

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

CWP-10475-2013 (O&M)

Date of Decision: 22.02.2018

Jagan Nath Pawar

... Petitioner

Vs.

Union of India and others

... Respondents

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

Present : Mr. Rajeev Anand, Advocate
for the petitioner.

Mr. Sourabh Goel, Advocate
for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the reply to the legal notice/order dated 28.02.2013, 26.12.2012 (Annexure P-10 and Annexure P-9) and further sought for a direction to respondents to comply the orders dated 18.10.2008, 8.10.2011 (Annexures P-4 and P-6) by which he is entitled for retrospective promotion to the post of Head Constable with reference to the seniority in the feeder cadre.

2. Petitioner joined service on 5.12.1984. He was promoted to the post of Lance Naik on 23.12.1991 and become Naik On 18.9.1995. While working as such, he has resigned from the service while holding the post of Lance Naik on 31.07.1996. By virtue of judicial pronouncement amongst others and petitioner was reinstated as a constable on 30.06.2006, even though, petitioner was holding the promotional post of Naik due to merger of Naik with the constable post on 10.10.1997. Status of the petitioner as on the date of rejoining was a constable. For the purpose of promotion to the cadre of Head Constable, procedure and criteria of list 'C' for promotion of Constable to Head Constable consists of various items like eligibility,

essential qualification and other criteria including pre-promotion course. The respondents held pre-promotion course for the post of Head Constable on 25.06.2007 in which petitioner participated and cleared the pre-promotion course. Thereafter official respondents have conducted DPC on 9.6.2009 for the purpose of promotion to the post of Head Constable. After due process of promotion to the post of Head Constable as per the criteria, petitioner was promoted to the post of Head Constable on 15.07.2009. In this background, whether petitioner is entitled to promotion to the post of Head Constable earlier than to 15.7.2009 or not is the issue in the present writ petition.

3. Learned counsel for the petitioner vehemently contended that the intervening period from the date of resignation and the date of reinstatement, respondents have extended the benefit of notional increment. Therefore, promotion to the post of Head Constable is to be revised and petitioner is entitled to earlier date of promotion from 15.07.2009 depending upon the eligibility list. It was also submitted that once the official respondents have extended service benefit for the intervening period from the date of resignation to the date of rejoining. Consequently, petitioner is entitled for promotion to the post of Head Constable earlier than the date assigned to him.

4. Per contra, learned counsel for the respondents submitted that as per the procedure/criteria of list-C for promotion to the post of Constable to Head Constable amongst others and petitioner was conducted on 25.6.2007. DPC was held on 9.6.2009. Pursuant to the aforesaid procedure, petitioner was promoted to the post of Head Constable on 15.7.2009. Therefore, there is no infirmity in the date of promotion. Thus, petitioner is

not entitled to retrospective promotion since no statutory provision is provided for the purpose of extending the benefit of retrospective promotion to the cadre of Head Constable. It was also submitted that when the eligibility criteria for Head Constable is stipulated like minimum length of service, Pre-promotion course and holding of DPC, question of retrospective promotion do not arise. In particular constable is not entitled for promotion to the post of Head Constable in the absence of passing of Pre-Promotion course which has been stipulated for the purpose of promotion to the post of Head Constable.

5. Heard learned counsel for the parties.

6. Crux of the matter in the present petition is whether petitioner is entitled to retrospective promotion to the post of Head Constable or not?

7. Having regard to the service particulars of the petitioner that he was appointed as a constable on 5.12.1984; he was promoted to the post of Lance Naik on 23.12.1991 and Naik on 18.9.1995; thereafter he resigned the post held by him on 31.7.1996; later on he was taken back to duty by virtue of judicial pronouncement on 30.06.2006 read with the pre-promotion course and DPC held on 25.06.2007 and 9.6.2009 respectively as also the fact that with reference to pre-promotion course read with the DPC, petitioner has been promoted to the post of Head Constable on 15.07.2009, question of retrospective promotion would arise only with reference to a statutory provision provides for such retrospective promotion. That apart for the purpose of eligibility for promotion to the post of Head Constable, pre-promotion course followed by DPC and it were were held on 9.6.2009 and 25.7.2007. Therefore, eligibility of the petitioner for promotion to the post of Head Constable would be only after completing eligibility criteria like

pre-promotion course which was held in the year 2007. Thereafter, DPC was held on 9.6.2009. Therefore, question of retrospective promotion is impermissible. Thus, petitioner has not made out a case so as to claim retrospective promotion earlier than the date i.e. 15.7.2009 since he has cleared his eligibility for promotion to the post of Head Constable only on 9.6.2009 the date on which DPC was held for the purpose of promotion to the post of Head Constable.

8. Accordingly, petition stands dismissed.

22.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**