

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3136-2018 (O&M)

Decided on 21.11.2023

Rajbir Singh

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. SK Biriwal, Advocate for the petitioner

Mr. SS Mann, Addl. AG Haryana

Mr. Ajit Kumar Sharma, Advocate for respondent No.2

Sandeep Moudgil, J.

The petitioner has filed the instant writ petition under Article 226 of the Constitution for issuance of a writ in the nature of certiorari for quashing the order/letter dated 09.09.2016 (Annexure P10) issued by respondent No.2 vide which the monetary/pensionary benefits of deemed promotion to the petitioner were denied and junior to the petitioner has been given the said benefit. With a further direction to respondent No.2 to grant him financial benefits of the deemed promotion as Circle Head Draftsman w.e.f. 08.03.2013.

It has been inter-alia contended by learned counsel for the petitioner that the impugned order/letter dated 09.09.2016 (P-10) is against the law and facts. In fact, the promotion to the petitioner has been declined on account of pendency of some charge sheet, which has since been dropped. Though, petitioner stands acquitted in a criminal case vide judgment dated 17.12.2013 (P-3) passed by learned Special Judge, Hisar, yet the benefit of notional promotion has been declined.

Learned counsel for the respondents submits that the petitioner did not work on the post of Circle Draftsman in actual as such, he was not eligible for monetary benefit in terms of Haryana Department letter No. Government, Finance 3/8/04-2/Pension dated 30.11.2007 (Annexure R-1) He further submits that as per Supreme Court decision in **"State of Haryana and Others Versus O.P. Gupta, 1996(2) RSJ 194"**, in case of notional promotion allowed from the deemed date, the concerned officials are not entitled for payment of arrears of salary as they had not worked during that period as such, the payment should be made from the actual date of promotion as notional fixation be made for the intervening period viz deemed date of promotion to actual date of promotion, and in view of the letter dated 27.11.2006 (Annexure R2) by the Government of Haryana, the petitioner, who has been granted deemed date promotion from the date his junior has been promoted, is granted notional fixation of pay etc. from the date of his deemed date promotion but the monetary benefits were granted to him from the date of his actual date of joining on the said post and as such, the petitioner will not be eligible for monetary benefit for promotional post.

Heard learned counsel for the parties and gone through the record.

The Supreme Court in **Union of India Vs. Janakiraman, AIR 1990 SC 2010** held as under:-

"7...We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least

and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally be promoted but for the disciplinary / criminal proceedings."

The Supreme Court in the said judgment made it very clear that where an employee has been exonerated from the criminal case / departmental proceedings and he has been given the benefit of salary of a higher post, he must be given all the benefits and the same cannot be denied, however, in cases where the disciplinary proceedings and the criminal case gets delayed at the instance of the employee or the employee gets acquitted not on the merits of the case, it is always open to the employer to deny the arrears of pay from the date of notional promotion.

In the present case, it is clear from the promotion order issued on 27.06.2014 that the petitioner was granted deemed date of promotion as CDM w.e.f. 08.03.2013, when his junior Ram Kumar Bhadu was promoted. The petitioner was facing FIR under Section 7/13 of the PC Act and was suspended on 19.1.2011, however, later on reinstated on 02.05.2011. In the said FIR, the petitioner was acquitted by giving benefit of doubt and the charge-sheet dated 20.04.2011 was also dropped on 16.04.2014. Even though, he was eligible to be considered for promotion on 08.03.2013 but since there was a pending Criminal case on one hand and pending departmental proceedings on the other, the name of the petitioner was not considered.

This Court is of the considered view that in a case where promotion to a Government servant is delayed for no reason attributable to him and when it is given to him later with retrospective effect from the date on which it was due, his claim that he is entitled to restoration of the benefits which were denied to him cannot be rejected. There is no justification for the Government to do so as it is only just and proper that Government should restore to him what was denied without any rhyme or reason. It is only proper that the Government should restore to the officer all that was lost by way of salary or other emoluments.

Accordingly, this writ petition is allowed and the order/letter dated 09.09.2016 (Annexure P10) is quashed and the respondents are directed to grant all financial benefits including arrears w.e.f. 08.03.2013 when the petitioner was granted deemed date of promotion, along with interest @ 6% p.a. within a period of 2 months from the date of receipt of certified copy of this order.

21.11.2023

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No