

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 8094 of 2018

Date of decision : January 08, 2019

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Ashok Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Varun Sharma, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

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RITU BAHRI, J.

The petitioner is seeking writ of certiorari for setting aside show cause notice dated 13.7.2015 (Annexure P-1), order dated 8.9.2015 (Annexure P-2) of respondent no.4-Superintendent of Police, Bhiwani, order dated 24.12.2015 (Annexure P-4), whereby his appeal was dismissed against censure, and order dated 16.10.2017 (Annexure P-7) by which the representation/appeal dated 31.3.2017 regarding promotion of the petitioner to the post/rank Sub Inspector Police was rejected. The petitioner has further prayed for issuance of a direction to respondents no. 1 to 3 to consider the case of promotion of the petitioner to the post of Sub Inspector Police from the post of Assistant Sub Inspector of Police keeping in view the representation dated 15.11.2017 (Annexure P-8).

Petitioner joined the Police Department as a Constable on 1.8.1985 and after passing Lower School Course, he was promoted to the post/rank of Head Constable and thereafter confirmed on that post w.e.f

3.1.2003. Thereafter, he was promoted to the post of Assistant Sub Inspector of Police w.e.f 23.5.2007 and confirmed as such w.e.f 31.1.2010 while posted at District Bhiwani in Hisar Range, Hisar. The copy of seniority list is annexed as Annexure P-9. Petitioner while posted as SHO Police Station City Dadri was issued a show cause notice on 13.7.2015 (Annexure P-1) stating therein that he did not carry out night patrolling during the night intervening 08/09.07.2015 despite his duty to conduct the same. Vide this show cause notice, petitioner was given an opportunity to show cause as to why the proposed punishment of censure may not be imposed upon the petitioner for his act of negligence. The petitioner gave his reply to the show cause notice vide letter dated 19.7.2015 (Annexure P-10). Vide impugned order dated 8.9.2015 (Annexure P-2), he was awarded the punishment of censure. Against the impugned order dated 8.9.2015 (Annexure P-2), the petitioner sent an appeal dated 22.10.2015, but respondent no.3 rejected the appeal of the petitioner vide impugned order dated 24.12.2015 (Annexure P-4).

In the reply filed to the show cause notice (Annexure P-10), the stand taken by the petitioner was that on the intervening night of 8/9.7.15, it was Head Constable Amarjit Singh who was sent to patrolling duty and he was busy in other official work. In the reply, the petitioner admitted that he was not on the patrolling duty. Hence the order dated 08.09.2015 (Annexure P-2) imposing punishment of censure upon the petitioner does not require to be interfered with, therefore, qua the prayer of the petitioner seeking quashing of the orders dated 08.09.2015 (Annexure P-2),

24.12.2015 (Annexure P-4) and order dated 16.10.2017 (Annexure P-7), the writ petition is hereby dismissed.

As regards second prayer of the petitioner regarding issuance of a direction to respondents no. 1 to 3 to consider the case of promotion of the petitioner to the post of Sub Inspector Police from the post of Assistant Sub Inspector of Police keeping in view the representation dated 15.11.2017 (Annexure P-8), counsel for the petitioner has argued that the punishment of *censure* being a minor punishment could not be made a ground to deny promotion to the petitioner to the post of Sub Inspector w.e.f 10.11.2015 when persons junior to him were promoted. He has referred to the promotion order dated 10.11.2015 (Annexure P-5), whereby persons junior to him have been promoted. Counsel for the petitioner has placed on record Instructions dated 19.7.1973 (Annexure P-11), where it has been laid down that the *punishment of censure or warning is not a major punishment by which promotion of an employee can be stopped. These punishments can be taken as a part of overall record of the employee to judge his overall suitability.*

Counsel for the petitioner has referred to a judgment passed by a Coordinate Bench of this Court in the case of **Jagir Singh vs. State of Punjab and others (CWP No. 16518 of 2008)** decided on 15.9.2011, wherein it was held that in certain circumstances the award of censure may not be any hindrance for promotion/increment,

Counsel for the State has referred to the Instructions Circular dated 20.6.1961 (Annexure R-1) annexed with the written statement,

wherein distinction between censure and warning has been explained. Learned State counsel has argued that unless the period of punishment gets expired by efflux of time, the case cannot be taken up for promotion and he has referred to the judgment of Hon'ble the Supreme Court in the case of **Union of India and others vs. A.N Mohanan 2007 (3) SCT 476**, wherein it has been held that the promotion could be ignored if a punishment of censure has been awarded.

Upon notice, written statement has been filed by respondent no.4 on behalf of all the respondents, in which a stand has been taken that it is wrong that the service career of the petitioner has been very much clean and penalty has been given to the petitioner. In paragraph 10 of the written statement, reference has been made to the penalties awarded to the petitioner in his service career:

1	Censure- 08.09.2015 vide order No.800-01 dated 08.09.15.
2	Warned to be careful in future vide order No.890-91/ST dated 08.09.15
3	Warned to be careful in future vide order No.902-03 dated 08.09.15.
4	Warned to be careful in future vide order No.1522-23/ST dated 28.12.2015
5	Censure vide order No.45-46 dated 13.01.2016
6	Censure vide order No.269-70 dated 12.04.2016
7	Censure vide order No. 271-72 dated 12.04.2016
8	Stoppage of two future annual increments with permanent effect vide order dated 356-58/ST dated 18.4.17.
9	Warned to be careful in future vide order No.1308-11/ST dated 27.9.17.

