

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

CWP No.21688 of 2014 (O&M)

Date of decision: 24.08.2018

Davinder Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. K.S. Dadwal, Advocate for the petitioner(s).

Ms. Deepali Puri, Addl. A.G., Punjab.

Jitendra Chauhan, J. (Oral)

By way of the present petition, the petitioner seeks issuance of directions to the respondent to complete the service record of the petitioner and to regularize the period of suspension from 09.09.2009 to 04.10.2010 by treating the same as duty period and also to pay arrears of salary and allowances.

The petitioner joined the respondent department as patwari on 02.05.1983. He was falsely implicated in FIR No.19 dated 09.09.2009, registered under Sections 7 and 13(2) of the Prevention of Corruption Act, 1998, at Police Station Vigilance Bureau, Hoshiarpur due to which the petitioner was suspended on 09.09.2009. However, during the pendency of trial, he was reinstated into service on 04.10.2010. Subsequently, the petitioner was acquitted of the charges.

It is contended that since the petitioner had been acquitted of

the charges and the period of suspension from 09.09.2009 to 12.05.2011 had been treated as duty period, however, no arrears of salary and allowances have been paid. He further states that the petitioner is 60% disabled person, therefore, he is also entitled for reservation in promotion in view of the instructions of the State Government issued from time to time.

On the other hand, learned State counsel states that the petitioner cannot take the benefit of reservation as he had been appointed as patwari in the general category. She further states that the petitioner is also not entitled for salary or arrears of the period of suspension as he did not work for that period.

Heard.

The petitioner, a Patwari in the respondent department, is claiming salary and arrears for the period he remained under suspension on account of registration of above said FIR, wherein he has been acquitted and further has laid claim for promotion to the post of kanungo being 60% physically disabled amongst 3% quota meant for the reserved category of physically handicapped. The first prayer qua treating the period of suspension as duty period has already been accepted by the respondents, vide order dated 11.08.2014 (Annexure R-1). Though in the reply dated 30.01.2017, the State is admitting the second claim for promotion to the post of Kanungo under quota reserved for physically handicapped, however, no action has been taken so far. Admittedly, the petitioner is 60% physically disabled as per disability certificate issued by

the Medical Officer, Civil Hospital Hoshiarpur. The argument raised by learned State counsel that the petitioner had been appointed as patwari in the general category, therefore, at this stage, he cannot take the benefit of promotion under quota reserved for physically handicapped lacks merit in view of the instructions dated 03.10.2012, issued by the State wherein it had been stated that if any employee is disabled during his service period, he should be privileged with the benefit of reservation at the time of promotion. The instructions dated 03.10.2012 are reproduced as under:-

“Reservation for Handicapped persons in Promotion in Group A, B,C and D services.

2. *Section 47(2) of the Act 1995 of Disabled persons (Equal Opportunities, Protection of Rights and Full Participation) relates to those persons who got handicapped/disabled during service, Section 47(2) is reproduced as under:-*

'No person can be deprived of promotion merely on the basis of his physical disability.'

Therefore, if any employee is disabled during his service period, he should be privileged with the benefit of reservation at the time of promotion.

3. *Apart from this the candidate can be considered for promotion in his category after having 40% disability in handicapped category which should be verified by the medical authority.”*

Keeping in the view the admitted position, the present petition is allowed. The respondents are directed to promote the petitioner to the post of Kanungo under quota reserved for physically handicapped after completing the necessary formalities in accordance with law, within a period of three months from the date of receipt of certified copy of the

order. The arrears of salary and allowances of suspension period, if any, remains, be also paid.

24.08.2018

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(JITENDRA CHAUHAN)

JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No