

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

268

CWP-6629-2020 (O&M)
Date of Decision: 04.04.2024

Suteekshan Mird

...Petitioner

Versus

State Bank of India

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Ms. Alka Chatrath, Senior Advocate with
Mr. Nishant Maini, Advocate for the petitioner
Mr. Anil Kumar Ahuja, Advocate for the respondent-bank

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of:-

- i. enquiry report dated 13.04.2015 (Annexure P-9);
- ii. order dated 17.06.2015 (Annexure P-12) whereby punishment of stoppage of 2 increments for 30 months without cumulative effect has been imposed; and
- iii. orders dated 01.03.2016 (Annexure P-13) and 01.09.2016 (Annexure P-14) whereby appeal and review filed by the petitioner against order dated 17.06.2015 has been rejected.

The petitioner is further seeking direction to respondent-bank to promote him w.e.f. 17.12.2017 and grant consequential benefits.

2. The petitioner, on 10.10.1992, joined respondent-State Bank of Patiala as Clerk-cum-Cashier. He rendered service in different branches and was time to time promoted. In 2011, he joined as Branch Manager at Nangal. He remained there till 24.05.2014. A lady colleague lodged a complaint against him alleging sexual harassment at workplace. The complaint was with respect to sexual harassment committed during 2011-12 and it was lodged on 14.06.2014. The complaint was lodged after disclosure of Assignment Appraisal Report Form (for short 'AARF') prepared by the petitioner qua complainant. A four members committee in terms of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short '2013 Act') came to be constituted. The committee recorded statements of complainant, petitioner and other employees of the bank. The committee concluded that petitioner is guilty of sexual harassment at workplace and should be awarded punishment for misconduct. It is apt to notice here that one member of the committee, who was not part of the respondent-bank, formed an opinion that complaint is more vindictive than alleged sexual harassment from both the sides. The findings of committee are reproduced as below:

“Findings of the report:

The enquiry was conducted in terms of guidelines contained in circular no. PER/8/14-15 dated 20.05.14. The Govt. of India has enacted “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013”.. As per provisions of the Act,

Sexual Harassment at workplace will be construed as misconduct. The scope covers the following:

- 1) Physical contact and advances*
- 2) Demanding sexual favours*
- 3) Making sexually colored remarks*
- 4) Showing pornography*
- 5) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature*
- 6) Implied or explicit promise of preferential treatment in her employment*
- 7) Implied or explicit threat of detrimental treatment in her employment*
- 8) Implied or explicit threat about her present or future employment status*
- 9) Interference with her work or creating an intimidating or offensive or hostile work environment*
- 10) Humiliating treatment likely to affect her health and safety.*

Time limit for filing the complaint of Sexual Harassment is within 3 months from the date of Incident. However time limit may be extended after recording the reasons adduced by the Complainant.

After recording the statements of Ms. Shivani Thakur, complainant, Sh. Suteekshan Mird, the Respondent and all the other staff members of the branch, by the Committee, it emerged that as Branch Manager of Nangal Township, it was Sh. Mird's first independent line assignment. He had created hostile environment in the branch whereby boasting that he has contacts with the Top Management and Senior Officers and he can make or mar the career of any officer or other staff member. The staff members were in awe of him and did not wish to go against him during the tenor, he remained in the branch. He used to talk in double meaning and

lewd words - during staff meetings in the presence of ladies staff members. Ms. Shivani Thakur was subjected to mental agony by creating hostile environment for her and addressing her covered with sexual overtones in front of her and other staff members. He used to humiliate her.

This is also the fact that incidents quoted by her happened during the period 2011-12 and as such as per prescribed time limit of Act, it may be time barred. However, she did not lodge written complaint against him earlier due to apprehension that no staff member will dare go against him and she may not get any support. Further this is also the fact that had she got good marks in AARF making her eligible for promotion, she would not have lodged complaint as admitted by her during interrogation. At the same time other facts cannot be ignored that Sh. Mird had created hostile environment for Ms. Shivani Thakur and was highly abusive and making sexually colored remarks for her. The fact is also corroborated by another woman officer, Mrs. Shalini Mittal, previously posted at the branch during 2011. Sh. Mird had singled out Ms. Shivani Thakur and gave her low marks with the intent to spoil her future employment status and career.

In order to ensure justice to the aggrieved party and in terms of provisions of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, Sh. Suteekshan Mird, the Respondent, recently transferred and posted as Manager (Adv), Nurpur Bedi (ADB) Branch. is found guilty and the Complaint Committee recommends to take action against him as misconduct as per service rules/conditions of the officer/

Sd/- Sd/- Sd/-
(SAROJ BALA) (D.P. SINGH) (KAMALJEET KAPOOR)

As per enquiry conducted on 04-07-2014 under Chairmanship of M/s Kamaljit Kapoor, AGM (Chairman Committee) into the complaint of Miss Shivani Thakur, AM against Branch Manager Sh. Suteekshan Mird.

In my opinion this complaint is more vindictive than alleged sexual harassment from both the sides. Mr. Shivani was asked direct questions:-

- a) In case she got better marks/grades in AARF would she complaint against Mr. Mird. Her answer was "NO"*
- b) Did ever Mr. Mird asked her to accompany outside the Bank answer was "NO"*
- c) Ever Mr. Mird said I love you/like you answer was "NO"*
- d) Did he ever tried to touch you answer was "NO"*
- e) During the tenure from 2011-2014 at two times he commented upon her.*
 - i) Tumhari Aukhon me Kajal Achha Lagta Hai.*
 - ii) Yeh rang app pe Jachta Hai.*

I feel bad about the direct and naked wording used by class IV employees so shamelessly and so intimately to Miss Shivani Thakur. Try to sympethise with her.

This creates big doubt on the behaviour & circumstances of the complaint.

How come all the 15 staff members were mute spectators and were complying with the whims and wills of Mr. Sh.Suteekshan Mird and appreciating also. Certain thing are unexplainable and doubtful.

Why all this happened on the disclosure of AARF marks of Miss. Shivani Thakur? Everybody started talking nasty and demeaning about Mr. Mird?

It is a complex concocted complaint dictated by some of Shivani's colleagues to take personal revenge from Mrs. Sh. Shuttekshan Mird via Mr. Shivani Thakur. Sh. Suteekshan Mird is a undoubtedly arrogant, abusive used lewed unparliamentary language to create hype and terror in the branch to prove himself big.

Shivani Thakur is very intelligent, skilled and hard working girl. Some time she might have offended Mr. Suteekshan Mird inflated ego. She was constantly under mental pressure & torture by Mr. Mird BM.

All the allegations leveled against Mr. Suteekshan Mird were conveyed to Miss Shivani Thakur through some employees.

I personally feel that Mr. Suteekshan Mird B.M. deserves some strict action for his misbehavior and high headedness and creating terror and making employees bow to his wishes under the rules.

*Sd/-
(Suteekshan Mird)*

*Sd/-
(P. President Rotary)"*

[Emphasis Supplied]

3. On the basis of aforesaid report, the respondent initiated departmental enquiry. The petitioner was issued charge sheet and an Enquiry Officer was appointed. On the basis of report of Enquiry Officer, the disciplinary authority vide order dated 17.06.2015 (Annexure P-12) imposed penalty of reduction of two increments in time scale of pay from ₹30,600/- to

₹28,900/- for a period of 30 months without cumulative effect. The order dated 17.06.2015 is reproduced as below:-

“This is with reference to the Charge Sheet dated 25.11.2014 served on you.

Please find enclosed a copy of the order dated 17.06.2015 passed by the General Manager (RNW-II)- Disciplinary Authority in your case, imposing on you the penalty of “reduction of 2 increments in your time scale of pay from Rs.30,600/- to Rs.28,900/- for a period of 30 months and you will not draw any increments during this period and it will not have any cumulative effect” in terms of Regulation 67(e) of the State Bank of Patiala (Officers) Service Regulations, 1979, with immediate effect.”

4. The petitioner preferred an appeal before the appellate authority which vide order dated 01.03.2016 (Annexure P-13) came to be dismissed by Chief Manager. He unsuccessfully preferred review.

5. The question of promotion of the petitioner came up for consideration before Departmental Promotion Committee in 2015. He was considered for the purpose of promotion and his result was kept in a sealed cover. On account of imposition of penalty vide order dated 17.06.2015, the sealed cover was consigned to record. The petitioner was not considered in 2016 because of rigor of penalty. He was considered in 2017 and granted promotion w.e.f. 14.08.2017. It is apt to notice here that he was considered along with 4,000 candidates and out of them 204 were selected. The petitioner from 14.08.2017 to 02.08.2018 worked as Chief Manager i.e. promotional post. The respondent in April’ 2018, while preparing a list of candidates for

promotion, realized that petitioner has been promoted during period of penalty. The respondent issued show cause notice dated 09.04.2018 (Annexure P-21) calling upon him to show cause as to why his promotion should not be recalled. The respondent adjudicated show cause notice on 19.03.2019, but reverted petitioner on 02.08.2018 i.e. prior to adjudication of show cause notice.