A perusal of the promotion order dated 10.11.2015 (Annexure P-5)

shows that while making promotion to the post of Sub Inspector and ignoring the petitioner, it has been ensured that the integrity of the officials during the last ten years was certified, his reliability during the last two years is up to mark and no punishment of censure is awarded during the last six months. The petitioner was awarded punishment of censure on 8.9.2015 on three occasions at Sr. No.1, 2, 3 as stated above. Hence the only question for consideration is that when junior to the petitioner were promoted vide order dated 10.11.2015 (Annexure P-5), whether the petitioner who was inflicted the punishment of censure could be ignored? This aspect has been considered in the case of ***Jagir Singh Vs. State of Punjab and others***, (CWP No.16518 of 2008) decided on 15.9.2011, *where the petitioner was a Senior Assistant in the office of District Ayurvedic and Unani Officer, Ludhiana and he was charge sheeted on the allegations like disobedience of the orders passed by the Senior officers. After conducting the regular enquiry, he was exonerated. Thereafter, a strict warning was issued to him taking a lenient view. This order was further modified and strict warning was ordered to be read as Warning and in this backdrop, the petitioner was denied promotion on the ground that he was issued minor punishment of warning and his juniors were promoted. The writ petition was allowed and it was held that punishment of censure was not a valid ground to withheld promotion or increments as per the Punjab Government Instructions, wherein it has been laid down that the punishment of censure cannot be made a ground to deny promotion/increment. The Co-ordinate Bench further observed that there was no necessity to fix the period after*

the award of censure. In the present case when the juniors were promoted, the petitioner was awarded censure on three occasions on the same date as reflected at Sr. No.123 of the Service Career. Hence on the date of promotion of the juniors, the petitioner could not be denied promotion on account of a minor punishment of censure. The judgment referred to by the counsel for the State in the case of **Union of India and others vs. A.N Mohanan 2007 (3) SCT 476** is rather in favour of the petitioner. In this case the Departmental Promotion Committee made selection on 1.11.1999 and the penalty of censure was awarded on 13.9.2001. Promotion was claimed w.e.f 1.11.1999. Respondent made an application before the CAT seeking such direction and vide order dated 18.6.2004 his application was allowed that penalty of censure was not a bar for promotion and though the sealed cover procedure was adopted and after opening the sealed cover promotion should have been given effect w.e.f 1.11.1999 Union of India challenged the order of CAT before the High Court and the writ petition was dismissed. Hon'ble the Supreme Court referred to Rule 3.1 of the Office Memorandum relating to promotion of Government servants dated 14.9.1992 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training. Rule 3.1 reads as under:

“Rule 3.1: If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the Criminal prosecution against him, the finding of the sealed cover/covers shall not be acted upon.

His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.”

The Supreme Court allowed the SLP and held that when the punishment of censure was imposed, the respondent in that case had a right to be promoted w.e.f the date next DPC convened the meeting and he cannot claim when the juniors were promoted. However, in the present case, when the juniors were promoted vide order dated 10.11.2015 (Annexure P-5), the petitioner had already suffered the punishment of censure vide order dated 8.9.2015 (Annexure P-2) and as per the judgment in **Jagir Singh's case (supra)**, there was no necessity to fix the period after the award of the censure. Hence the petitioner was duly eligible to be promoted when the juniors were promoted as there were no departmental proceedings on 10.11.2015.

In the case of **P.S Sachdev vs. Union of India (UOI) and others (2011) 161 PLR 476**, it was held that for the purpose of promotion if warning was not to be taken not account then censure should have also not taken into account for denying promotion. In paragraph 9, it has been observed as under:

9. *In the definition of 'Warning' one of the meaning assigned is 'admonish' and likewise one of the meaning assigned to 'Censure' is 'reprimand'. When we see the meaning of expression 'admonish', it is clear*

that it is to caution against danger or error or warn as of something to be avoided. Thus, the aforesaid technical meaning of expressions 'Warning', 'Censure' and 'Admonish' would show that these are virtually interchangeably used in common parlance then 'Warning' and 'Censure' may stand on the same footing. Therefore, it is held that for the purposes of promotion if warning is not to be taken into account then 'Censure' shall also not be taken into account in the case of the applicant-petitioner. To that extent the view of the Tribunal deserves to be modified. Ordered accordingly."

In the present case, the petitioner cannot be denied promotion on account of punishment of censure awarded to him vide order dated 8.9.2015 (Annexure P-2). A perusal of this order shows that the petitioner was posted as SHO Police Station, Dadri and did not carry the patrolling duty on the intervening night of 08/09.07.2015 despite his duty to conduct the same. He was issued show cause notice on 13.7.2015 (Annexure P-1) and the reply given by him was not found satisfactory and hence minor punishment of censure was inflicted vide impugned order dated 8.9.2015 (Annexure P-2). Since the punishment of censure is minor punishment, the appeal has been dismissed. Vide order dated 24.12.2015 (Annexure P-4), it was held that the impugned punishment order does not require any interference as absence from duty is a misconduct for which minor

punishment awarded to the petitioner is not excessive. As per the Instructions 19.7.1973 (Annexure P-11), the punishment of censure is not that major that on the basis of which the promotion of any employee can be stopped. This punishment should be taken as a part of overall record of the employee to judge his overall suitability. The relevant portion of the Instructions dated 19.7.1973 (Annexure P-11) is reproduced hereasunder:

(1)Censure or Warning with a copy on the ACR

“These punishment normally nor that major that on the basis of which the promotion of any employee can be stopped and these punishment should be taken as a part of overall record of employee and should be judged as overall suitability.”

In view of the above said Instructions and aforementioned judgments, the writ petition is being partly allowed qua the right of promotion of the petitioner. Order dated 16.10.2017 (Annexure P-7) whereby his representation for promotion to the rank of Sub Inspector has been rejected is being set aside. A direction is being given to promote the petitioner as Sub Inspector w.e.f 10.11.2015 keeping in view that he has been awarded punishment of censure prior to that date.

January 08, 2019

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(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes