

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

CWP-14006-2019

Date of decision: - 23.07.2019

Harphool Singh

...Petitioner

Versus

The State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Deepak Sonak, Advocate
for the petitioner.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is in respect of order dated 05.12.2018 (Annexure P-9), whereby his claim for the grant of promotion retrospectively with effect from the date when an employee junior to him i.e. respondent No.4 was promoted to the post of Accountant, has been rejected.

The facts as mentioned in the writ petition are that petitioner initially joined as an Assistant Accountant with the respondent-Corporation on 16.12.1986. In the year 2008, petitioner was issued a charge-sheet under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987. The said charge-sheet was served upon the petitioner on 15.10.2008, wherein, the allegations were made against the petitioner as well as other co-employees with regard to the handling

charges, which were paid, which resulted into the loss of ₹71,49,150/- to the respondent-Corporation. According to the petitioner, enquiry was conducted more than once. During the pendency of the enquiry/proceedings, on 02.03.2010, the case of the employees for promotion to the post of Accountant was considered and the name of the petitioner, being second in the seniority list, was also considered against two posts available. But due to the pendency of the charge-sheet, petitioner was not promoted. Thereafter, on 20.05.2014 (Annexure P-3) in pursuant to the charge-sheet dated 15.10.2008 petitioner was held guilty and punishment of recovery was imposed upon him. Petitioner was held liable for an amount of ₹63,917/-. Against the said order, an appeal was filed by the petitioner and the amount was reduced to ₹3,196/-. The said amount of penalty imposed upon the petitioner has been deposited by him. After the culmination of the proceedings in respect of the charge-sheet dated 15.10.2008, petitioner submitted the representations (Annexures P-7 and P-8) for the grant of promotion with retrospective effect from the year 2010 when the person junior to him i.e. respondent No.4 was promoted as an Accountant.

Respondent-Corporation decided those representations, vide order dated 05.12.2018 (Annexure P-9), rejecting the claim of the petitioner for the grant of retrospective promotion on the ground that petitioner was held guilty in respect of the charge-sheet dated 15.10.2008 and therefore, according to the instructions, which have been issued by the Government of Haryana, as petitioner was not exonerated, he cannot be granted retrospective promotion to the post of Accountant. It is

admitted by the counsel for the petitioner during the course of hearing that after the imposition of the punishment, petitioner was promoted prospectively as an Accountant, from which post he ultimately retired.

The question, which has been raised before this Court, is as to whether, an employee, who has been held guilty in a charge-sheet, is entitled for promotion with retrospective effect or not?

A bare perusal of the impugned order, which has been passed by the respondents, shows that the respondents have relied upon the guidelines, wherein, it has been provided that if a charge-sheet is pending against an employee issued under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987, the employee cannot be promoted during the pendency of the said proceedings and in case, an employee is exonerated in the said disciplinary proceedings without imposition of any penalty, and is otherwise fit in all respects, then, he is entitled for promotion with retrospective effect.

Counsel for the petitioner argues that no doubt, the petitioner has been imposed with the penalty of fine, which has been accepted by the petitioner and deposited also, but the same should not come in his way for the grant of promotion only on the basis of the guidelines.

There is no challenge to the guidelines, which have been issued by the Government of Haryana and the counsel for the petitioner has not been able to show that the guidelines, which were reproduced by the respondents in the impugned order were not in existence on the day when the case of the petitioner was to be considered for promotion. In the absence of any challenge to the guidelines, respondents are well within

their right to act according to those guidelines and pass appropriate orders.

Counsel for the petitioner cites a judgment passed by the Hon'ble Supreme Court in case of **Jagat Narain Vs. Food Corporation of India and others**, 2010(4) SCC 558. Counsel argues that the minor penalty cannot be a ground to withhold the benefit and therefore, as per the law laid down by the Hon'ble Supreme Court in **Jagat Narain's case (supra)**, petitioner is held entitled. The reliance is placed upon paragraph Nos.5 and 7 of the said judgment, which are as under: -

“5. The appellant does not dispute the fact that when his case was initially considered for promotion in December, 2004, a minor penalty proceeding was pending. Not does he dispute the fact that in the said proceedings, an order was made on 3.1.2005 imposing a penalty, for recovery of Rs.5,000/-. But the appellant relies on two circulars of the first respondent dated 13.12.2001 and 19.12.2001. The first circular dated 13.12.2001, reads thus :

"We have made a reference to Headquarters about some clarifications relating to imposition of minor penalty/recovery from the individuals and not releasing promotions of various officers/officials involved in such cases. Clarification has been received which stipulates that in the cases where such recoveries have been ordered under minor penalty these recoveries can continue even in promoted capacity, therefore, there is no point to withhold such promotions. Since necessary clarification has already been received, all such cases which be reviewed and before 24.12.2001, all such promotions should be released."

