

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

CWP No.12969 of 2013

Date of Decision:20.04.2017

Murlidhar Singla

... Petitioner

Vs.

State of Haryana and others

... Respondents

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

Present : Mr. Raman B. Garg, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioner has questioned the validity of memo dated 27.4.2004, order dated 10.1.2011 and order dated 6.8.2012 (Annexures P-3, P-10 and P-12 respectively). Further he has sought for direction to consider his name for promotion to the post of Assistant Superintendent w.e.f. 23.12.2005 the date on which Shri Rajbir Singh and others were promoted who are stated to be juniors. He has also sought for direction to grant 3rd ACP which was due on 1.1.2006.

The petitioner while working as a clerk during the year 1997-98, Reporting Authority and Reviewing Authority passed an annual confidential report in favour of the petitioner. However, Deputy Commissioner, Jind did not agree with the Reporting Authority and Reviewing Authority and proceeded to pass adverse remarks which reads as under:

“Doubtful integrity, I rate him average, I do not agree with Reporting Authority/Reviewing Authority remarks. As far as I remember certain disciplinary/Criminal cases were pending against him.”

The petitioner being aggrieved by the order dated 27.4.2004

(Annexure P-3) submitted representation on 9.6.2004. The same was rejected on 10.1.2011. Thereafter, he preferred a representation to the Government. The Government affirmed the decision of the Deputy Commissioner, Jind on 6.8.2012 (Annexure P-12). Thus, the present petition has been filed.

Learned counsel for the petitioner submitted that Deputy Commissioner, Jind passed annual confidential report for the years 1997-98 as doubtful integrity and average and he does not agree with the Reporting Authority and Reviewing Authority. Further it is recorded "As far as I remember certain disciplinary/Criminal cases were pending against him." He further submitted that it is true that the petitioner was involved in a criminal case in an FIR No.224 dated 13.6.1992. However, the petitioner was acquitted in the said case on 11.4.1997 prior to writing of annual confidential report for the year 1997-98 on 27.4.2004 by the Deputy Commissioner, Jind. That apart the period of suspension has been treated as duty on 19.5.1997 (Annexure P-8). Despite these factual aspects, Deputy Commissioner has failed to apply his mind and he is biased in writing annual confidential report for the reasons that with his personal knowledge of pendency of disciplinary proceedings/criminal cases. He is writing annual confidential report at the same time he has failed to verify fate of the criminal case which was decided on 11.4.1997 itself. Further suspension period has been treated as duty. Therefore, Annexure P-3 is without application of mind and non consideration of relevant facts like date of acquittal as well as treating the suspension period as duty. Hence, Annexure P-3 is liable to be set aside. The rejection of representations are liable to be set aside. Hence, petitioner is entitled for promotion to the post of Assistant

Superintendent on par with the juniors and from the date on which juniors were promoted. The petitioner is also entitled for grant of 3rd ACP which is due to the petitioner as on 1.1.2006.

Per contra, learned counsel for the respondents submitted that the petitioner had filed a civil suit in respect of reverting the petitioner from the post of Assistant to that of clerk and decree was passed on 31.10.2008 which is in his favour. By virtue of decree, the petitioner has been continued as Assistant w.e.f 4.11.1994. Therefore, the present petition do not survive for consideration. He resisted the claim of the petitioner on the score that the annual confidential report for the year 1997-98 has been examined by the next higher authorities to the Deputy Commissioner and they have apprised the order passed by the Deputy Commissioner dated 27.4.2004. Hence, no interference is called for.

Heard learned counsel for the parties.

Perusal of Annexure P-3 read with undisputed fact that the petitioner has been acquitted in the criminal case on 11.4.1997 and the fact that the suspension period has been treated as duty. Consequently, writing of adverse report based on the pendency of the criminal case and disciplinary proceedings by the Deputy Commissioner, Jind is without application of mind so also non examination of material fact that the petitioner was acquitted in the criminal case on 11.4.1997 and suspension period has been treated as duty and further petitioner's services have been extended on 20.10.2003. These events are relevant for the purpose of quashing Annexure P-3 dated 27.4.2004 for the reasons that it is without application of mind and the same is quashed. Consequently, orders dated 10.1.2011 and 6.8.2012 passed by the next higher authorities vide

Annexures P-10 and P-12 are set aside. In view of setting aside the annual confidential report for the year 1997-98, the petitioner is entitled for service benefits like promotion to the post of Assistant Superintendent on par with the juniors and grant of 3rd ACP which is due to the petitioner as on 1.1.2006. The above benefit shall be considered by the competent authority within a period of three months from today, if the petitioner is otherwise eligible. If the petitioner is entitled for the benefit of promotion as well as 3rd ACP, the concerned respondent is hereby directed to calculate and disburse the arrears within a period of three months from today.

Petition stands allowed.

20.04.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**