6. Mrs. Alka Chatrath, Senior Advocate submits that petitioner was not found eligible during 2015 and 2016 because of pending or adjudicated proceedings, however, he was considered in 2017 and extended benefit of promotion. He was promoted w.e.f. 14.08.2017 and he worked till 02.08.2018 as Chief Manager. He did not draw salary of Chief Manager till the expiry of penalty period i.e. 30 months period from 17.06.2015. The respondent recalled his promotion without passing a speaking order. The show cause notice was issued on 09.04.2018 and it was adjudicated on 19.03.2019 whereas petitioner was reverted on 02.08.2018 by a mere communication. The act of respondent amounts to post decisional hearing and adjudication. The penalty period expired on 16.12.2017, thus, the respondent, at the most, could consider his date of promotion w.e.f. 17.12.2017. The respondent, in subsequent years despite best annual reports, rejected him in interview. He had unblemished service record of 32 years. The complainant had lodged complaint against him after more than 2 years from the date of alleged offence. The petitioner granted lower grade to the complainant, thus, as soon as petitioner came to be transferred to another Branch, the complainant lodged

a complaint against him. The findings of independent member indicate that complainant lodged complaint because of her lower grade in AARF.

In support of her contentions, she relied upon judgments of Supreme Court in *Union of India and others v. K. Krishnan, 1992 SCC (L&S) 995*; *Union of India v. B. Radhakrishna, 1997 (11) SCC 698* and judgment of this Court in *Rati Ram v. Chaudhary Charan Singh Haryana Agricultural University, Hisar and another, 2010 SCC OnLine P&H 2084*.

7. *Per contra*, Mr. Anil Kumar Ahuja, Advocate submits that punishment awarded to the petitioner was not solely based upon report of committee. An independent enquiry was conducted. He was served charge sheet and given due opportunity to put forth his defence. The enquiry officer found him guilty and thereafter, he was awarded punishment by disciplinary authority. The appellate authority as well as reviewing authority did not find substance in his contentions. This Court cannot examine finding of facts recorded by different authorities. There is no violation of procedure or guidelines warranting interference of this Court. The scope of interference in such matters is very limited and there is no extraordinary or *prima facie* reason to interfere in the findings of authorities.

The petitioner was promoted by mistake and nobody has vested or fundamental right to take advantage of mistake of anybody else. The policy prescribing procedure for promotion categorically provides that an employee during the period of penalty cannot be considered for promotion. The petitioner by mistake was promoted w.e.f. 14.08.2017 and at that point of time, he was undergoing period of penalty. His period of penalty expired on

16.12.2017, thus, he could not be considered for promotion on 14.08.2017. The respondent has every right to re-call promotion which is made by mistake. There is no need to comply with mandate of Article 311 of the Constitution of India where there is mistake in granting promotion. The requirement of compliance of Article 311 of the Constitution of India or principles of natural justice arises where a person is demoted from his present post. It is not a case of demotion whereas it is a case of re-calling inadvertently made promotion.

In support of his contention, he relied upon judgments of this Court *Sunder Lal and others v. State of Punjab and others, 1970 AIR (Punjab) 241; Bhupinder Singh Sandhu v. State of Punjab and others, 1991 (2) S.C.T. 246* and *Hari Kesh v. Haryana State Electricity Board, 1998 (1) S.C.T. 338*.

