

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.453 of 2020(O&M)
DECIDED ON : 16.03.2020

EHC Parveen Kumar

...Petitioner

versus

State of Haryana and ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present : Mr. Sajjan Singh, Advocate
for the petitioner.

Mr. Jagbir Malik, Addl. A.G., Haryana.

GIRISH AGNIHOTRI, J. (ORAL)

Petitioner-EHC Parveen Kumar has filed the present writ petition, *inter alia*, with a prayer to quash/modify the impugned Promotion List B-1 for the year 2018 dated 12.12.2019 (Annexure P-3) for further admission to the Lower School Course-2018.

Learned counsel for the petitioner submits that the name of the petitioner has been wrongly excluded and the name of the petitioner deserves to be included in the list of candidates to be sent for Lower School Course-2018. Vide order dated 17.08.2019 (Annexure P-1), the alleged punishment had been set aside by the Appellate Authority.

Notice of motion in this case was issued on 10.01.2020. Reply on behalf of respondents has been filed by Sh. Shashank Kumar Sawan, IPS, Deputy Commissioner of Police, Headquarters, Gurugram. The same is taken on record. In para 4 of the preliminary submissions of reply, the stand taken is as under:-

“4. That the petitioner is not entitled for

selection in list-B under 62% quota for the year 2018 as he was undergoing major punishment as on 01.01.2018 (cut of date) because the punishment of stoppage of two annual increment with permanent effect since 19.12.2016 was set aside on 17.08.2019 (Annexure P-1) in view of relevant rule 13.7 of Punjab Police Rules applicable to Haryana Police as amended vide notification dated 07.08.2017. The relevant Rule 13.7 of PPR states as under:-

“..... Provided that no constable during the period when he is undergoing major punishment shall be eligible for entry into promotion list B.....”

In view of the above, as per stand of the respondents, the only question which needs to be decided is as to whether a punishment which has been set aside by the Appellate Authority can be said to be an impediment or can be said to be the reason for not considering the petitioner for further promotion merely because on the alleged cut of date (in the present case on 01.01.2018), the said punishment was in existence and was not set aside by the Appellate Authority.

Learned counsel for the petitioner submits that once the punishment has been set aside by the Appellate Authority, it has to be wiped off from the service record of the employee and could not be taken as one of the facts to deny consideration of the petitioner for further promotion.

This Court accepts the plea of the petitioner and is also of the view that from the proviso as reproduced by the respondents, it is evident that the intention of the Rule framers is on the existence of the punishment. It would be too hyper technical approach to say that although the Appellate Authority subsequently has set aside the punishment but it shall be treated to be in existence on the cut of date and as a result the employee would be denied consideration for further promotion.

In view of the above, the writ petition is allowed and the petitioner who is stated to have secured 116.95 marks which is above the cut of marks of 101.25, is held entitled to be included in the list of candidates to be sent for Lower School Course-2018. The petitioner shall be also entitled to all consequential benefits.

March 16, 2020*jyoti3***(GIRISH AGNIHOTRI)
JUDGE**

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO