

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

CWP No.5915 of 2022 (O&M)

Date of Decision.08.08.2022

Kuldeep

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sunil Kumar Nehra, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

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JAISHREE THAKUR J. (ORAL)

1. The petitioner herein seeks to challenge the order dated 11.10.2021 (P-11) vide which a person junior to the petitioner has been promoted on the post of Assistant Sub Inspector, ignoring the fact that period of currency of punishment of censure had elapsed.

2. In brief, the facts are that the petitioner was appointed as Constable on 11.10.2008. By order dated 23.12.2013, the petitioner was approved for Executive Clerical Cadre, English and Accounts Branch and he was thereafter promoted to the rank of officiating Head Constable on 27.01.2015. The petitioner was suspended on 17.09.2016 and a departmental enquiry was initiated against him and others. A show cause notice was issued as to why punishment of Censure be not inflicted upon him. The petitioner submitted his detailed reply to the show cause notice, which was found to be unsatisfactory and he was imposed a punishment of censure. Appeal filed by the petitioner against the said order was returned by observing that no appeal lies against the order of censure. The petitioner submitted a mercy appeal to the Director General of Police, Haryana on

06.09.2018, which stood filed vide order dated 17.12.2021. On account of the punishment imposed upon the petitioner, adverse remarks were recorded in the ACR of the petitioner for the period from 01.04.2016 to 26.09.2016. The petitioner thereafter submitted a representation against the adverse remarks recorded in his ACR for the period from 01.04.2016 to 26.09.2016, which adverse remarks were then categorized as 'Good' by an order dated 17.07.2017 by the Commissioner of Police, Faridabad. Vide order dated 11.10.2021, a junior person to the petitioner namely Sarita has been promoted to the post of Assistant Sub Inspector.

3. Learned counsel appearing on behalf of the petitioner would contend that despite upgradation of ACR of the petitioner for the period from 01.04.2016 to 29.06.2016, his representation against the punishment of censure has been dismissed and mercy appeal stood filed. It is argued that it is on account of punishment of censure that the petitioner has been ignored for promotion while his junior stands promoted. It is submitted that currency of punishment of censure had already expired as far back as 2017 and therefore, he could not have been ignored for promotion in the year 2021 when his junior was promoted. He would rely upon the judgment rendered by Division Bench of this Court in ***HC Dalsher Singh Vs. State of Haryana and others 2009(1) SCT 584*** to contend that currency of censure is for six months.

4. Per contra, learned counsel appearing on behalf of the respondent-State would submit that the period of punishment of censure is for six months but the petitioner had been awarded punishment for corrupt activities for which he is not eligible to be promoted to the next post for 10 years. It is submitted that as per Annexure R-2, which is a policy regarding

promotion of officer/officials to the higher post, it has been laid down that if in reports for preceding 10 years in respect of the post from which he is to be promoted, a doubt has been expressed regarding his honesty, he should not be promoted. Meaning thereby, even if there is a slightest doubt about the integrity of a person for past 10 years, he should not be promoted. She would rely upon judgment rendered by a Coordinate Bench of this Court in ***Om Parkash and others Vs. State of Haryana and others*** in CWP No.13326 of 2015 decided on 11.09.2018 wherein it has been held that even though the order of penalty of censure is minor but when it is read with an underlying charge of corruption, the same is magnified and therefore, such a person can be ignored for promotion.

5. I have heard learned counsel for the parties and with their assistance have gone through the case law as cited. The admitted facts are that the petitioner was awarded censure by the Deputy Commissioner of Police, Faridabad on 01.10.2016, which would be valid only for a period up till 01.04.2017. Meaning thereby, the currency of punishment period was already over at the time when the person junior to the petitioner was promoted to the rank of officiating Assistant Sub Inspector. The plea taken by the respondent-State that conduct of the petitioner was such that he would not be entitled for promotion as his integrity was doubtful, would not be sustainable in the light of the fact that his ACRs for the said period, which was based upon the punishment of censure, has been upgraded to 'Good'. As on date when promotions were made, there was no adverse entry against the petitioner, regarding his *doubtful integrity*, for him to have been ignored for promotion.

6. The case law as has been relied upon by the counsel appearing

on behalf of the respondent-State in *Om Parkash's case* (supra) would not be applicable to the facts and circumstances of the present case and the same is distinguishable. The case as relied upon pertains to downgrading of ACR on the ground of punishment of censure, which had been recorded. It was in this background that the said writ petition came to be decided whereas in the instant petition, even though there is a punishment of censure, period of which has since elapsed, ACR of the petitioner had been upgraded instead of downgrading as had been done in the case of *Om Parkash*. The instructions (Annexure R-2) would not be applicable in the instant case as, on the date when the petitioner ought to have been promoted, there were no adverse entries for the past 10 years and the currency of punishment was long over. There was no impediment in considering the case of the petitioner on the said date.

7. In view of the aforesaid facts and circumstances, the order dated 11.10.2021 is set aside and the instant petition is allowed. The respondents are directed to grant promotion to the petitioner to the post of Assistant Sub Inspector from the date his junior was promoted with all consequential benefits within a period of two months from the date of receipt of certified copy of this order.

(JAISHREE THAKUR)
JUDGE

August 08, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No