8. I have heard the arguments of both sides and perused the record with their able assistance.

9. The conceded position emerging from the record is that petitioner joined respondent bank as Clerk-cum-Cashier in 1992. He, in 2011, joined as Branch Manager at Nangal. He remained there till 14.06.2014. During the said period, no complaint was lodged against him, however, a complaint alleging sexual harassment came to be lodged against him on 14.06.2014. A committee consisting of four members was constituted to examine allegation of sexual harassment. Three members of the committee found him guilty and one member found that complaint is concocted. On the basis of report of committee, enquiry was conducted which culminated in minor punishment of

stoppage of two increments for 30 months without cumulative effect. The petitioner unsuccessfully preferred appeal and review against the order of punishment. He was considered for promotion in 2015 but not promoted because of pending charge sheet. He was not considered in 2016 because of period of penalty. He was considered in 2017 and promoted w.e.f. 14.08.2017. He worked as a Chief Manager i.e. at promotional post from 14.08.2017 to 02.08.2018. He was reconsidered on 02.04.2018 for promotion. A show cause notice dated 09.04.2018 came to be issued to him alleging that he has been wrongly promoted. He was reverted on 02.08.2018, however, show cause notice was adjudicated on 19.03.2019.

10. The sole ground of the respondent for re-calling of promotion is that as per policy framed by bank, an officer cannot be considered for promotion during the period of penalty. The petitioner was subjected to penalty on 17.06.2015 and its duration was till 16.12.2017. He could not be considered for promotion till 16.12.2017 whereas by mistake he was considered for promotion on 14.08.2017. The bank had committed mistake and the petitioner cannot take advantage of their mistake. The bank has every right to correct its mistake.

11. This Court does not find it appropriate to interfere with the findings of disciplinary authority as well as appellate authority with respect to punishment of stoppage of increments, though finds it apposite to notice that independent member of the committee had formed an opinion that complainant had lodged complaint on account of grant of lower grade in AARF. The complainant admitted before the committee that she would not

have filed compliant had the petitioner granted better grade in AARF. This finding of the committee deserves to be noticed.

12. The petitioner was promoted w.e.f. 14.08.2017 and he worked as Chief Manager upto 02.08.2018. The petitioner was promoted after undergoing a detailed process of promotion. It is not a case of promotion by seniority. The respondent considered 4,000 officers and the selection process included viva voce. He was denied promotion in 2015 because of pending disciplinary proceedings and in 2016, he was not considered because of period of penalty. The respondent has cited above noted judgments in support of his contention that bank has right to correct its mistake. If a promotion is made by mistake, it can be corrected at a later point of time. Indubitably, it is settled proposition of law that no one can take advantage of mistake of others. If there is mistake on the administrative side, it can be very well corrected. Even judicial and quasi-judicial orders, after following due process, can be corrected, thus, respondent had right to correct its mistake.

13. In the obtained facts, it needs to be adjudicated whether petitioner was promoted by mistake which was corrected at later point of time? Whether the petitioner could be considered for promotion on the efflux of penalty period?

14. The petitioner was eligible for promotion in 2015 as well 2016 but he was not considered. He was considered and promoted in 2017. He worked for 1 year on promotional post. The respondent was having complete record of the petitioner. There was no jurisdictional, clerical or calculation error. The Promotion Committee considered past record and subjected him to

viva voce. There were 4,000 candidates and 204 were selected. In the totality of facts and circumstances, it cannot be held that there was mistake on the part of respondent-bank and the petitioner was promoted by mistake. The judgments cited by respondent wherein it has been held that promotion made by mistake can be re-called, do not advance its plea.

15. The policy governing promotion provides that an officer undergoing penalty period cannot be considered for promotion. The object of the policy is lucid. The policymaker does not want to promote an officer who is undergoing penalty period. The petitioner was subjected to minor penalty and its period was 30 months. He had committed alleged offence during 2011. Complaint was lodged against him in 2014 and complainant before the Committee had conceded that she would not have lodged the complaint, had the petitioner granted her better grade in AARF. He was subjected to penalty on 17.06.2015. In 2015, he was not promoted because charge sheet was pending. The charge sheet culminated in penalty which sprawled over 30 months. The period of penalty was 30 months, however, if contention of respondent is accepted, the petitioner could not be considered for promotion neither during the pendency of disciplinary proceedings nor penalty period. The disciplinary proceeding may continue for a quite long time and may culminate in minor penalty. As per policy, despite minor penalty, an officer is not eligible for promotion during disciplinary proceedings as well as period of penalty. The matter needs to be examined in totality. A person may not be promoted during the period of penalty, however, it is unjustified to conclude that he cannot be considered at all. During the pendency of disciplinary

