

CWP-10230-2016 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-10230-2016 (O&M)
Date of Decision: 13.12.2023

Bhim Sain Vashisht

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Rajeev Anand, Advocate the petitioner
Mr. Amit Arora, Senior Panel Counsel,
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 08.01.2016 (Annexure P-9) to the extent the petitioner despite having been extended notional promotion has been denied benefit of arrears of pay and allowances.
2. The petitioner was appointed Sub-Inspector (Executive) on 18.12.1976 with respondent-department. The petitioner was time to time promoted and on 27.07.2012 he was promoted to the post of Commandant. He was entitled to the promotion on the post of Senior Commandant w.e.f. 14.04.2015, however, he was not promoted because of pendency of inquiry against him. The petitioner was exonerated in the inquiry and accordingly promoted w.e.f. 14.04.2015 vide communication dated 08.01.2016. The petitioner is claiming arrears and pay band w.e.f. 14.04.2015 whereas

respondent-department has extended w.e.f. actual date of promotion i.e. 08.01.2016.

3. Learned counsel for the respondents while pointing out reply submits that as per Para 3 of OM dated 14.09.1992 issued by Department of Personnel and Training, where an officer is granted promotion on notional basis i.e. preceding the actual date of promotion, the appointing authority may or may not extend benefit of arrears of pay for the period of notional promotion. From the perusal of Para 3 of afore-cited OM, it comes out that if appointing authority decides to deny arrears, it is required to record reasons for the denial. Para 3 of the aforesaid OM is reproduced as under:

“Para 3- On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegation against the Government Servant, the sealed cover or covers shall be opened. In case the Government Servant is completely exonerated, the due date of his promotion will be determined with reference to position assigned to him in the finding kept in the sealed cover/covers and with the reference to the date of promotion of his next junior on the basis of such position. The Government Servant may be promoted, if necessary, by reverting the junior most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the Appointing Authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether

disciplinary or criminal are for example delayed at the instance of the employees or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employees etc. These are only some of the circumstances where such denial can be justified.”

[Emphasis Supplied]

4. From the reading of impugned order dated 08.01.2016, it is quite evident that appointing authority has denied benefit of arrears of pay and allowances, however, as required by the aforesaid instructions, no reason has been recorded.
5. On being confronted, learned counsel for the respondents expressed his inability to controvert the fact that respondent while passing impugned order has not recorded reasons, as mandated in instructions dated 14.09.1992 which are foundation of the reply of the respondents.
6. In the wake of instructions dated 14.09.1992, the present petition deserves to be allowed by way of remand to the competent authority to record reasons with respect to entitlement or disentitlement of the petitioner for arrears.
7. The needful shall be done within three months from today.
8. Pending application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

13.12.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>