

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.5424 of 2013

Date of Decision:29.03.2017

Balwant Singh Bhandair

... Petitioner

Vs.

High Court of Punjab and Haryana at Chandigarh

... Respondents

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

Present : Mr. Gurcharan Dass, Advocate for the petitioner.

Mr. Raman B. Garg, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioner has prayed for following relief:

- “i) issue a writ, order of direction especially in the nature of certiorari quashing office order dated 31.3.2010 whereby representation dated 8.1.2010 was rejected (Annexure P-13), order dated 11.7.2012 whereby the representations filed by the petitioner have been rejected (Annexure P-21) and order dated 18.2.2008 passed by the Hon'ble Committee (Annexure P-29);*
- ii) further issue a writ of mandamus directing the respondent to treat the punishment period from 29.11.1989 instead of 7.12.1991 in view of judgment titled “Major Singh Gill v. State of Punjab, 1992 (1) S.C.T. Page 436”; as has been done in the case of Sh. Desh Pal Rana, Reader;*
- iii) further issue a writ of mandamus directing the respondent to treat the period from 8.12.1991 to 21.11.1994 as period “spent on duty” as punishment in the charge sheet dated 22.11.1989 has been awarded w.e.f. 7.12.1991 and exonerated in second charge sheet dated 8.10.1990 as has been done in the case of similarly situated person Sh. Bhola Nath Vohra by this Hon'ble Court;*
- iv) further issue a writ of mandamus directing the respondent*

to fix seniority of the petitioner w.e.f. 10.4.1996 i.e. date of judgment passed in CWP No.16864 of 1994;

v) further issue a writ of mandamus directing the respondent to release the final pension and other retiral benefits of the petitioner alongwith interest as have been released in favour of Sh. Bhola Nath Vohra.”

Brief dates and events of the case in the tabulated form are as under:

25.4.1973	Petitioner was appointed as a clerk.
02.01.1978	Petitioner was promoted to the post of Junior Translator
9.4.1983	Promoted to the post of Translator
24.11.1988	Promoted to the post of Assistant Registrar.
4.10.1989	Promoted to the post of Deputy Registrar.
November, 1989	The petitioner was reverted back to the post of Translator.
18.2.1986	The petitioner was further placed on ac-hoc basis as Superintendent Grade-II with certain observations that the petitioner is entitled for seniority.
10.4.1996	CWP No.16864 of 1994 filed by the petitioner questioning his reversion was disposed of. The petitioner was placed under suspension on certain allegations and two disciplinary proceedings were initiated.
18.01.2008	Petitioner was exonerated in one of the disciplinary proceedings.
07/12/91	In another disciplinary proceedings, the petitioner was punished by imposing the penalty of reduction in rank.
26.04.1996	Punishment of reduction in rank is modified to that of withholding of four annual increments with cumulative effect.
11.7.2010	The petitioner submitted representation.
30.04.2016	The petitioner was acquitted in criminal case.

Whereas petitioner's immediate junior Shri B.S. Walia in the cadre of junior Translator's service particulars are as under:

09.10.1975 (FN)	Joined as Supervisor
16.12.1975	Promoted as clerk
2.1.1978'	Promoted as Jr. Translator/Designated as Translator
6.2.1998'	Promoted as Revisor
3.5.2002`	Promoted as Superintendent Grade-I
8.2.2007'	Promoted as Assistant Registrar
1.2.2011' (AF)	Retired Compulsorily under rule 33(4) of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973
21.11.2011	CWP No.21520 of 2011 filed by Sh. B.S. Walia challenging his compulsorily retirement was admitted. No stay was granted and early hearing was declined.

The petitioner had questioned the abolition of various posts including seven temporary posts of Deputy Registrars and five Temporary posts of Assistant Registrar which are abolished on 18.11.1989 and order of reversion passed in the year 1989 in CWP No.16864 of 1994. The official respondents took objection that there is a delay in challenge to order of reversion so also abolition of posts and further took the objection that the orders of appointment/promotion passed in favour of the petitioner were contrary to the provisions of Article 14 and 16 of the Constitution and also that without there being any requirement of the posts the then Chief Justice has ordered creation of posts and showered benefits on the petitioner and some other persons. The same was taken note of by this Court while deciding the petitioner's CWP No.16864 of 1994 while quoting the decision dated 19.10.1995 passed in CWP No.7418 of 1993 (Satinder Singh Bajwa v. Registrar, High Court of Punjab and Haryana). An extract of which reads as under:

