. Thereafter, the respondents No.4 and 5 were promoted to the post of Sub-Inspector and Inspector on 25.05.1982, 25.01.1991 and 09.10.1993 respectively.

Learned counsel for the petitioner submitted that petitioner name was not considered for the post of Sub-Inspector and Inspector from the date of respondents No.4 and 5 were promoted on the ground that the

petitioner had adverse report for the year 1983-84 and 1984-85. In this regard, he has filed two representations which were turned down and rejected. Consequently, he has filed a Civil Suit before trial Court. His Civil Suit No.1012 of 1993 and 533 of 1991 were decreed on 31.03.1994 while set aside the annual confidential reports as well as order of penalty of stoppage of five increments ordered on 06.09.1989. Further, name of the petitioner was not considered for promotion on the ground that he had a doubtful integrity for the year 1992-93 and such an adverse report was recorded during the period from 16.05.1992 to 27.07.1992. It was submitted that such an adverse report would not be a hurdle for the purpose of promotion in lieu of Government instructions which reads as under:-

“Minimum period for which a Reporting Officer should have seek the work of a Subordinate before recording remarks on him. No reporting officer should record his remarks in the confidential report of an officer under him unless he has seen his work and conduct for at least three months during the financial year.”

In view of the fact that annual confidential reports for the year 1983-84 and 1984-85, penalty order dated 06.09.1989 which were set aside and consequently, the adverse remarks for the period from 16.05.1992 to 27.07.1992 cannot be taken into consideration based on the Government instructions, the petitioner is entitled for promotion to the post of Sub-Inspector as well as Inspector from the date of his juniors' promotion.

Learned State counsel vehemently contended that petitioner's name was not considered to the post of Sub-Inspector on the score that he had adverse remarks, he was facing penalty of stoppage of five increments and adverse report for the period from 16.05.1992 to 27.07.1992. It was

further submitted that during pendency of the litigation, he was promoted to

the post of Sub-Inspector on 28/07/2001. Thereafter, the petitioner's name could not be considered for promotion to the post of Inspector for the reasons, he attained the age of superannuation and retired from service on 30.04.2005. For the purpose of promotion to the post of Inspector, Sub-Inspector must have rendered five years of service along with eight years of service in the non-gazetted post having regard to the date of promotion for the post of Sub-Inspector and date of retirement, petitioner is not entitled to be promoted to the post of Inspector.

Heard learned counsel for the parties.

Perusal of the dates relating to promotion of the petitioner and respondents No.4 and 5, it is evident that the petitioner is senior to respondents No.4 and 5. Admittedly, names of respondents No.4 and 5 were considered for the post of Sub-Inspector i.e. on 25.01.1991 and 04.04.1991, the petitioner had adverse ACRs for the year 1983-84 and 1984-85. In addition to that, he was facing penalty of stoppage of five increments which was imposed on 06.09.1989. Even as on the date of promotion to the post of Police Inspector to respondents No.4 and 5 i.e. 09.10.1993, the above adverse reports were taken note off for overlooking the claim of the petitioner's name for consideration for promotion along with respondents No.4 and 5 for the post of Sub-Inspector and Police Inspector. The petitioner aggrieved by the ACR for the year 1983-84 and 1984-85 so also questioning the penalty of stoppage of five increments dated 06.09.1989 for the subject matter of Civil Suit No.1012 of 1993 and 533 of 1991. Both the suits were decreed on 31.03.1994. Insofar as adverse report for the period from 16.05.1992 to 27.07.1992 which has been taken note for the promotion of the petitioner in the year is taken into

consideration. The same cannot be hurdle for grant of promotion in view of the Government instructions cited by the petitioner (supra). Having regard to the above clause, read with the fact that adverse report have been recorded for less than two and a half months, the same cannot be taken into consideration for the purpose of overlooking the name of the petitioner for promotion. Admittedly, the respondents have not preferred and appeal against the decree dated 31.03.1994 passed in Civil Suit Nos.1012 of 1993 and 533 of 1991 which was decreed on 31.03.1994.

In view of these facts and circumstances, there is no hurdle for promoting the petitioner from the date of juniors-respondents No.4 and 5 promotion to the post of Sub-Inspector on 25.01.1991 and promotion to the post of Inspector on 09.10.1993. The concerned respondents-competent authorities are directed to consider the name of the petitioner for promotion to the post of Sub-Inspector on 25.01.1991 and for the post of Inspector w.e.f. 09.10.1993 and extended all service benefits like pay fixation, increments etc. including monetary benefits for the intervening period. The petitioner is before this Court since 1994 and he is entitled for interest @ 6% per annum on all arrears of pay and pension.

Petition stands allowed.

The above exercise shall be completed within a period of three months from today.

17.02.2017

Dinesh Bansal

(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No