

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

**CWP No. 10029 of 2016
Date of decision : 20.09.2018**

Suresh Kumar

...Petitioner

versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Anurag Goyal, Advocate for
Mr. B.S. Rathee, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G. Haryana

RITU BAHRI, J.

In the present civil writ petition, the petitioner has sought quashing of order dated 26.04.2016 (P-5) to the extent that the petitioner was not promoted to the post of Sub Inspector.

Brief facts of the case are that the petitioner joined as Conductor with the respondent-department in the year 1985 and his services had been regularized in the year 1987. There were some allegations against the petitioner of embezzlement of amount of money and some orders were passed against him on 29.07.1999 (P-1 colly). The petitioner approached the respondent-authority by filing appeal (P-2) that his number of increments have been stopped and on confirmation from the office of respondent NO. 3, it conspired that during the year 1993, his 16th annual increments have been stopped. Respondent No. 2 sent a letter dated 27.01.2018 (P-3) to

respondent No. 3 in which either enquiry is pending or punishment has been awarded. Respondent No. 3 sent the comments (P-4) that the petitioner was in habit of embezzlement which caused prejudice to the petitioner. On 26.04.2016, respondent No. 2 issued promotion orders to the post of Sub Inspector but the petitioner was not found fit for promotion due to effect of stoppage of increments and the post was retained.

Learned counsel *inter alia* contends that the petitioner was wrongly denied the promotion as his last 10 ACR's are good but the respondents have counted the previous punishment way back of the year 1993 to 1999. Further as per policy dated 17.05.1989, only last 10 ACR's have to be seen and the petitioner cannot be declined promotion on the ground that he had suffered punishment of stoppage of increments.

Learned State counsel on the other hand, has referred to written statement filed on 30.10.2017 wherein it has been stated that the case of the petitioner has been considered for promotion but due to effect of stoppage of increments, his claim has been rejected in view of instructions dated 31.05.2016 (R-1) which states that no promotion should be allowed to any employee during the currency of punishment of stoppage of his grade increments.

Further the petitioner has been involved in numerous cases of frauds/embezzlements of funds while discharging his duties as conductor. Due to his fraudulent character, he has been warned 25 times, his services censured 24 times, increment stoppage 38 times (34 increments without cumulative effect and 04 increments with cumulative effect) and recovery of Rs.6632/- has been done. The petitioner has also been suspended by the

competent authority many times (R-2).

Heard learned counsel for the parties.

Reference at this stage can be made to instruction dated 31.05.2006 which provide that if an employee has been awarded punishment of stoppage of one or more grade increments and his turn comes up for promotion during the currency of stoppage of his grade increment(s), the decision for his eligibility of promotion or otherwise should be taken keeping in view his overall record and he should be considered fit for promotion if his overall record makes him eligible for promotion notwithstanding the fact that the punishment to him becomes ineffective on his promotion. In this instruction, reference has been made to judgment of Hon'ble the Supreme Court of India in a case of ***State of Tamil Nadu v. Thiru K. .S. Murugesan and others, 1995 (3) RSJ 271*** wherein it has been held that unless the period of punishment got expired by efflux of time, the claim for consideration during the said period cannot be taken up.

In the present case, it is not in dispute that the integrity of the petitioner has been found doubtful from 1989 to 1990, 1994-95, 1998-99 and 2001-02. Further in the year of 1995-96 and in 2003-04, the overall assessment of the petitioner was average. The petitioner has shown gross negligent towards his duties. The currency of stoppage of 04 increments with cumulative effect is still pending. Vide Annexure P-2, the petitioner has filed his appeal again the punishment awarded to him vide Annexure P-1.

Keeping in view the instruction dated 31.05.2006 ,the case of the petitioner for promotion has rightly been rejected, as the punishment of

stoppage of 04 increments with cumulative effect is still pending.

In view of the above discussion made above, the present petition is dismissed.

20.09.2018

G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>