

2023:PHHC:109422

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CWP-24653-2019 (O&M)
Date of Decision:-22.8.2023

Vije Pal Singh MannPetitioner

Versus

The State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Amarjit Singh Bedi, Advocate for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner seeks issuance of a writ in the nature of certiorari so as to quash order dated 8.8.2019 (Annexure P-10) passed by Principal Secretary, Water Resources Department, Punjab vide which a legal notice dated 12.9.2018 (Annexure P-5) issued on behalf of the petitioner seeking promotion w.e.f. 25.11.2016 i.e. the date when his juniors had been promoted, has been declined.
2. A few facts necessary to notice for disposal of this petition are that the petitioner was initially recruited as a Temporary Engineer (directly recruited Sub Divisional Officer) in the year 1988 in the Department of Irrigation, Punjab (now Water Resources Department). In the year 2003, the petitioner

came to be involved in FIR No.126 dated 17.6.2003 registered at Police Station Sadar Malout, under Sections 406, 409, 120-B of Indian Penal Code and Sections 13(1)(D) read with Section 13(2) 88 of Prevention of Corruption Act, wherein upon conclusion of investigation, a challan was filed against the petitioner. While the trial in respect of aforesaid FIR i.e. FIR No.126 dated 17.6.2003 was pending, the petitioner became entitled to be considered for promotion to the post of Superintending Engineer. Meetings of Departmental Promotion Committee (DPC) were convened on 10.11.2016 and 25.11.2016 to consider the promotion of various Executive Engineers to the post of Superintending Engineers. The case of the petitioner was also considered by DPC but his candidature was kept in a sealed cover on account of pendency of trial arising out of aforesaid FIR i.e. FIR No.126 dated 17.6.2003. However, some other colleagues of the petitioner were ordered to be promoted as Superintending Engineer w.e.f. 25.11.2016.

3. The petitioner faced the trial and was ultimately acquitted in FIR No.126 dated 17.6.2003 vide judgment dated 14.3.2018 (Annexure P-4) passed by the Court of learned Additional Sessions Judge, Sri Muktsar Sahib. Pursuant to acquittal of the petitioner, the petitioner served legal notice dated 12.9.2018 (Annexure P-5) upon the respondent seeking promotion to the post of Superintending Engineer w.e.f. 25.11.2016 i.e. the date when his juniors had been promoted. However, since no action was taken by the respondent, the petitioner was constrained to file Civil Writ Petition i.e. CWP No.11733 of 2019 before this Court, which was disposed of vide order dated 6.5.2019 (Annexure P-9) while directing the respondent to pass a speaking order on legal notice dated 12.9.2018 (Annexure P-5) within a period of 3 months. Thereafter, the case of the petitioner was considered by the respondent and

consequently the impugned order dated 8.8.2019 (Annexure P-10) came to be passed.

4. Learned counsel for the petitioner submitted that the impugned order declining promotion has been passed *inter alia* on two grounds i.e. the respondent was in the process of filing an appeal against the judgment of acquittal of the petitioner and also the fact that another FIR came to be registered against the petitioner subsequently i.e. FIR No.7 dated 24.6.2017 at Police Station Vigilance Bureau, Ferozepur under Prevention of Corruption Act. It has been submitted that the impugned order suffers from infirmity inasmuch as the respondent could not have taken into account the FIR, which came to be registered in the year 2017 while considering his case for promotion w.e.f. the year 2016. In other words, the FIR i.e. FIR No.7 dated 24.6.2017, which had been lodged subsequent to the date with effect from which the petitioner was to be considered for promotion, ought to have been overlooked. Learned counsel for the petitioner, in order to hammer forth his aforesaid submissions, places reliance upon judgment of Hon'ble Supreme Court rendered in Delhi Jal Board Versus Mahinder Singh, 2000 AIR (SC) 2767 and also judgment of this Court in Punjab Gramin Bank and another Versus Vipin Kumar Puri, 2014(8) R.C.R. (Civil) 440.
5. Opposing the petition, learned State counsel submitted that pursuant to acquittal of the petitioner in first FIR i.e. FIR No.126 dated 17.6.2003, the case of the petitioner for his promotion was considered and a detailed impugned order dated 8.8.2019 (Annexure P-10) was passed. It has been submitted that although it is correct that the second FIR i.e. FIR No.7 dated 24.6.2017 came to be lodged after the date when juniors of the petitioner were considered for promotion but the fact that now when the petitioner has

been considered for promotion, one more FIR had been lodged, is a fact which cannot be overlooked absolutely. It has further been submitted that, in any case, the petitioner having been considered and the authorities having come to the conclusion that the legal notice dated 12.9.2018 (Annexure P-5) deserves to be rejected, *inter alia* on ground of antecedents of petitioner particularly his involvement in another FIR under Prevention of Corruption Act, cannot be said to be suffering from any infirmity as the right of an employee to be promoted is not an absolute right and if upon consideration it is found that his case deserves to be rejected, the authorities concerned are well within their right to do so.

6. This Court has considered the rival submissions addressed before this Court.
7. The contention of the petitioner that the subsequent FIR i.e. FIR i.e. FIR No.7 dated 24.6.2017 cannot be taken into account for the purpose of declining promotion is sought to be supported on the basis of judgment of Hon'ble the Supreme Court in Delhi Jal Board's case (supra) as well as of this Court in Punjab Gramin Bank's case (supra). However, upon perusal of the said judgments, it is noticed that in both of the said judgments it has been held that the right conferred in such cases of 'consideration for promotion'. The petitioner having been considered for promotion, the judgments would not be of much avail to the petitioner. The said judgments do not lay that an employee has to be promoted as of right. None of these judgments have stated anywhere that the subsequent FIR is to be absolutely ignored.
8. During the course of arguments, it has been vehemently argued by learned counsel for the petitioner that since the petitioner was to be considered for promotion w.e.f. 25.11.2016, therefore, the factum of any subsequent conduct i.e. lodging of the FIR or even filing of challan is to be ignored.

9. However, this Court cannot subscribe to the aforesaid contention as the conduct of an employee which reflects on his integrity and uprightness cannot be absolutely overlooked while considering the promotion of an employee. In the present case, pursuant to lodging of the second FIR i.e. FIR No.7 dated 24.6.2017 under Prevention of Corruption Act, the matter was duly investigated and challan has also been filed. Under these circumstances, the petitioner cannot claim promotion as of right and the competent authority was fully justified in rejecting the case of the petitioner. The instant petition, as such, is sans merit and is hereby dismissed.

22.8.2023

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No