

220

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

CWP-27966-2017

Date of Decision: 26.04.2022

Jagjit Kumar Batra

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Chander Shekhar, Advocate,
for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

Mr. Vaibhav Narang, Advocate,
for respondent No.2.

Mr. Rampal Kohle, Advocate, for
Mr. Tajender Joshi, Advocate,
for respondents No.3 and 4.

HARSIMRAN SINGH SETHI J. (ORAL)

Prayer of the petitioner in the present petition is for quashing of order dated 29.11.2016, passed by respondent No.2 (Annexure P-4), vide which, the arrears of promotion extended to the petitioner with retrospective effect to the post of Accounts Officer have been denied to him and that too without any valid justification and further to direct the respondents to grant him all the consequential benefits of the said promotion to the post of Accounts Officer extended with retrospective effect.

Learned counsel for the petitioner argues that the petitioner joined the Punjab State Electricity Board (now Punjab State Power Corporation Limited) on 06.09.1976. In the year 1996, the petitioner was promoted to the post of Divisional Accountant and later on was sent to the

Bhakhra Beas Management Board on deputation, where he remained posted till his retirement. Learned counsel for the petitioner submits that the next promotion from the post of Divisional Accountant is to that of the Accounts Officer, but despite the fact that the petitioner was within the zone of consideration for promotion to the said post, the employees, who were junior to him, were promoted and the petitioner was not considered for the said promotion on the ground that he was working with the Bhakhra Beas Management Board on deputation at that time. Vide order dated 20.11.2012 (Annexure P-1), the person, namely Sh. Girdhari Lal Kansal, who was junior to the petitioner, was promoted to the post of Accounts Officer. Learned counsel further submits that the petitioner, thereafter approached the authorities concerned with the request that he is also entitled for promotion to the post of Accounts Officer, with effect from the date when the persons junior to him were promoted, and further stated that even though he was the substantive employee of the respondent-Corporation in the year 2012, when the persons junior to him were promoted, but still his case for promotion to the post of Accounts Officer was wrongly not considered by the respondent-Corporation.

Thereafter, the respondents considered the claim of the petitioner and passed an order granting the petitioner the benefit of promotion to the post of Accounts Officer, w.e.f. 21.11.2012, but the said promotion was granted to him notionally and without there being any arrears of salary, despite promotion. Learned counsel for the petitioner places reliance upon Annexure R-2/1 to support his claim.

Upon notice of motion, the respondents have filed the reply, wherein they have submitted that as the petitioner was working with the

Bhakhra Beas Management Board on deputation at the time when the persons junior to him were promoted to the post of Accounts Officer, therefore, his case could not have been considered for the said promotion and when the petitioner raised his grievance with regard to the non-grant of promotion, he was granted the benefit of regular promotion to the post of Accounts Officer, from the date when the persons junior to him were promoted, but as the petitioner did not work on the said promoted post with the respondent-Corporation, therefore, he cannot claim the arrears of the higher post on the ground of “No Work No Pay”.

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

It is a matter of fact that even while working on deputation with the Bhakhra Beas Management Board, the petitioner remained the employee of the respondent-Corporation for all intents and purposes. It is a further conceded fact that when the employees junior to him were promoted to the post of Accounts Officer, the petitioner was very much in service and his case was liable to be considered for the grant of said promotion keeping in view his seniority position, but the respondents did not grant the said benefit to the petitioner, merely on the ground that at that time, the petitioner was working with the Bhakhra Beas Management Board on deputation. Though as per the law, the petitioner should have been given the proforma promotion along with his juniors, so that he could have claimed higher salary even while working on deputation, therefore, the non-grant of promotion to the petitioner at the time when the employees junior to him were promoted, is only attributable upon the respondents.

It is further a conceded fact before this Court that there was no

impediment with regard to the grant of promotion to the petitioner to the post of Accounts Officer, when the persons junior to him were promoted, i.e. in November, 2012. Hence, once the respondents had themselves realized their mistake and had granted the promotion to the petitioner as Accounts Officer with retrospective effect, the petitioner was also entitled for the grant of consequential benefits of the said promotion including arrears of salary.