This was followed by another circular dated 19.12.2001 issuing a consequential direction that promotion orders may

be served in cases where orders have been released by Zonal Office, but withheld by regional offices due to currency of recovery. Learned counsel for the appellant submitted that having regard to the said circulars, mere pendency of minor penalty proceedings, or imposition of orders of minor penalty for recovery in such proceedings should not result in withholding the promotion.

7. Seen in the background of the two circulars dated 13.12.2001 and 19.12.2001, it is evident that the promotion of petitioner by order dated 24.1.2005 was not the result of any oversight. It should be noticed that as on 24.1.2005, the minor penalty proceeding had come to an end by levying penalty of Rs. 5,000/-. Even as on 8.11.2004 what was pending was only a minor penalty proceeding. Therefore, having regard to the circulars dated 13.12.2001 and 19.12.2001, neither the pendency of minor penalty proceedings nor the imposition of minor penalty by way of recovery of Rs. 5000/- would come in the way of the employees being considered for promotion or being promoted. It therefore, follows that there was no justification for cancelling the said promotion dated 24.1.2005. If the appellant was thus entitled to promotion and the cancellation of the promotion was not warranted, the case of the appellant being considered again for the very same promotion and adoption of sealed cover procedure in view of the pendency of subsequent disciplinary proceedings will not arise (vide : ***Delhi Jai Board v. Mahinder Singh - 2000(4) S.C.T. 704 : 2000 (7) SCC 210***)."

A bare perusal of the above would show that in **Jagat Narain's case (supra)**, there were circulars, which were issued by the respondents therein dated 13.12.2001 and 19.12.2001, according to which, in case an employee has been imposed a minor penalty, the said minor punishment should not be a ground to deny retrospective

promotion. On the basis of those circulars, the Hon'ble Supreme Court held that once the circulars issued by the respondents therein itself granted the benefit of promotion even though a minor punishment has been imposed, the employee, who has been imposed minor punishment, cannot be denied promotion with retrospective effect.

In the present case, the facts are different. The instructions, which have been issued by the respondents and reproduced in the impugned order, existence of which is not denied by the counsel for the petitioner, is as under: -

"According to the instructions issued by the Government, the cases of promotion of Government employee against whom disciplinary proceedings under Rule-7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987, are pending should be considered but he should not be promoted till disciplinary enquiry has been completed and he has been exonerated. In a case in which the Government employee has been chargesheeted but his explanation in response to the has not been received, the case of promotion should be kept pending and should be decided after the decision as to whether regular departmental proceedings should or should not be held. If it is decided that an enquiry should be held, then the Govt. employee should not be promoted until he has been exonerated. If he is ultimately exonerated of all the charges without the imposition of any penalty and is otherwise fit for promotion in every respect, he should be promoted with promotion retrospective effect i.e. from the date on which he was due for promotion and an official junior to him was promoted".

A bare perusal of the above instructions, which governs the service in respect of the petitioner, clearly states that retrospective

promotion can only be granted in case an employee is fully exonerated of the charges without the imposition of any penalty. In the present case, petitioner has not been exonerated of the charge but has been held guilty and penalty of fine has also been imposed upon him. Therefore, the facts of the present case are not similar to **Jagat Narain's case (supra)**, hence, no benefit of judgment in **Jagat Narain's case (supra)** can be given to the petitioner.

In the present case, the respondents are well within their right to withhold the retrospective promotion in case an employee has been held guilty of the charge and where the penalty has been imposed.

It is a settled principle of law that in case an employee whose promotion was withheld due to the pendency of the disciplinary proceedings and in the disciplinary proceedings, employee has been found guilty, he will not be entitled for promotion with retrospective effect from the date the other persons, were promoted. He has to be treated differently. The Hon'ble Supreme Court of India in **Union of India Vs. K.V. Jankiraman, 1991(3) S.C.T. 317** held as under: -

“29. According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the

penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in presentii. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (iii) of “paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal.”

Therefore, in view of the above, as the petitioner was held guilty in the present case and has imposed penalty of fine, which order of penalty has been accepted by the petitioner and has not been challenged, the claim of the petitioner with retrospective effect promotion has rightly been declined by the respondents.

Counsel for the petitioner argues that the punishment was imposed upon the petitioner after a delay of six years from the issuance of the charge-sheet, which delay has caused prejudice to the petitioner.

In the present writ petition, there is no challenge either to the charge-sheet or to the order imposing punishment upon the petitioner. Once, the petitioner is not challenging the order of punishment and rather has accepted the order of punishment by complying with the same and depositing the amount as asked by the respondents, at this stage, without there being any challenge to the charge-sheet or the order imposing penalty, petitioner is estopped from raising the argument that prejudice has been caused to the petitioner while imposing the punishment.

In view of the above, no ground is made to interfere with the impugned order and hence, the present writ petition is dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

July 23, 2019
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	Yes