

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

**CWP No. 12144 of 2016
Date of decision : 14.11.2018**

Satish Kumar

...Petitioner

versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Raman B. Garg, Advocate
for the petitioner.

Ms. Palika Monga, DAG, Haryana

Mr. R.D. Bawa, Advocate
for respondent No. 2.

RITU BAHRI, J.

The petitioner is seeking issuance of writ in the nature of certiorari quashing the impugned order dated 06.04.2016 (Annexure P-19) with a further direction to the respondents to grant the petitioner revised pay scale w.e.f 01.05.1989 as granted to his colleagues including his juniors, vide Annexure P-9 with all consequential benefits.

Brief facts of the case are that the petitioner was appointed in the Haryana State Agricultural Marketing Board as Sub Divisional Officer on 01.04.1975 and thereafter was promoted to the post of Executive Officer by respondent No 2. The promotion of the petitioner as Executive Engineer was pre-poned vide order dated 30.06.1993 (Annexure P-1) and the petitioner was deemed to be promoted w.e.f 12.05.1981. The petitioner was further promoted to the post of Supdt. Engineer, vide endroement dated 10.11.2006 w.e.f 17.09.1999 (Annexure P-2). Thereafter, F.I.R No. 120 dated 24.04.2001 was registered against the petitioner under Sections

7/13/49/88 of the Prevention of Corruption Act and he was placed under suspension vide order dated 25.04.2001 and was also issued charge sheet under Rule 7 of HCS (P&A) Rules, 1987 vide memo dated 08.01.2002. The petitioner submitted his reply to the charge sheet on 16.04.2002. He was reinstated subject to final decision of criminal proceedings as well as without prejudice to the pending departmental enquiry vide order dated 26.04.2002. The petitioner was thereafter convicted vide order dated 17.09.2002 and he filed appeal against order dated 17.09.2002 and his sentence was suspended on 08.10.2002, during the pendency of the appeal. Thereafter, the suspension orders of the petitioner were revoked on 28.04.2002 by the respondent-Board. The petitioner continued in service till 22.04.2008 and the petitioner was to retire on 30.04.2009 on attaining the age of superannuation but in pursuance of the decision taken by the Board of Directors in its meeting dated 16.04.2008 (annexure P-3), the petitioner was dismissed from service on 22.04.2008 on the ground of his conviction despite the fact that he was acquitted of the charges framed against him. The Hon'ble High Court accepted the appeal of the petitioner, vide judgment dated 17.12.2012 (Annexure P-4) and set aside the judgment of conviction dated 17.09.2002 and acquitted the petitioner of the charge. The petitioner made representation for revocation of dismissal order dated 22.04.2008 and after getting no response, he approached this Court by filing CWP No. 10487-2014, which was allowed on 14.01.2016 (Annexure P-5). Thereafter, the pay scale of the Engineers were revised w.e.f 01.05.1989 vide circular dated 02.06.1989 (Annexure P-6) by the respondent-State. The said circular was further modified vide circular dated 16.05.1990 (Annexure P-7) with a rider that the selection grade of Rs.4100-5300 shall

be limited to 20% of the cadre posts. But the respondent-Board has not granted the said benefit to the Engineers serving the respondent-Board including petitioner. This matter came up for consideration before this Court in various writ petitions including ***CWP No. 13055-1993 titled as Anil Kumar Aggarwal and another vs. State of Haryana and others***, the same was decided on 16.04.2009 (Annexure P-8) and the respondents were directed to grant the benefit of circular dated 02.06.1989, as modified vide order dated 16.05.1990.

The respondents granted this benefits to the seniors of the petitioner namely Deepak Talwar, Prem Singh and juniors of the petitioner namely Vijay Parkash and S.K. Nangru in the meeting of the Administrative Committee of the respondent-Board on 14.01.2011 (Annexure P-9). However, the Committee deferred the case of the petitioner on the ground that 70% of the ACR for the year 1979-80 is doubtful and opinion of the Chief Secretary Haryana was decided to be obtained. The petitioner gave representations dated 15.06.2011 and 17.08.2015 for grant of selection grade to him w.e.f 01.05.1989 (Annexure P-10 and 11) but no action has been taken till date.

The petitioner then again approached this Court by filing CWP No. 19826-2015 which was disposed of on 17.09.2015 with a direction to the respondents to consider and take a decision on the representation of the petitioner dated 17.08.2015. The petitioner was then called for hearing on 09.03.2016 and he appeared before the Administrative Committee of respondent No. 2 headed by respondent No. 1 and the respondent No. 2 passed impugned order dated 06.04.2016 (Annexure P-19) rejecting the claim of the petitioner. Hence the present writ petition.

Learned counsel for the petitioner has argued that the impugned order is liable to be set aside as the only requirement is to be seen that the concerned officer must have completed 12 years regular service as on 01.05.1989 and the said officers must fall within 20% of the cadre posts. The petitioner has fulfilled both the requirements as on 01.05.1989 because the petitioner was appointed on 01.04.1975 as Sub Divisional Officer on regular basis and he completed more than 14 years of service on 01.05.1989. Secondly, the petitioner falls within 20% cadre on 01.05.1989 as juniors to the petitioner has been granted selection grade on 01.05.1989.