The law on the said issue is also clearly settled by the Division Bench of this Court, while passing order in **CWP-20178-2003**, titled as **“Karnail Singh Vs. Punjab State Electricity Board and others”**, decided on 12.01.2006, wherein also, where a promotion to the employee was not granted by the Department and the non-grant of the promotion was due to the fault of the Department only, the employee was held entitled for the consequential benefits along with the arrears. The relevant paragraphs of the said judgment are as under:-

“ - X - X -

6. We have given our thoughtful consideration to the contentions of the learned counsel appearing for the parties. The question that is required to be considered is whether the petitioner is entitled for the monetary benefits from the deemed date of his promotion i.e. 30.8.1995 though he has not worked on the higher post of Internal Auditor. The petitioner admittedly has been granted the benefits from the date he actually joined and start working i.e. 9.3.2000. Besides, he has been given the notional benefits from the deemed date of promotion. The petitioner, as already noticed, was promoted as Assistant Revenue Accountant w.e.f. 6.8.1987 and he joined as such on 12.10.1987. Thereafter, vide office order No. 208 dated 13.7.1990

he was given promotion w.e.f. 20.6.1986. However, his seniority was fixed w.e.f. 12.10.1987 i.e. the date of his joining as Assistant Revenue Accountant. This consequently affected his next promotion also and persons junior to him were promoted as Internal Auditors on 21.7.1995. The respondents in their written statement have stated that the petitioner was due for promotion but could not be promoted because he was not having a good service record and he was ultimately promoted on 13.7.1990. It is appropriate to note that there is no basis or material placed on record to show that he was not having good service record. The petitioner has filed an application in which he has stated that as per the promotion criteria total 11 points are required from the past five Annual Confidential Reports (ACRs) and that he met the said criteria. Besides, his service record was in order and he fulfilled the necessary conditions. It is also stated in the replication that in terms of para-8 of the instructions relating to promotion if there is delay beyond three years in deciding any disciplinary proceedings it does not have any affect on the promotion. It is stated that the petitioner was charge sheeted in 1994 in respect of allegations of 1990. Thereafter, it is on the request of the petitioner that an inquiry was initiated on 4.11.1994. It is on his repeated asking an Inquiry Officer was appointed on 14.3.1996 i.e. after six years.

The inquiry was started from 23.5.1996 and the petitioner submitted his final reply on 17.7.1997, Thereafter the report was not submitted till 12.8.1999 and in the inquiry report, the Inquiry Officer recommended the punishment of censure. Therefore, it is stated that the said punishment has no affect on the promotion after three years of its pendency. It may also be noticed that the respondents in their written

statement have submitted that the petitioner was considered for promotion to the post of Internal Auditor along with his juniors in the year 1995 but his service record was incomplete and for this reason his case was not considered. Thereafter his case was again considered for promotion in the next batch in the year 1996 but because the departmental proceedings were pending against him and his Annual Confidential Reports were not good so his case for promotion was deferred. The petitioner admittedly was promoted as Internal Auditor vide office order dated 22.12.1999 and he joined the post of Internal Auditor on 9.3.2000 on which he continued to work till his retirement on 30.6.2000. The reason, therefore, which has been taken by the Board for denying the monetary benefits is that the Annual Confidential Reports of the petitioner were not good in the year 1995 and departmental proceedings were pending against him. However, the position that has been stated by the petitioner in his replication has not been disputed by the respondents. The petitioner has placed on record the copy of memo dated 28.9.1983 (Annexure-P.5) issued by the Board with regard to grant of retrospective promotion and consequential benefits. It is indicated therein that in number of cases employees of the Board are left over for promotion for various reasons like involvement in disciplinary cases, adverse entries in ACRS, Incomplete records such as missing ACRs. In many cases such employees are later promoted because the disciplinary cases are dropped or the punishment awarded is set aside in appeal or the adverse remarks are expunged. In such cases the affected employees, it is mentioned, come forward with requests for retrospective promotions. The Board to bring about uniformity in such cases had decided that retrospective promotion

may be given by the authorities competent to order promotion in the cases indicated therein which inter alia include whether promotion of an employee has been deferred on account of disciplinary cases, because office record is not complete or is held i up on account of adverse entries in the confidential record, It has been indicated that in all these cases the concerned employee should be given deemed date of promotion and he should be paid full arrears. The petitioner has also referred to the instructions of the Board dated 18.2.1997 (Annexure- P.6) which provides the general criteria to be followed for promotion. It is provided therein that the instructions issued by the Board for making promotion were silent on certain issues such as disciplinary cases and evaluation of assessment. After careful review of the earlier guidelines it was felt that method of evaluation of employees has to be quantified for making assessment of the cases of the employees for promotion. It was decided in terms thereof that uniform criteria is to be followed in making promotions to various posts in the Board. In respect of censure it has been provided that its effect is that one censure would down grade one ACR i.e., one step below so that it has uniform effect on all employees. In other words an outstanding ACR of an employee having been awarded punishment of censure in a year is to be downgraded to very good and if he has very good ACR it is to be downgraded to good and so on. In the case in hand, as has already been noticed, the petitioner was awarded the punishment of censure vide order dated 12.8.1999 in respect of an incident of 1990. Besides, the charge-sheet itself was issued in 1994 and it is on the request of the petitioner that inquiry was initiated on 4.11.1994 and an Inquiry Officer was appointed. on 14.3.1996. The inquiry started on 23.5.1996 and the petitioner

submitted his final reply on 17.7.1997. It has not been shown by the respondents that the criteria and norms fixed by the Board for promotion of the petitioner had been complied with. Rather, the respondents have stated in their written statement that the petitioner was considered for promotion to the post of Internal Auditor along with his juniors in the year 1995 but his service record was incomplete and, therefore, his case was not considered.

*It has further been submitted that when the petitioner retired on 30.6.2000, departmental proceedings were still pending against him and he was awarded penalty of censure by taking a lenient view as he had already retired. Therefore, in the circumstances, it is a case where the petitioner was not allowed to perform his duties on the higher post as he was not given promotion on the higher post on the due date. The promotion has been denied on account of incomplete records and not on account of pendency of the departmental proceedings or any disparaging comments in his ACR. A Division Bench of this Court in the case of **Vidya Parkash Harnal v. State of Haryana, 1995(3) SCT 786**, held that the Executive/State Government have to be bound and governed by the rule of law and if an employee is not promoted at his rightful place when he is entitled to and becomes eligible in accordance with the rules at that time, the Court cannot ignore the magnitude of sufferings and pains on account of deprivation of the monetary benefits to him. The employee as well as his dependents suffer from such arbitrariness of such unguided executive authority. It was held that once a civil servant is found entitled to promotion with retrospective effect, he cannot be deprived of the benefits of the arrears of salary accruing on account of such promotion from the date*

*assigned for his promotion and the principle of 'no work no pay is not attracted in such cases where the employee is not offered the work to which he was entitled to. The rule in Vidya Parkash Harnal's case (supra) was reiterated in **Ram Pal v. State of Haryana. 2003(2) SCT 984** by a Division Bench of this Court wherein it was held that where a civil servant is not offered the work for which he was legally entitled, he cannot be deprived of the wages for the post to which he is subsequently held entitled to. The case of **Paluru Ramkrishnalal and others v. Union of India** (supra) referred to in the Punjab Government instructions dated 8.12.1998 which have been adopted by the Board vide memo dated 8.10.2001 would not be applicable to the facts of the present case. In the said case the grievance of the writ petitioners therein was that quite a number of Supervisors Grade-'A' had been promoted to the post of Charge-man Grade-II on completion of two years satisfactory work and they had been discriminated against and had not been so promoted immediately on the expiry of two years in pursuance of the circulars indicated therein. A learned Single Judge of the Allahabad High Court dismissed their writ petition on the ground of unexplained laches and also on the ground that a previous petition for similar relief had not been pressed. Against the judgment of the learned Single Judge the petitioners therein preferred an appeal before the Division Bench which went into the merits of the case. However, it did not find any substance in the submissions made on behalf of the appellants and dismissed the appeal. It was pointed out that it had been admitted that conditions of service applicable to the appellants therein were governed by the service rules framed under Article 309 of the Constitution and Rule 8 contemplated that the*

*appointment by promotion were to be made on the basis of a selection list prepared for different grades by duly constituted departmental promotion committees provided in the rules. Rule 12 provided that no appointment to the post to which the rules applied was to be made otherwise than as specified therein. Against the said judgment, civil appeal was preferred before the Hon'ble Supreme Court. In view of an order dated 2.2.1981 which had been passed by the Hon'ble Supreme Court in Civil Appeal No. 441 of 1981 titled **Virinder Kumar v. Union of India reported in AIR 1981 SC 1775(1)**, the petitioners before the Hon'ble Supreme Court prayed for the same relief.*

