

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

**CWP No. 471 of 2023 (O&M)
Date of decision : January 24, 2023**

Maninderjit Singh

..... Petitioner

Versus

Chairman Punjab Mandi Board and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :-Mr. Gagneshwar Walia, Advocate
for the petitioner.

Mr. Sanjeev Sharma, Advocate
for respondent Nos. 1 and 2.

PANKAJ JAIN, J. (ORAL)
CM-1235-CWP-2023

This is an application under Section 151 CPC for placing on record. The Punjab State Agricultural Marketing Board (Class I) Service Rules, 1988 as Annexure P-14.

For the reasons mentioned in the application, application is allowed. The aforementioned Rules are taken on record as Annexure P-14 subject to all just exceptions.

CWP No. 471 of 2023

Present petition has been filed under Article 226/227 of the Constitution of India for issuance of writ in the nature of certiorari for quashing the impugned order dated 18.10.2022 (Annexure P-10) passed by respondent No.2 whereby the claim of the petitioner for promotion as District Mandi Officer w.e.f. 07.12.2018 i.e. the date on which the petitioner claims that his juniors were promoted along with all consequential benefits has been rejected.

Learned counsel for the petitioner submits that petitioner was posted as Deputy District Mandi Officer in the year 2017 and was due to be promoted as District Mandi Officer. During his tenure while working as District Mandi Officer the petitioner was charge sheeted on 12.12.2017. The said disciplinary proceedings finally culminated in the order dated 06.02.2019 whereby the petitioner was awarded with the punishment of stoppage of one increment without cumulative effect. The order has been placed on record as Annexure P-1. During the period the disciplinary proceedings were pending against the petitioner, DPC was held and the result of the petitioner was kept in a sealed envelope to await the decision of disciplinary proceedings. In view of the fact that the petitioner was awarded penalty, he could be promoted only in the subsequent DPC held on 27.12.2019 w.e.f. 25.02.2020. The petitioner represented to the respondent-authorities claiming that he was entitled for notional promotion w.e.f. the date his juniors were promoted primarily on two grounds:

- i) Stoppage of promotion is one of the punishments provided under the rules and thus, stoppage of increments coupled with stoppage of promotion would amount to double jeopardy.
- ii) The petitioner cannot be made to suffer even beyond the currency of minor punishment awarded vide order dated 06.02.2019 (Annexure P-1).

The respondents rejected the claim of the petitioner relying upon the instructions issued by the Departmental Promotion Committee. The operative part thereof which has been relied upon is as under:-

“17.6.2. if any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.”

I have heard learned counsel for the petitioner and have gone through the record of the case.

So far as the first plea raised by the petitioner is concerned with respect to double jeopardy is concerned, the issue is well settled by the Apex Court in the case of **Union of India Vs. K. V. Jankiraman 1991 (4) SCC 109** and further followed in the case of **State of Tamil Nadu Vs. Thiru K. S. Murugesan 1995 (3) SCC 273** wherein it has been held that:-

“6. A Bench of three Judges of this Court in Union of India v. K.V. Jankiraman, 1991(3) SCT 317 (SC) : AIR 1991 Supreme Court 2010

considered thus :-

"According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensue purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depend upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That in the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and denies him the promotion,

such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal."

7. It would thus be clear that when promotion is under consideration, the previous record forms basis and when the promotion is on merit and ability, the currency of punishment based on previous record stands on impediment. Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impressible under the Rules and it would be premium on misconduct. Under these circumstances, we are of the opinion that the doctrine of double jeopardy has no application and non- consideration is neither violative of Article 21 nor Article 14 read with 16 of the Constitution."

In these circumstances, even if the relevant rules provide for stoppage of promotion as one of the punishments the same would not constitute double jeopardy as an employee has a right to be considered for promotion but does not possess any vested right to be promoted. The law with respect to sealed envelope pending departmental proceedings viz-a-viz DPC is well settled in

Union of India Vs. K. V. Jankiraman's case (supra).

In view of the aforementioned settled law, no ground for interference

is made out.

Consequently, the present writ petition is dismissed.

(PANKAJ JAIN)
JUDGE

January 24, 2023
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Whether speaking/reasoned	Yes
Whether Reportable :	No