Learned counsel for the petitioner further contends that the petitioner cannot be penalised for the fault of the respondent-Board, who is under obligation to keep the records of the petitioner. The petitioner is not custodian of the relevant ACRs. Reference has been made to a judgment of Division Bench of this Court in case of ***Surjit Singh vs. State of Punjab 1998 (1) SCT 445*** wherein it has been held that if record is not available, the same cannot be made a ground to deny the benefit to an employee. The relevant portion is reproduced as under:-

“The mere fact that the respondents have lost the petitioner's service book cannot affect the interests of the petitioner. He was not the custodian of the record. It was for the department to preserve the record of service. The loss of record by them cannot defeat the petitioner's claim.

Learned counsel has further argued that the ACR's of the colleagues of the petitioner are also not available for many years but they were also granted the selected grade by the authorities, vide decision dated 14.01.2011 (annexure P-9).

Further the respondent-Board cannot take into consideration the available ACRs of the petitioner proportionately, as per judgment of Hon'ble Full Bench of this Court in a case of ***Kamal Kumar Gupta vs. State of Haryana 1991 (1) SCT 57.***

Learned counsel further submits that it is wrong on the part of the respondents to say that the honesty of the petitioner was found doubtful in the ACR for the year 1979-80 as in ACR for the year 1979-80, it contained remarks about the honesty that “There was a case of dishonesty against him and the same is still under enquiry.” The said remarks were recorded by the reporting authority i.e the Executive Engineer. Those remarks were reviewed by the reviewing authority and converted the average ACR of the petitioner as good by recording that “He should act vigilantly and exercise increased control/supervision on all the works and specifications”. These remarks of Superintendent Engineer were confirmed by the higher authorities namely the Secretary as well as Chairman of the respondent-Board. The remarks were based on the pending enquiry in which the petitioner was exonerated vide order dated 05.05.1983 (annexure P-18).

Further the petitioner was never conveyed any adverse remarks during the entire service period including the relevant period from 1975-76 to the year 1988-89 and thus the ACR's are required to be treated as Good. Reference has been made to judgment of Hon'ble the Supreme Court in a case of ***Prabhu Dayal Khandelwal vs. Chairman, UPSC 2015 (3) SCT 606*** wherein it has been held that the un-communicated ACR's could not be taken into consideration to defeat the claim for promotion of an employee.

On the other hand, learned State counsel has argued that since

70% of ACR's was not complete and further his service record was not satisfactory, his case was rightly sent to Chief Secretary Haryana. Reference has been made to charge sheets under Rule 7 and 8 issued to petitioner during his entire service career and their decision. As per the chart given in para No. 6, the petitioner has been exonerated in 8 charge sheets, he was censured in 03 charge sheets. He was given warning in 03 charge sheet. The charges were dropped in 06 charge sheets. The charges were filed in 03 charge sheets. The charges were withdrawn in 01 charge sheet. The petitioner was awarded punishment of recovery in two charge sheets.

Learned State counsel further submits that the petitioner was issued 26 charge sheets, 15 under Rule 7 and 11 under Rule 8 during his entire service career.

Heard learned counsel for the parties.

In the present case, it is not in dispute between the parties that the petitioner earlier filed CWP No. 10487-2014, which was allowed on 14.01.2016 (Annexure P-5). This judgment was challenged by the Board by filing LPA No. 757-2017, which was also dismissed. The petitioner was paid all the consequential benefits from the date of his dismissal i.e 22.04.2008 till the date which includes salary from 22.04.2008, the date of dismissal to 30.04.2009, the date of retirement of the petitioner and pension from 01.05.2009 till date. An order dated 17.04.2008 was also issued and pay and allowance in favour of the petitioner was released w.e.f 22.04.2008 to 30.04.2009. Further the petitioner has been sanctioned pension from 01.05.2009 vide order dated 27.04.2018.

However, the petitioner was not granted the revised pay scale w.e.f 01.05.1989 as granted to his colleagues including his juniors, vide

Annexure P-9 only on the ground that his 70% ACR's are not complete and his integrity was doubtful.

A perusal of the above 26 charge sheets would reveal that either the petitioner was exonerated or the charge sheets were dropped/filed in 18 charge sheets. The petitioner was censured or warned in 06 charge sheets and the said penalty has no value in the eyes of law. The only record of the petitioner upto 01.05.1989 was to be considered for grant of selection grade to him.

Reference can further be made to order dated 18.01.2015 (Annexure P-24) whereby the allegations against the petitioner were inquired into in the departmental enquiry and the petitioner was found to be innocent. The Committee dropped the charge sheet issued vide memo dated 08.01.2002. In the judgment dated 17.12.2012, it further revealed that the petitioner was acquitted honorably.

In the above mentioned 26 charge sheets, there are no major penalties awarded to the petitioner. Moreover, 70% ACRs of the petitioner was good. The petitioner cannot be penalised for the fault of the respondent-Board, who is under obligation to keep the records of the petitioner.

In view of the discussion made above, the present petition stands allowed and order dated 06.04.2016 (Annexure P-19) is set aside. A direction is given to the respondents to grant the petitioner revised pay scale w.e.f 01.05.1989, as granted to his colleagues including his juniors, vide Annexure P-9.

14.11.2018

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No