

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 20233 of 2018 (O&M)

Date of Decision: 31.10.2018

Devender Kumar Nanda

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Amit Jhanji, Advocate,
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Kumar Rana, Advocate
for private respondents.

RAJIV NARAIN RAINA, J. (Oral)

1. Heard.

2. When the matter came up for preliminary hearing in the urgent list, notice of motion was issued to the respondents for 23.08.2018 and the following order was passed:

“At the outset, Mr. Amit Jhanji, learned counsel for the petitioner submits that challenge to the show-cause notice dated 10.5.2018 (Annex. P-25) may be separated from this writ petition with liberty to the petitioner to pursue his grievance in appropriate proceedings independently instituted. This is for the reason that clubbing the disciplinary issue with the prayer for promotion from retrospective date when charge-sheet was not issued, may be a misjoinder of

causes of action. Accordingly, prayer ii) in this writ petition is ordered to be deleted with liberty to the petitioner as aforesaid.

So far as the other prayers are concerned, Mr.Jhanji Submits that the case of the petitioner has to be dealt with under the 1998 Rules (not under the 2016 Rules) as there were vacancies available when the chargesheet under Rule 7 of the Punishment and Appeal Rules, 1987 was issued on 11.4.2014. Further submits that persons junior to the petitioner i.e. respondents no.4 to 6 have been promoted w.e.f. 1.10.2012, 1.6.2015 and 1.3.2016 respectively by order dated 5.2.2018 (Annex. P-23 pg.287). As a result, the petitioner had a right of consideration for promotion prior to the date when juniors to the petitioner were promoted to the post of Assistant Divisional Fire Officer since the petitioner was not under charge-sheet on 1.10.2012 when respondent no.4 was promoted.

Notice of motion, returnable by 20.9.2018.

Dasti process as well.”

3. In the promotion order dated 02/05.02.2018, three Fire Station Officers were promoted as Assistant Divisional Fire Officers (ADFO) with effect from the date/s specified in the order. The case of the petitioner was held up as he could not be promoted at that stage due to pendency of disciplinary proceedings against him initiated under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 for major misconduct. It was ordered that his promotion case will be considered depending on the outcome of the disciplinary proceedings. The order dated 02/05.02.2018 contained five terms and

conditions the first one of which was that the junior most ADFO will be reverted back on his original post in case the petitioner becomes eligible for promotion for the post of ADFO subject to the outcome of his pending disciplinary proceedings upto 30.04.2018. The date 30.04.2018 is significant because one ADFO was to superannuate which would create a vacancy in the cadre.

4. Mr. Jhanji has filed CM No. 16604 of 2018 for placing on record the administrative order dated 29.10.2018 passed during the pendency of these cases which is the final order on the enquiry proceedings. The Director, Urban Local Bodies and Fire Fighting Services, Haryana, Panchkula acting as the punishing authority converted the charge-sheet under Rule 7 to Rule 8 and imposed minor penalty of warning to be careful in future. This has changed the complexion and outcome of the case of the petitioner for promotion.

5. In view of this order culminating the disciplinary proceedings, this petition can be disposed of with a direction to the respondent to consider the case of the petitioner by keeping in view the minor penalty imposed and in light of the order dated 05.02.2018.

6. In case the petitioner is held entitled to promotion to the higher post, he will take his place from the due date of occurrence of vacancy in the promotional post as per seniority and from the date/s when his juniors were promoted as ADFOs with all consequential benefits.

7. The case shall be processed expeditiously by the
department.
8. With these directions and observations, the petition is
disposed of.

31.10.2018
kv

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No