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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 19369 of 2015
Date of decision: 27.01.2020

Daljit Singh

.....Petitioner

V/s.

Food Corporation of India and others

.....Respondents

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Arun Singla, Advocate,
for the petitioner.

Mr. K.K. Gupta, Advocate,
for respondent Nos. 1 to 3.

Sanjay Kumar, J. (Oral)

Grievance of the petitioner, an employee of the Food Corporation of India (FCI), is with its orders dated 18.09.2014, 02.01.2015 and 21.07.2015 {Annexure P-16 (colly)} issued in connection with his claim for promotion to the post of Manager (Depot). He seeks a consequential direction to the FCI to promote him to the said post from the date his juniors were promoted, viz, 31.03.2015.

The petitioner entered the service of the FCI in 1984 as an Assistant Grade-III (Depot). He was promoted as an Assistant Grade-II (Depot) in the year 2000.

It is an admitted fact that he was subjected to disciplinary proceedings in July, 2009, which ended in imposition of the minor penalty of reduction in the time scale of pay by one stage without cumulative effect for a period of one year, vide order dated 20.03.2010. In the meanwhile, the

Zonal Promotion Committee of the FCI, at its meeting held in December, 2009, considered the candidature of the petitioner for promotion to the post of Assistant Grade-I (Depot), but owing to pendency of the disciplinary proceedings, the result thereof was kept in a sealed cover.

Aggrieved by imposition of the aforestated minor penalty, the petitioner preferred an appeal. The appeal was allowed on 20.03.2010 and the penalty imposed upon the petitioner was reduced to 'Censure'. This order was passed on 25.07.2013.

The petitioner was promoted as an Assistant Grade-I (Depot) with effect from 12.10.2011. It is his case that he would be entitled to be placed on par with his juniors in the cadre of Assistant Grade-II (Depot) who stole a march over him owing to his delayed promotion. Reliance is placed upon the judgment of the Supreme Court in **Md. Habibul Haque V/s. Union of India and other [1994 AIR(SC) 2661]**. Therein, the Supreme Court had observed as under:

',,,,,But for the removal of the appellant from service, he would have been entitled to be considered for fitment in the grade of Preventive Officers, Grade-I, when his junior-most officer, namely, Sarup Kumar Ghosh, was considered and promoted w.e.f. February 29, 1968. The High Court fell in error in considering that there was a punishment imposed upon the appellant in the order dated August 9, 1973. It is seen that the punishment imposed was only reduction of pay scale for one year with cumulative effect. That does not have the effect of reducing his seniority nor would it be a punishment of reduction of seniority of any placement which the appellant would be entitled to hold in the order of seniority. Under those circumstances, we are of the view that the appellant is entitled

to be adjusted in the cadre of Preventive Officers, Grade-I w.e.f. February 29, 1968, the date on which his immediate junior was considered and was given fitment as Preventive Officer, Grade-I.'

Mr. Arun Singla, learned counsel for the petitioner, would stress upon the aforestated observation and contend that the petitioner is entitled to similar benefit.

It is however be noted that the aforestated judgment was delivered by a two-Judge Bench of the Supreme Court and no earlier case law was considered while granting such benefit.

Mr. K.K. Gupta, learned counsel for the FCI, would point out that a Constitution Bench of the Supreme Court had occasion to deliberate over a similar issue in **Union of India V/s. K.V. Jankiraman, [1991 AIR (SC) 2010]**. He would rely upon the observations made in para 29 of the said judgment, which read as under:-

'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 praesenti. 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'.

In the light of the clear and unequivocal edict laid down by the larger Bench, the decision in **Md. Habibul Haque**, which was passed without considering the same, does not lay down the correct position of law, though it is later in point of time. As affirmed by the Constitution Bench, refusal to consider an employee for further promotion during the period that he is suffering a punishment does not amount to a further penalty, as the said refusal is a necessary consequence of the penalty suffered by him.

The principal fact remains that promotion of the petitioner stood delayed owing to the punishment imposed upon him and during the currency of the said punishment, his eligibility for further promotion stood suspended. He therefore cannot seek to be placed on par with his juniors who were promoted earlier owing to this. The prayer of the petitioner to grant him retrospective promotion therefore cannot be countenanced.

The writ petition is devoid of merit and is accordingly dismissed. Pending miscellaneous applications, if any, shall also stand dismissed.

No order as to costs.

(SANJAY KUMAR)
JUDGE

27.01.2020

rakesh

whether speaking/non speaking

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Yes/no

whether reportable/non reportable e

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Yes/no