

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

**RSA 2424/2017 (O&M)
Date of decision:08.08.2018**

EHC Harjit Singh

.....Appellant

v.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.Deepender Singh,Advocate for the appellant.

Jaswant Singh,J.

Since there is delay of 1355 days in refiling the appeal, application bearing CM 5886-C/2017 has been filed seeking condonation of said delay.

The reason ascribed for the delay in refiling is alleged misplacement of file by Clerk during shifting of office of the counsel. The application is supported by the affidavit of Jatinder Singh,Clerk to the counsel.

The reasons stated above, do not constitute sufficient grounds for condoning the delay of 1355 days' in refiling the appeal. It is not believable that for almost four years a litigant would not ask his Counsel about the fate of his case. Even if it is so assumed that appellant was negligent in pursuing his case, the casual approach on the part of his counsel does not entitle condonation of such an inordinate delay in refiling the appeal. Accordingly, the application for condonation of delay in refiling the appeal is dismissed.

Main case.

Appellant/plaintiff is in second appeal aggrieved against the judgment and decree dated 3.4.2013 passed by Additional District Judge, Karnal whereby the appeal of the respondents/defendants was allowed and judgment and decree dated 20.7.2010 passed by Civil Judge (Junior Division) Karnal decreeing the suit of the plaintiff/appellant for declaration and mandatory injunction was set aside and suit dismissed.

Undisputed facts are that:-

1. Plaintiff was appointed as Constable in Haryana Police on 1.8.1985 at Ambala. Later on he was assigned to District Karnal in the year 1988.
2. In January 1990, Constables serving in District Karnal were deputed for Lower School Course meant for promotion to the post of Head Constable. However, plaintiff was not considered for the said course as in the year 1989 he was allegedly implicated in a departmental enquiry whereafter punishment of stoppage of three annual increments with cumulative effect was imposed upon him vide order dated 10.8.1990.
3. Plaintiff challenged the said order of punishment dated 10.8.1990 by filing an appeal before DGP Haryana, who accepted the appeal the punishment of stoppage of three annual increments with cumulative effect was reduced to penalty of censure. Record further bares that plaintiff was also awarded punishment of stoppage of two increments without cumulative effect. It was alleged by the plaintiff

that as per Rule 13.7 of the Punjab Police Rules, due to imposition of major punishment, an employee cannot be deputed to the Lower School Course for a period of three years, which period in the case of petitioner would have been over in January 1994, however, he was promoted as exempted Head Constable after having 6 years of requisite service and the same was granted to him after his having passed the promotion course. Thus, it was alleged that though plaintiff was entitled to be considered for promotional course in the year 1994, but was wrongly denied the right of being considered for promotional course. Since his representations to higher authorities yielded no result, the suit was filed on 28.7.2007.

4. Upon notice, defendants contested the suit by filing written statement taking various grounds viz., jurisdiction of civil court to try the suit, non-joinder/mis-joinder of necessary parties and being time barred. Plaintiff filed no replication.
5. On the pleading of the parties, issues were framed. Both sides led evidence in support of their respective pleadings. The trial court after hearing both sides and perusing the material brought on record, decreed the suit of the plaintiff vide judgment and decree dated 20.7.2010.
6. Aggrieved against the same, defendants, preferred an appeal which was allowed by the learned District Judge, Karnal vide judgment and decree dated 3.4.2013 and the suit of the plaintiff was dismissed. Hence the present second appeal.

Heard learned counsel for the plaintiff/appellant.

It is submitted that the judgment and decree passed by the learned Appellate Court is liable to be set aside on the ground that it failed to appreciate the provisions of Rule 13.7 of the Punjab Police Rules, 1934 (for short 1934 Rules). It is further submitted that as per Rule 13.7(g) of the 1934 Rules, for every major punishment five marks and for every minor punishment three marks are to be deducted. It is then submitted that the appellate Court failed to appreciate the fact that notification dated 29.9.1995 debarring a constable punished with major punishment for three years came in the year 1995 and it could not be applied retrospectively. It is thus submitted that the judgment and decree passed by the appellate Court is perverse and based on mis-appreciation of evidence and non-consideration of relevant exhibited documents on record.

After hearing the learned counsel for the appellant and perusing the impugned judgment and decree in my opinion, no question of law much less substantial question of law arises for consideration in this appeal and the same is liable to be dismissed.

The learned Appellate Court while rejecting the said pleas raised on behalf of the plaintiff/appellant observed that although his punishment of stoppage of three increments with cumulative effect was reduced to censure on the acceptance of his revision vide order dated 11.2.2002, however at the time of filing of the suit the plaintiff was admittedly above 40 years and thus overage for sending his name to Lower School Course and hence defendants could not be asked to send him to Lower School Course. On the question of granting him seniority with effect from the date his juniors were promoted, it was rightly held that even the

said relief could not be granted as plaintiff did not implead such juniors as party to the suit. It was further held that plaintiff having slept over his right now could not claim for sending him to the Lower School Course and granting of seniority from the date his juniors were promoted. It is for these reasons that the judgment and decree of the trial court was set aside and suit of the plaintiff dismissed.

At the time of hearing, it is not disputed that persons junior to plaintiff were sent for Lower School Course in the January 1990 while he was not sent for the said course as departmental enquiry was pending against him in which he was found guilty and imposed punishment of stoppage of three increments with cumulative effect vide order dated 10.8.1990. The said punishment was ultimately reduced to censure vide order dated 11.2.2002 by the DGP Haryana. Even as per own showing of the plaintiff, he was entitled to be sent to Lower School Course in January 1994, however, he chose to file the suit on 28.7.2007. Thus, it is apparent that the suit filed by the petitioner was clearly barred by time.

In view of the above, the instant appeal is dismissed on grounds of delay of 1355 days in refiling as well as on merits.

08.08.2018
joshi

(Jaswant Singh)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No