

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

**CWP No.20988 of 2018
Date of decision:23.07.2019**

Sharmila

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.N.Lohan, Advocate
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

AMIT RAWAL J.

Question involved in present case is whether a person who has been censured can be denied the promotion with effect from the date juniors have been promoted or from the date of passing of promotion order. To answer the aforementioned question it would be in the fitness of things to refer to few facts.

As per the averments, petitioner in the year 2003 i.e.17.9.2003 was recruited as Constable in the Haryana Police and after undertaking the course was promoted to the rank of Officiating Head Constable (Female) w.e.f. 17.5.2012 as per the order dated 18.05.2012 (Annexure P-1).

Learned counsel appearing on behalf of the petitioner submitted that petitioner was further deputed for the Intermediate School Course Batch No.64 and was declared pass. In order to initiate the process of promotion, requirement of law is to bring eligible candidate in the list 'D'

i.e. one who passed the Intermediate School Course. Various Head Lady Constable, who were less meritorious than petitioner being in list 'C' were brought on promotion list 'D' i.e. Neelam Kumari, Rajvinder Kaur, Rajvinder Kaur, Saroj, Neelam Devi and Neelam Kumari. Attention of this Court was drawn to the order dated 27.10.2016 (Annexure P-2). The whole purpose of keeping name of petitioner in list 'C' was on the basis of pendency of one departmental enquiry, though service record of petitioner revealed Good/Very Good, in other words, more than 70% of the ACR were Good and Very Good.

The aforementioned enquiry resulted into punishment of censure vide order dated 24.07.2017 (Annexure P-3). Though the petitioner submitted a representation to be brought in list 'D' w.e.f. 30.7.2017 (Annexure P-4) but as indicated above, junior persons were brought in list D and promoted officiating Assistant Sub Inspector w.e.f. 27.10.2016. In such circumstances, claim of the petitioner is to promote her when the juniors were promoted i.e. w.e.f. 27.10.2016 instead of 30.07.2017.

The Instruction dated 19.7.1973 of Haryana Govt. prescribes that in case a person who has been awarded censure or warning would not seriously affect the promotion, resulting into withholding of promotion.

In support of contention relied upon judgment of this Court rendered in Kuldeep Kaur Vs. Punjab and Haryana High Court and another 2016(3) RSJ 414.

Per contra, learned State Counsel submitted that petitioner for claiming the promotion had already approached this Court vide CWP

No.8489 of 2018 which was disposed of vide order dated 17.04.2018 wherein it was found that case of petitioner for promotion was considered alongwith immediate juniors. The petitioner remained under suspension and was transferred from District Jind to Kurukshetra and in the departmental enquiry, awarded a censure by the Superintendent of Police and not only this, in another departmental enquiry was also awarded censure. The instruction of 1973 has been superseded vide instructions dated 31.05.2006, Annexure P-7. In fact, affect of retrospective promotion would be premium on her conduct, therefore, the department kept period of six month from the date of censure in both the enquiries and rightly so promoted w.e.f. 30.07.2017 instead of 27.10.2016.

I have heard the learned counsel for the parties, appraised the paper book and of view that there is force and merit in the submissions of Mr. Lohan, for, Annexure P-7 would reveal that instructions of 1973 were not superseded but modified only to the extent that where there is punishment of stoppage of grade increment, promotion would be considered from the date but not retrospectively. In judgment aforementioned, while noticing the case law noticed that in appeal punishment was reduced to warning to be careful in future which would be minor punishment. I would be failing in my duties if not extracting the relevant portion of instructions of 1973 which remained un-modified:-

“1. Censure or warning with a copy on the ACR:-These punishment ordinarily are not so serious that the promotion of the employee may be withheld on that basis and these

punishments be considered that part of the entire record (overall suitability judge) of the employee.”

Keeping in view the circumstances and law, writ petition is allowed and order dated 11.07.2018 (Annexure P-6) denying the case of petitioner for promotion with effect from the date juniors were promoted, respondent is directed to promote the petitioner w.e.f. 27.10.2016 alongwith all consequential benefits, if any, if permissible in law. The question raised above, therefore, is answered hereinabove.

Writ petition stands allowed.

(AMIT RAWAL)
JUDGE

July 23, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No