

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

CWP-10670-1998

Date of Decision: 04.05.2022

MANOHAR LAL (now represented by LRs)

...Petitioners

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R.K. Malik, Sr. Advocate
with Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl. A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petition was filed in the year 1998, *inter alia*, for issuance of a writ in the nature of *certiorari* to quash the impugned order dated 13.05.1998, whereby, the petitioner has been denied the promotion as Sub Divisional Engineer w.e.f. April 05, 1990.

2. Petition was admitted on 22.02.1999.

3. In the return filed to the writ petition, following stand has been taken in Para 3 of the written statement, which is reproduced herein for ready reference :-

“3. That in reply to para 3 of the writ petition, it is submitted that the petitioner was served various charge-sheets from time to time, the detail of charges and punishment is given as under :-

a) Charge-sheet Under Rules-7 served vide Engineer-in-Chief, Haryana, PWD Public Health Branch, Chandigarh No.12000-PH/EV dated 2.9.1975 on the following charges :-

i) Embezzled Government Stores worth Rs.25060.70 P.

ii) Pilfered M.S. Bars 10 mm and 12 mm lying at W/W Nalwa.

- iii) *Tampered with the indents No.1/2451, dated 31.10.1973 and No.2/2451 dated 31.10.1973 with a malafide intention to cover up the shortages.*
- iv) *On transfer in July, 1974 from Public Health Division No.2, Hisar to Public Health Division, Rewari, he did not hand over the M.A.S. accounts register of Providing Water Supply Scheme Nalwa (old register) and M.A.S. accounts register of Mtc. Water Supply Dabra and Ladwa.*

The following punishment were awarded vide Engineer-in-Chief Haryana, PWD Public Health Branch, Chandigarh order No.2139-PH/ET(2), dated 16.4.96 (copy annexed as P-1 of the Writ Petition) :-

- i) *Recovery of Rs.15649.90 P. on account of loss caused to Government”.*
- b. *Charge-sheet under Rule-7 served vide Engineer-in-Chief, Haryana, P.W.D. Public Health Branch, Chandigarh No.7740-PH/E-4, dated 19.5.1976 on the following charges:-*
 - i) *Tempering with official record in as much as changing one of the date in his approved Tour-Programme for the month of October, 1974 by over-writing the dates of 15.10.1974 i.e. the date when he was on Casual leave.*
 - ii) *Putting in a false claim of T.A. and receiving payment thereof for the said date of 15.10.1974 and thereby defrauding the Government illegally.*

In this charge-sheet case the services of petitioner were terminated vide Engineer-in-Chief, Haryana, P.W.D. Public Health Branch, Chandigarh order No.1918-PH-E4, dated 23.2.1983, but the said punishment was later set aside vide order No.1445-48-PH/E4, dated 16.2.1989, as per orders of the Appellate Authority.

- c) *Charge-sheet Under Rule-7 served vide Engineer-in-Chief, Haryana, P.W.D. Public Health Branch, Chandigarh No.723-PH/E IV, dated 20.1.1979 on the following charge :-*

“Wilfully absent from duty for 205 days in the year 1976 and 108 days during the year 1977.”

This charge-sheet was decided by the Engineer-in-Chief, Haryana, P.W.D. Public Health Branch, Chandigarh order No.5725-PH/ET(2), dated 20.9.1996 by awarding following punishment :-

“ He may be treated absent from duty for 117 days i.e. 03.06.76 to 3.12.76 (Broken period as per charge-sheet) and 108 days i.e. 1.3.77 to 31.7.77 (Broken period as per Charge-sheet).

- d) *Charge-sheet under Rule-7 served vide Engineer-in-Chief, Haryana, P.W.D. Public Health Branch,*

Chandigarh No.681 dated 21.1.1981 on the following charges:-

i) Embezzlement of Rs.377.97 P. in connection with the execution of work maintenance of Public Health Amenities in the Primary Health Centre, Village Gopi.

ii) Forgery of indent No.20/885.

iii) Negligence in maintenance of correct Account.

This charge-sheet was decided by the Engineer-in-Chief, Haryana, P.W.D. Public Health Branch, Chandigarh No.1581-PH/E3, dated 9.3.1992 by awarding following punishment :-

“Recovery of Rs.243.48 P.”

4. The aforesaid stand taken in the written statement has not been controverted either by way of filing any further affidavit and/or replication.

5. In the premise, the claim of the petitioner for seeking promotion was rightly rejected. The service record and the bio-data of the petitioner is self speaking and needs no further elaboration and therefore, to contend that merely because some of the punishments and the charge-sheet issued, which were prior to 10 years preceding the date of his being considered for promotion, is of no consequence. What has to be seen is the overall record of the petitioner, to determine his merit and not just the seniority.

6. The relevant instructions dated 19.07.1993 (Annexure P-8) are reproduced hereunder :-

“I am directed to invite your attention to the subject cited above and to say that the detailed instructions relating to policy adopted for promotion of officials to higher posts were issued vide Government circular No.931-4-GS-I-72/10308 dated 13.4.1972 and No.2759-4-GSI-73/12854 dated 21.5.1973. The policy to be adopted for promotion of the employees whose conduct is a subject to enquiry, when their turn comes, have also been clarified in detail vide Government instructions No.6034-2-GSI-32498 dated 18.11.1971. In cases of employees who have been awarded punishment, the Government have considered it appropriate that to consider their cases for promotion in such event, the appointing

authority/administrative department should take decision keeping in view the equity and rules of natural justice and following points should be kept in view in cases of employees who have been awarded different punishments:-

(1) to (3) xxx xxx xxx

(4) RECOVERY FROM PAY:

This punishment does not extent to any period. Therefore, at the time of promotion such punishment should be kept in view considering as a part of overall record.”

7. Record also reveals that due to the mis-conduct including serious charges of embezzlement, at one stage, the petitioner’s services were also terminated but later on, by virtue of interference by the superiors in the administrative hierarchy, the same were directed to be restored.

8. In the overall scenario, petitioner therefore since having already been let off with leniency cannot claim promotion by pleading sheer seniority once it was found that he is not meritorious.

9. No grounds to interfere.

10. Dismissed.

May 04, 2022
gurpreet

(ARUN MONGA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No