

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

Decided on 16.01.2017

209 CWP-201-2013

H.L. BISHNOI

....PETITIONER

VS

STATE OF HARYANA & OTHERS

....RESPONDENTS

209-A CWP-12314-2013

H.L. BISHNOI

....PETITIONER

VS

STATE OF HARYANA & OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr.Subhash Ahuja, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

AJAY TEWARI, J.(Oral)

The petition bearing no. CWP-201-2013 has been filed for quashing of the impugned order dated 24.09.2008/10.10.2008 and 15.09.2011/03.10.2011 imposing punishment of stoppage of one increment with cumulative effect with a further direction to the respondent-authorities to release the annual grade increments to the petitioner for the period of suspension.

Second petition bearing no. CWP-12314-2013 has been filed for quashing of impugned order dated 21.02.2012 and the order dated 20.11.2009 with a direction to the respondent to consider and promote the petitioner on the post of executive engineer from the date persons

junior to him were promoted.

Both the petitions are decided vide common order.

The brief facts of the case are that the petitioner was unauthorizedly absent on 25.09.2000 and again on 04.10.2000 to 07.03.2001, though he was sanctioned leave from 04.10.2000 to 12.10.2000. On 07.03.2001 he was placed under suspension and charge sheeted under Rule 7 of the Haryana Civil Services Punishment and Appeal Rule, 1987 on 28.03.2001. He filed reply claiming that during this period he was seriously ill and had also moved an application for extension of leave on 13.10.2000. The enquiry officer gave his report on 22.08.2006 wherein he accepted the contention of the petitioner that the petitioner was in fact seriously sick and unable to join the duty till 15.12.2004 on which date fitness certificate was given by the doctor. Consequently the enquiry officer found him guilty only of not getting his leave sanctioned. It is after that the impugned order of punishment has been passed.

Learned counsel for the petitioner has argued that in view of the finding that the petitioner was actually seriously sick the minor misdemeanor of not having got the leave sanctioned could not have invited the major punishment imposed upon him. In Paragraph Nos. 13 and 14 of the writ petition he has given details of some of the colleagues of the petitioner who were facing the same predicament and had to proceed without getting sanctioned leave for various reasons and in no case was any charge sheet or even any memorandum issued. These

averments have not been denied in the corresponding reply. It cannot be denied that each case is different and the plea of the petitioner cannot be justified on this ground only. There is some weight in this argument and also in the argument that in cases where different persons are guilty the fact that one guilty person got relief cannot be taken as that another guilty person can get relief. However these arguments would not detract from the conclusion that the punishment given to the petitioner is disproportionate.

One alternative could be to set aside the order of punishment and refer the matter back to the competent authority for a fresh decision. However learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the matter of “**Union of India and Another vs. S.S. Ahluwalia 2007 AIR (SC) 2952**” where the Supreme Court held as follows:

..... The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case the court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case in order to avoid delay the court can itself impose lesser penalty.....”

In view of this judgment, I deem it appropriate to reduce the punishment imposed on the petitioner to that of censure. As regards the

second prayer that the delay on the part of the respondents would not justify such a long period of suspension, I find favour with this argument also. From the perusal of the dates it transpires that chargesheet was issued on 28.03.2001 but enquiry officer was appointed after more than 02 years and took decision after further 03 years to submit his report. It is not a case where complicated allegations were levelled against the petitioner and were only with regard to whether he had applied for leave and whether he would have claimed medical unfitness. In the circumstances, it has to be held that there was inordinate delay in finalization of the departmental proceedings. As noticed above, the petitioner was granted fitness certificate and undertook to rejoin back on 15.12.2004. Consequently up till that date leave of the kind due would have to be granted and after that date he is to be treated to be on duty and would have to be given all consequential benefits.

There is also a prayer that during this interregnum his juniors have been promoted. The petitioner has claimed that his case for promotion be considered from the date of his juniors were considered. It has been mentioned that the case of the petitioner was also considered as and when his juniors's case was considered but in view of the major penalty imposed upon him, the case of the petitioner was not decided. Now that the major penalty has been reduced the respondents are directed to consider the claim of the petitioner afresh for promotion in the altered set of circumstances with effect from the date when his

juniors were considered. In these circumstances, as regards the prayer in the first writ petition bearing no. CWP-12314-2013 let the respondents grant the necessary benefits within 03 months from the date of receipt of the certified copy of this order, and as regards promotion of the petitioner, the respondents are directed to consider the case of the petitioner afresh for promotion from the date the case of juniors were considered, within the period of 06 months from the date of receipt of certified copy of this order.

Petitions stand disposed of in the above term.

16.01.2017
anuradha

(AJAY TEWARI)
JUDGE

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Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No