“What has happened in the case of the petitioner illustrates total negation of statutory rules in so far as his retrospective promotion to the post of Superintendent Grade-II, confirmation on that post, further promotion and confirmation

on the posts of Superintendent Grade-I, Assistant Registrar and Deputy Registrar are concerned. The petitioner's posting as Assistant Court Officer on officiating basis, his further posting as Court Officer-cum-Assistant Registrar and officiating Superintendent Grade-II without affecting the seniority of senior persons may not be exceptionable, but there was no legal or other justification for his retrospective promotion as Superintendent Grade-II and on other higher posts. Neither the petitioner the petitioner has placed any material before us to show that a seniority-list in the cadre of Assistant was prepared and cases of others were considered before granting him retrospective promotion as Superintendent Grade-II nor the record produced by the respondent shows existence of such seniority list. Similarly, for promotion to the post of Superintendent Grade-I, no seniority-list in the cadre of Superintendent Grade-II is shown to have been prepared and candidatures of eligible persons have been considered. Same is the position regarding promotions to the posts of Assistant Registrar and Deputy Registrar. The unescapable conclusion which has to be reached on the basis of facts and the legal position, mentioned above, is that the statutory Rules as well as the constitution provisions contained in Articles 14 and 16 were flouted for giving undue benefit to the petitioner. Therefore, it is not possible to issue any writ, order or direction to uphold these unlawful orders whereby the petitioner was given retrospective appointment as Superintendent Grade-II and Superintendent Grade-I and then promoted as Assistant Registrar and Deputy Registrar. We, therefore, do not find any illegality in the orders Annexures P18, P19A, P19B, P19C, P19D, P19E and P19F. However, the order Annexure P-19G in so far as it brings about the reversion of the petitioner from the post of Deputy Registrar to the post of Assistant can not be legally sustained. The promotion of the petitioner to the post of Superintendent Grade-II on adhoc basis vide order Annexure P5 cannot be per

se be treated as unconstitutional because that promotion was made subject to the seniority of other Assistants. Therefore, to that extent the order (Annexure P-19G) deserves to be modified.”

Thus, this Court declined to interfere with challenge to the abolition of certain posts as well as reversion. However, it was observed that instead of being reverted to the post of Translator, the petitioner should be deemed to have been reverted to the post of Superintendent Grade-II (adhoc) on which he has been promoted vide order dated 18.2.1986. Consequently, a direction has been issued to the respondents to undertake the exercise for determination of the seniority and for making promotions to various posts to which reference has been made in the order dated 18.10.1995 passed in CWP No.7418 of 1993.

The petitioner was placed under suspension on certain allegations and two disciplinary proceedings were initiated in which the petitioner was exonerated in one of the disciplinary proceedings on 18.1.2008 and in another disciplinary proceedings, he was punished by imposing the penalty of reduction in rank on 17.12.1991. Thereafter, the same was modified to that of withholding of four annual increments with cumulative effect by order dated 26.4.1996. The petitioner's name was not considered for promotion to the post of Revisor on par with Mr. B.S. Walia who is immediate junior to the petitioner in the feeder cadre of Translator on the score that the petitioner was facing criminal proceedings as well as currency of penalty imposed in the disciplinary proceedings were in vogue. The petitioner's representation in respect of modification of penalty and for extending other service benefits were concerned, it was examined by the official respondent and rejected the same on 31.3.2010 by observing thus:

“You are hereby informed that your request for implementation of order of Hon'ble Division Bench dated 10.04.1996 passed in CWP No.16864 of 1994 has been considered and declined by Hon'ble the Chief Justice.”

The petitioner submitted representation on 11.7.2010. It was also rejected by observing as follows:

“You are hereby informed that your representation dated 18.6.2012 has been rejected as your earlier representation dated 28.4.2010, 02.07.2010, 05.12.2011 and 19.12.2011 containing similar requests as made in the representation for considering the penalty of four increments with cumulative effect w.e.f. 29.11.1989 instead of 7.12.1991 and for treating your period w.e.f. 8.12.1991 to 21.11.1994 as 'spent on duty' with all consequential benefits including balance of pay and allowances have been considered and rejected by the then Hon'ble the Acting Chief Justice.

You are also directed not to make representations in future in this regard on administrative side.”

Admittedly, petitioner was not entitled to any service benefit as on the date of rejection of his representations since criminal proceedings were pending against him.

