

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

237

CWP-5784-2016 (O&M)
Date of decision: 16.01.2017

Ct. Bhupinder Singh

....Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr.S.N.Yadav, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. A.G., Haryana.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of the communication dated 06.01.2016 by which the petitioner's claim for sending him for lower school course has been denied.

2. Learned counsel for the petitioner submitted that the petitioner was subjected to disciplinary proceedings and he has been exonerated by the disciplinary authority on 27.10.2014. Whereas the consideration of Constables for the purpose of sending for lower school course is as on 01.01.2015. Learned counsel for the petitioner submitted that as on 01.01.2015 the petitioner was not facing any penalty for the reasons that he had been exonerated by the disciplinary authority on 27.10.2014. Whereas, the appellate authority *suo moto* modified the disciplinary authority's order

from exoneration to that of stoppage of one annual increment with temporary effect on 23.07.2015. Thus, as on 01.01.2015 there was no hurdle for sending him to lower school course. Thus, the official respondents' decision that the petitioner is in the penalty currency period up to 01.07.2017 is highly arbitrary and illegal.

3. On the other hand, learned counsel for the respondents submitted that disciplinary proceedings would be concluded as and when orders are passed in the present case. No doubt the petitioner was exonerated in the disciplinary proceedings on 27.10.2014 however, appellate authority modified the exoneration to that of imposing the penalty of stoppage of one future annual increment with temporary effect vide order dated 23.07.2015 and the currency of the penalty would be up to 01.07.2017. Thus rightly, the respondents have taken a decision to not to send the petitioner for lower school course as he was facing disciplinary proceedings.

4. Heard learned counsel for the parties.

5. Crux of the matter is whether the petitioner is fully eligible as on 01.01.2015, the date on which names of other Constables were considered for the purpose of sending them for lower school course or not. Perusal of the date and events relating to the disciplinary proceedings, it is evident that on 27.10.2014 the petitioner had been exonerated by the disciplinary authority and further the appellate authority *suo moto* taken action to modify the exoneration order passed by the disciplinary authority to that of imposing the penalty of stoppage of one future annual increment with temporary effect vide order dated 23.07.2015 and the currency of the

penalty would be up to 01.07.2017. Having regard to the fact that as on 01.01.2015, the petitioner had been exonerated therefore, question of currency of penalty or pendency of the departmental enquiry do not arise as on 01.01.2015. Subsequent events i.e. *suo moto* action taken by the appellate authority to modify the disciplinary authority's order and imposing the penalty on 23.07.2015 would be prospective. Therefore, denying the benefit of acquiring the lower school course by the petitioner as on 01.01.2015 is highly arbitrary and illegal.

6. Thus, Annexure P5 dated 06.01.2016 is set aside. The respondents are directed to consider the grievance of the petitioner for the purpose of acquiring the qualification of lower school course as if he has been selected as on 01.01.2015 and to extend all service benefits on par with the juniors who have been sent for acquiring lower school course as on 01.01.2015. The above exercise shall be completed by the respondents within a period of 3 months' from today.

16.01.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No