

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116+247

CM-7317-CWP-2022 in/and
CWP-7975-2019
Date of Decision :17.05.2022

Sukhdev Singh

..Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Paramjit Singh Thiara, Advocate for the petitioner.

Mr. Arihant Goyal, Advocate for the respondents.

Harsimran Singh Sethi, J. (Oral)

CM-7317-CWP-2022

As prayed for, application is allowed.

Replication to the written statement filed on behalf of the respondents is taken on record.

CWP-7975-2019

The present writ petition has been filed for quashing of order dated 05.03.2004 (Annexure P/10) whereby, the petitioner was awarded a punishment of 'Severe Reprimand' on the ground that the same was never conveyed to the petitioner. Further prayer of the petitioner is for the grant of benefit of 2nd ACP scale on completion of 24 years of service w.e.f. 2004 along with arrears.

At the time of hearing, learned counsel for the petitioner

submits that the petitioner does not press his prayer with regard to the quashing of order dated 05.03.2004 (Annexure P/10) as the petitioner is entitled for the grant of benefit of 2nd ACP, even if, the order of punishment dated 05.03.2004 (Annexure P/10) exists.

As per the averments made in the petition, the petitioner joined as a Constable in Boarder Security Force on 01.05.1980 and ultimately retired from service on attaining the age of superannuation on 30.04.2018. The petitioner completed 24 years of service in the year 2004 and, hence, became eligible for the grant of benefit of 2nd ACP but, the same was not extended to him by the respondents on the ground that the petitioner was imposed a minor punishment of 'Severe Reprimand' hence, therefore, cannot be granted the said benefit. The said action of the respondents is under challenge in the present petition.

Upon notice of motion, the respondents have filed reply, wherein also the respondents have taken the stand that as in the year 2004, a punishment of 'Severe Reprimand' was imposed upon the petitioner, the petitioner cannot be granted the benefit of 2nd ACP.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The benefit of ACP is to be granted in case an employee is entitled for promotion but, due to the non-availability of the promotional avenue is not promoted and is stagnated in the feeder cadre. The said benefit of ACP can only be declined in case an employee is not eligible for promotion on one account or other or suffers from any disability/ineligibility in respect of promotion to the higher cadre. The

respondents are bringing into operation order dated 05.03.2004 (Annexure P/10) whereby, a minor punishment of "Severe Reprimand" was imposed upon the petitioner.

The question which arises is whether a minor punishment can be taken into account for denying the benefit of promotion to the petitioner and consequently grant of benefit of 2nd ACP on completion of 24 years of service.

It is a settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No.1448-2010 titled as **Jagat Narain vs. Food Corp. of India and others** decided on 05.02.2010 that a minor punishment will not come into the way of an employee to seek promotion to the higher cadre. Relevant portion of the judgement is as under:-

"7. Seen in the background of the two circulars dated 13.12.2001 and 19.12.2001, it is evident that the promotion of petitioner by order dated 24.1.2005 was not the result of any oversight. It should be noticed that as on 24.1.2005, the minor penalty proceeding had come to an end by levying penalty of Rs. 5,000/-. Even as on 8.11.2004 what was pending was only a minor penalty proceeding. Therefore, having regard to the circulars dated 13.12.2001 and 19.12.2001, neither the pendency of minor penalty proceedings nor the imposition of minor penalty by way of recovery of Rs. 5000/- would come in the way of the employee being considered for promotion or being promoted. It therefore, follows that there was no justification for cancelling the said promotion dated 24.1.2005. If the appellant was thus entitled to promotion and the cancellation of the promotion was not warranted, the case of the appellant being considered again for the very same promotion and adoption of sealed cover procedure in view of the pendency of subsequent disciplinary proceedings will not arise."

Hon'ble Supreme Court of India once again decided the said issue while passing order in Civil Appeal Nos.2970-2975 of 2013 on 09.04.2013 titled as **Rani Laxmibai Kshetriya Gramin Bank and others vs. Manoj Kumar Chak**. Relevant portion of the judgment is as under:-

“6. All the aforesaid writ petitions were clubbed and decided by the High Court of Judicature at Allahabad by a common judgment dated 8th December, 2010. By the aforesaid judgment, the High Court quashed the Circular No. 17 of 2009 dated 30th November, 2009 and Circular dated 12th July, 2010. The appellant bank was directed to consider the claim of the respondents (Writ Petitioners) for promotion in accordance with the procedure and method of punishment provided by the competent authority for selections. The High Court in its judgment concluded :-

“1. Where a person is eligible to be considered for promotion, his exclusion, on the ground that he has suffered minor or major penalties, cannot be a ground to exclude him from consideration. The competent authority, as held in K.V. Janakiram (supra) and B.V. Sivaiah (supra), can lay down minimum standards required and also prescribe mode of assessment of merit of the employees eligible to be considered for promotion. The assessment can be made by assigning marks on the basis of appraisal of performance on the service record and interview. The competent authority may also prescribe minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit. The employee, however, cannot be excluded and denied his right to be considered by the selection committee for promotion.

2. The persons, who have been awarded censure entry or other minor punishments, thus cannot be excluded from the zone of consideration for promotion. The question of assessment on merit is to be made by the Selection Committee at the time of selection and not before that by eliminating the person who is within the zone of consideration.

3. We are further of the opinion that the circulars issued by the bank cannot override the statutory Rules nor can supplement it to the extent that the persons, who are otherwise eligible to be considered for promotion, will be rendered ineligible and will not be given a chance to be considered for promotion.”

In the present case, the respondents have not even shown to this Court that 'Severe Reprimand' is a punishment envisaged in the rules to be treated as even minor punishment and the same can only be treated equivalent to warning issued to an employee, which is only advisory in nature and not a punishment. In the present case 'Severe Reprimand'

punishment has been issued to the petitioner and the same is only advisory in nature and not a punishment so as to make the petitioner even ineligible for the grant of benefit of promotion.

Once, the petitioner is not debarred from claiming promotion even after issuance of punishment of 'Severe Reprimand' by the respondents, the same cannot be taken into account to deny the benefit for the grant of 2nd ACP to the petitioner. As the petitioner was stagnating in feeder cadre despite being eligible for promotion, therefore, he is entitled for the grant of benefit of 2nd ACP from the date it became due after completion of 24 years of service in 2004. Not only this, the petitioner has already been granted benefit of ACP in the year 2007 hence, the only question is to anti date the same from the year 2007 to 2004, when the petitioner completed 24 years of service required for the grant of benefit of 2nd ACP.

Keeping in view the above, the petitioner is held entitled for the grant of 2nd ACP on completion of 24 years of service and therefore, the same be granted to him along with all the consequential benefits within a period of two months from the date of receipt of copy of this order.

The writ petition stands allowed in above terms.

May 17, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No