The writ petitions came up for hearing before a two Judges Bench of the Hon'ble Supreme Court on 9.9.1987 and it was observed that the judgment dated 2.2.1981 in Virinder Kumar's case (supra) may require reconsideration and the petitions were directed to be placed before a three Judges Bench where inter alia the correctness of the judgment would be looked into and the nature of relief available to the petitioners on the facts stated would also be considered. During the hearing of the case, it was pointed out by the learned counsel for the petitioners therein that the reason which weighed with the Hon'ble Supreme Court in allowing Civil Appeal No. 441 of 1981 i.e. in Virinder Kumar's case (supra) applied to the writ petitions therein also and it was brought to the notice that similarly placed 125 employees had got the benefit of the circular dated 6.11.1962 in pursuance of an order passed by the Hon'ble Madhya Pradesh High Court on 4.4.1983 in the writ petitions filed by them. It was, therefore, urged that if the same relief is not granted to the petitioners they were likely to become junior to the appellants in Civil Appeal No. 441 of 1991 i.e. in

Virinder Kumar's case. The Hon'ble Supreme Court after considering the matter observed that it was difficult to grant the relief prayed for in the aforesaid writ petition simply on the basis of the earlier judgment dated 2.2.1981 in Civil Appeal No. 441 of 1991 i.e. in Virinder Kumar's case (supra) and the writ petitions, therefore, deserve to be dismissed. However, since the judgment dated 2.2.1981 in Virinder Kumar's case (supra) had not been challenged and had become final it was considered that the appellants who were granted the benefits in view of the judgment of the Hon'ble Madhya Pradesh High Court dated 4.4.1983 against which Special Leave Petition was dismissed, the relief be restricted to the benefits as have been granted by the said High Court which included that a person would not be entitled to any pay and allowances during the period for which he did not perform the duties on the higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post w.e.f. the date his junior was promoted. Consequently, it is in the peculiar circumstances of the said case and in view of the directions of the Hon'ble High Court of Madhya Pradesh that the financial benefits on higher posts were declined as their Lordships did not find it proper to grant the relief only on the basis of an earlier order dated 2.2.1981 passed in Virinder Kumar's case. In the case in hand, as has already been noticed, the petitioner was not allowed to work as his case was not considered for promotion. In fact, if his service record was improper or departmental inquiry was pending, sealed cover procedure was liable to be followed. The right of an employee to get pay of the higher post on which he had not worked has been recognised by their Lordships of the Supreme Court in Union of India v.

K.V Jankriraman, 1991(3) SCT 317: AIR 1991 SC 2010, wherein it was held as follows:-

"The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him."

7. Therefore, for the failure of the authorities to consider the case for promotion of the petitioner at the appropriate time and consequently preventing him from working and also not to opt for the sealed cover procedure in case departmental proceedings were pending, the petitioner cannot be denied the monetary benefits of the higher post of Internal Auditor to which promotion has already been granted by way of deemed date of promotion.....

- X - X -"

Learned counsel for the respondents have not been able to distinguish the case of the present petitioner with that of **Karnail Singh's case** (supra), and therefore, the petitioner is held entitled for the grant of arrears of salary on the promoted post of Accounts Officer with retrospective effect, with effect from the date when he was given notional promotion.

Further, Instructions (Annexure R-2/1) cannot be pressed where the employee was ready and willing to perform the duties and it is not a case where promotion of the petitioner was denied by the respondent-Corporation under some ambiguity. Where the fault of not promoting an eligible employee is upon the respondent-Corporation, there Instructions

(Annexure R-2/1) cannot be put into operation so as to deny the arrears of the said promoted post of Accounts Officer with retrospective effect to the petitioner.

Let the respondents calculate the arrears of salary, for which the petitioner is entitled for upon promotion to the said post of Accounts Officer, from the date when he was notionally promoted, under this order within a period of two months from the date of receipt of the copy of this order and the amount so calculated be released to the petitioner within a period of four weeks thereafter.

No further relief has been prayed for on behalf of the petitioner.

Allowed in the above terms.

26.04.2022

Apurva

(HARSIMRAN SINGH SETHI)
JUDGE

1. Whether speaking/reasoned : Yes
2. Whether reportable : Yes