

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

(Sr. No. 265)

CWP No. 26290 of 2017

Date of decision : 10.11.2022

Sanjay Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present : Mr. Piyush Bansal, Advocate for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

* * *

DEEPAK SIBAL, J. (Oral)

Through the present petition the petitioner seeks quashing of order dated 23.10.2017 through which the benefit of exemptee promotion given to him from the post of Constable to Head Constable has been withdrawn resulting in his reversion from Exemptee Head Constable to Constable.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that on 05.11.1992 the petitioner was recruited as a Constable in the Haryana Police. In the year 2008, while he was serving on the afore post, a regular departmental inquiry was initiated against him. The charge against him was that in a surprise inspection, he was not found present at the place of his duty. Instead, he was found at another place illegally checking a truck with a view to extort money from its driver. In the departmental inquiry the petitioner was found

guilty. On the basis of the Inquiry Report, through order dated 18.07.2008, his punishing authority *i.e.* the Superintendent of Police, Rohtak (for short - the S.P.) awarded to the petitioner the punishment of stoppage of two annual increments with permanent effect. The petitioner filed an appeal against the punishment meted out to him by the S.P. In such appeal the appellate authority *i.e.* the Inspector General of Police, Rohtak Range, Rohtak (for short - the I.G.), through order dated 27.01.2009, reduced the petitioner's punishment to stoppage of one annual increment with permanent effect. The petitioner challenged the order of the I.G. through a revision filed by him before the Director General of Police, Haryana (for short - the D.G.P.). On 16.07.2009, such revision of his was disposed of by the D.G.P. with a direction that the punishment to the petitioner be further reduced to stoppage of one annual increment with temporary effect. Such punishment assumed finality.

On 16.12.2009, in terms of the Standing Order No.127/2008 of the D.G.P., Haryana (for short – the Standing Order) the petitioner was promoted as Exemptee Head Constable. However, on account of the petitioner's afore punishment, which was based on his questionable integrity, the S.P. issued a notice to the petitioner as to why his promotion be not withdrawn. The petitioner filed a reply, after consideration of which an order was passed through which the petitioner's promotion as Exemptee Head Constable was withdrawn. Such order is the subject matter of challenge through the instant petition.

Learned counsel for the petitioner submits that at the time when the petitioner was granted exemptee promotion the fact with regard to the

punishment meted out to the petitioner was well within the knowledge of the authority passing such promotion order; in spite of the same he was granted promotion; there was no concealment on the part of the petitioner; the promotion could have not been withdrawn after a period of 08 years especially when the punishment finally meted out to the petitioner was only stoppage of one annual increment with temporary effect which is not a major punishment and therefore, in terms of the Standing Order, the petitioner could not be reverted.

Learned State counsel opposes the acceptance of the present petition by submitting that promotion under the Standing Order was to be given to police officials with a clean service record and whose integrity for the last 10 years was certified to be above board; in the year 2009, after following due process, the petitioner had been punished for having been found to be illegally checking a vehicle with a view to extort money from its driver; such punishment had attained finality; in the same year *i.e.* 2009, in terms of the objects behind the Standing Order, the petitioner could have not been granted exemptee promotion and that even otherwise the petitioner's service record was not clean as in addition to the afore referred punishment he has been punished for 06 other proved misconducts.

The Standing Order under which the petitioner seeks exemptee promotion reads as under :-

“POLICE DEPARTMENT

HARYANA STATE

DIRECTOR GENERAL'S STANDING ORDER No. 127/2008

Subject:- Promotion of the NGOs/ORs after completion of 12 years, 22 years and 30 years.

The objective of the Standing order is to remove the stagnation in promotion in various ranks as a welfare measure in respect of those officials who have served the department for more than 12 years, 22 years, and 30 years with clean service record but could not get promotions as prescribed in Punjab Police Rules as applicable to Haryana. The State Government have decided vide their letter No. 30/32/2008-6 HGI dated 03.09.2008 to allow one rank promotion to Constables/HCs/EHCs/EASIs & ASIs subject to the following conditions:

- 1) Constable would be promoted to the post of Exemption Head Constable after completion of 12 years.*
- 2) Head Constable/Exemptee Head Constables/ORP Head Constables would be promoted to the post of Exemptee Assistant Sub Inspector after completion of 22 years qualifying service provided they have completed five years of service in the present rank.*
- 3) Assistant Sub Inspector/Exemptee Assistant Sub Inspector/ORP Assistant Sub Inspector would be promoted to the post of Exemptee Sub Inspector after completion of 30 years of qualifying service provided they have completed five years of service in the present rank.*
- 4) The upgraded post will be purely personal to them.*
- 5) This upgradation will not confer any right to claim seniority or other consequential benefits.*
- 6) No such promote official shall be confirmed against the upgraded post.*
- 7) The competent authority will take up promotion cases of police personal as soon as they become eligible and fulfill the criteria laid down for promotions. The eligibility criteria for these promotions will be as under :-*
 - (i) Officials who have earned at least 70% or more reports of good or better categories during the last 10 years should be considered eligible for promotion under this scheme.*
 - (ii) Integrity of the official during the last 10 years should be certified.*
 - (iii) If ACR contains adverse remarks regarding reliability,*

then such officer should not be promoted for at least two years after the last date of the ACR in which adverse remarks regarding reliability have been recorded.

- (iv) *Official should not have earned any major punishment during the last two years immediately preceding the date of completion of required years of service. Any NGO/OR who has been awarded a punishment of Censure will be considered for promotion under this scheme only after six months continuous good conduct thereafter.*
- 8) *Such Exemptee Head Constables who fulfill requisite eligibility conditions will also be considered on merits for bringing their names on 'list-B' maintained for sending Constables to Lower School Course as per prescribed categories i.e. 55%, 35% and 10% under PPR 13.7.*
- 9) *All Constables who are given promotions under above mentioned scheme as head Constable will be deputed to undergo a training course for 1, 2 months at Haryana Police Academy, Madhuban for which syllabus shall be prescribed by the Director, Haryana Police Academy, Madhuban. The objective of the training will be to prepare such police personnel to undertake investigation work. Investigation powers under Cr.P.C. or other laws will be vested in only those EHCs/EASIs/ESIs or ORP/Head Constables who have undergone this course. However only those EHCs/EASIs/ESIs should be allowed to investigate criminal cases who have gained sufficient knowledge and experience. District SSP/SOs/Officers incharges of Police Stations shall ensure the optimum utilization of promotions ordered under the above scheme of the State Government for investigation of cases.*
- 10) *It will also be ensured that every police personnel promoted under this scheme a deputed for 'Exemptee Course' in such a manner that requisite course is usually completed within a period of two years from the date of their promotions.*
- 11) *The confidential cards and ACRs of officials promoted under this scheme shall be maintained separately as per PPR and Govt. Instructions on the subject.*
- 12) *As promotion under the above scheme is not a regular promotion, hence the officials shall retain their constabulary/regimental numbers of their substantive ranks.*

The Standing Orders No. 16/2000 and 103/2003

issued vide Endst No.4969-5005/E(II)-7 dated 28.03.2000 and 25814-51/E(II)-3 dated 3.12.2003 stand repeated from the date of issue of above standing order.

The above guidelines/standing instructions may please be complied with meticulously.

*Sd/-
(R.S. Dalal)
Director General of Police, Haryana*

Endst. No.11820-85/E(II)-1 Dated Panchkula, the 22.09.08

A copy is forwarded to all Heads of Police Offices in Haryana for information and necessary action.

*Sd/-
(R.S. Dalal)
Director General of Police, Haryana”*

(emphasis supplied)

A perusal of the afore quoted Standing Order reveals that the objective behind the Standing Order was to remove stagnation in promotion for police officials with a clean service record and whose integrity for the last 10 years was above board. The promotions under the Standing Order were to be treated as purely personal to the incumbent and were not to confer any right upon them. The promotee official was also not to be confirmed against the upgraded post.

It is not disputed that on 16.12.2009 the petitioner was granted promotion as an Exemptee Head Constable under the afore quoted Standing Order and that immediately before the grant of such promotion he had been found guilty for being absent from the place of his duty and being elsewhere seeking to extort money from an innocent truck driver. His integrity was thus established to have been compromised. The finding of guilt and the punishment meted out to the petitioner for such misconduct had attained

finality. Thus, his promotion was in violation of the objects of the Standing Order and in particular Clause 7(ii) of the same as per which, before an official could be considered for promotion, his integrity for the last 10 years was required to be above board.

Further, it is the admitted position that in July, 2006 also the petitioner was awarded punishment of stoppage of one annual increment with permanent effect and this was when he had been found absent from Guard duty while he was posted in a village.

In the light of the above, the petitioner's promotion under the Standing Order was not regular; purely personal to him and was beyond the objects as also in violation of Clause 7(ii) of the Standing Order. Therefore, the same, after following the principles of natural justice, was rightly withdrawn.

Dismissed.

10.11.2022

sunil yadav

**(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No