The petitioner has sought a writ for mandamus directing the respondent to treat the punishment period from 29.11.1989 instead of 7.12.1991 with reference to decision in the case of “Major Singh Gill v. State of Punjab, 1992 (1) S.C.T. Page 436”.

There is no provision under the disciplinary rules to impose penalty from the date of initiation of inquiry namely from the date of issuance of charge memo. Therefore, the petitioner is not entitled for any relief insofar as second prayer is concerned and cited decision is distinguishable with reference to disciplinary rules.

Third prayer is concerned treating certain period 'spent on duty' is impermissible for the reasons that the petitioner has been awarded punishment and he was facing two disciplinary proceedings and he was continued to be under suspension with reference to first and second disciplinary proceedings.

Fixation of seniority with reference to CWP No.16864 of 1994; decided on 10.4.1996 and consequential benefits, financial benefits on par with one Shri Bhola Nath Vohra is concerned, it is to be noted that the petitioner grievance relating to assigning seniority and promotion has been rejected by the official respondents on two grounds. Firstly that the petitioner was facing currency of penalty and secondly petitioner was facing criminal proceedings. One of the contention raised by the respondent is that the petitioner has failed to question the decision dated 28.4.2011 (Annexure P-16). In the absence of challenge to the said order, the petitioner is not entitled for relief sought in the present petition insofar as seniority and promotion are concerned.

It is to be noted that one of the reason assigned in the order dated 28.4.2011 that the petitioner was facing criminal proceedings. The criminal proceedings was concluded in acquittal on 30.4.2016. Consequently, cause of action in respect of seniority, promotion and re-fixation of pay and other benefits would arise only on 30.4.2016 i.e. during the pendency of this petition. Contention of the respondent that petitioner has not challenged decision dated 28.4.2011 would be diluted in view of later development that petitioner was acquitted in criminal proceedings on 30.4.2016. Therefore, in view of the later development that the petitioner has been acquitted in the criminal proceedings on 30.4.2016,

the official respondents are required to re-consider the petitioner's grievance relating to seniority, promotion etc on par with Mr. B.S. Walia, who is immediate junior to the petitioner in the cadre of Translator. Service particular of Mr. B.S. Walia, who is immediate junior to the petitioner are that he was promoted to the post of Revisor on 6.2.1998 and further to the post of Superintendent Grade-I and Assistant Registrar from 3.5.2002 and 8.2.2007 respectively.

In view of the above facts and circumstances whether the petitioner is entitled for promotion to the post of Revisor, Superintendent Grade-I and Assistant Registrar on par with Mr. B.S. Walia or not?

Undisputedly the petitioner was punished in the disciplinary proceedings and it was modified from reduction in rank to that of withholding of four annual increments with cumulative effect. The said punishment would be in currency for a period of four years i.e. upto 1995 read with acquittal in criminal proceedings on 30.4.2016, the official respondents are required to examine the petitioner's claim for promotion to the post of Revisor on 6.2.1998, Superintendent Grade-I on 3.5.2002 and Assistant Registrar on 8.2.2007 on par with Sh. B.S. Walia. If the petitioner is otherwise eligible for promotion to the post of Revisor, Superintendent Grade-I and Assistant Registrar respectively, the official respondents are directed to examine the service record of the petitioner to the post of Revisor as on 6.2.1998, Superintendent Grade-I as on 3.5.2002 and Assistant Registrar as on 8.2.2007. Since as on 6.2.1998 currency of penalty imposed in a disciplinary proceedings is over and the fact that in criminal proceedings he was acquitted. Supreme Court in the case of **Union of India and others** v. **K.V. Jankiraman and others**; 1991 (4) SCC 109 held as

follows:

“26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any

arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.”

In view of the factual aspects of case read with legal position, the above exercise shall be completed by the official respondents within a period of 6 months and extend service and monetary benefit if the petitioner is otherwise eligible.

Due to pendency of the criminal proceedings, certain retiral benefits have been withheld and it was settled after acquittal in the criminal case on 30.4.2016. Gratuity has been paid in the month of November 2016. The petitioner is entitled for interest on gratuity amount during the period from the date of retirement till payment of gratuity is made. The petitioner is entitled for interest from 1.12.2008 to till payment of gratuity is made @ 6% per annum while excluding reasonable period of three months from the date of retirement.

Interest shall be paid within a period of 4 months from today.

With the above observation, petition stands disposed of.

29.03.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No