proceedings, as per respondent, an officer can be considered, however, granted promoted subject to outcome of penalty proceedings. A similar principle should be applied with respect to penalty period. An employee may not be promoted during penalty period, however, he cannot be kept out of zone of consideration. It is not a case of promotion by seniority. It is a case of promotion on the basis of performance. An officer who is subjected to minor penalty cannot be kept out of zone of consideration if he has merit and committee finds him more suitable than other candidates. In such circumstances, the promotion may be made effective on the expiry of penalty period especially when officer is facing minor penalty. The denial of promotion, in the peculiar facts and circumstances of the case in hand, would amount to double punishment to the petitioner. Misbehavior coupled with granting lower grade in AARF to a lady colleague lent him to minor punishment of denial of increment. The alleged offence was committed in 2011 and he was denied promotion in 2015 as well 2016. Denial of promotion even from the date his penalty period ceased to exist would certainly amount to double punishment.

16. Supreme Court in ***K. Krishnan (supra)*** while adverting with similar question has approved promotion from the date of expiry of penalty period. The respondent was a postman. He was subjected to penalty of withholding of increment. During the period of penalty, he was found suitable for promotion. The Court held that during the period of penalty, he could not be promoted but he was entitled to promotion on the expiry of period of penalty. The relevant extracts of the judgment read as:

“2. The respondent is a postman. He appeared at the required test for the purpose of promotion to the Postal Assistant's cadre. He was successful at the test but before the order for his promotion could be issued he was found guilty in a disciplinary proceeding, and was punished by withholding of increment in salary for a period of one year and six months. As a result of this penalty the decision to promote him was not implemented. He made an application before the Central Administrative Tribunal for a direction to the present appellants to promote him. Following the decision in Parveen Kumar Aggarwal v. India Council of Agricultural Research, (1988) 8 Administrative Tribunal Cases 496, and another unreported judgment, the Tribunal allowed his prayer holding that he was entitled to be promoted with effect from 1.12.1989 with consequential benefits and directed the appellants to promote him without delay, on the ground that the denial of promotion to the respondent amounts to a second punishment which is not permissible. This judgment is under appeal.

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XXXX

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5. It has been stated by the learned counsel for the parties that except for the above punishment, the respondent is fit for promotion and that the currency of the penalty will expire on 14.9.1990. In that view he may be promoted immediately thereafter with effect from 15.9.1990, provided he is not otherwise disqualified for promotion by incurring some other disqualification. The appeal is accordingly allowed but without costs.”

[Emphasis Supplied]

17. In **B. Radhakrishna (supra)**, the Court has held that a person cannot be promoted during the period of penalty, however, he can be granted promotion from the date the punishment would cease to operate. The relevant extracts of the judgment reads as:-

“5. The learned counsel for the appellants has invited our attention to the judgment of this Court in Union of India v. K. Krishnan, 1992 Supp (3) SCC 50 . In that case this Court was dealing with the provisions of Rule 157 of the Posts and Telegraphs Manual, Vol. III, which provides that even where the competent authority considers the candidate fit for promotion in spite of punishment given in a departmental proceeding the promotion shall not be given effect to during the currency of the penalty. The impugned judgment of the Tribunal in that case was based on the decision in Parveen Kumar Aggarwal. This Court, while setting aside the judgment of the Tribunal, has laid down: (SCC p. 52, para 4)

"4. We have considered the matter closely and in our opinion the view taken by the Tribunal both in the impugned judgment and in the earlier decisions holding that as a result of the provisions of Rule 157 forbidding the promotion of a State employee during the currency of the penalty results in a second punishment, is not correct. There is only one punishment visiting the respondent as a result of the conclusion reached in the disciplinary proceeding leading to the withholding of increment, and the denial of promotion during the currency of the penalty is merely a consequential result thereof. The view that a Government servant for the reason that he is suffering a penalty or a disciplinary proceeding cannot at the same time be promoted to a higher cadre is a logical one and no exception can be taken to Rule 157. It is not correct to assume that Rule 157 by including the aforementioned provision is subjecting the Government servant concerned to double jeopardy."

6. *The order dated 11-11-1987 promoting the respondent as Senior Accountant with effect from 1-4-1987, on which date the punishment of withholding of two increments imposed on*

the respondent was operative, was, therefore, not correct and it has rightly been rectified and the promotion has been granted with effect from 1-3-1988, i.e., the date on which the said punishment ceased to operate.

7. *The respondent, in his written reply, has placed reliance on the decision of this Court in Council of Scientific and Industrial Research v. K.G.S. Bhatt, (1989) 4 SCC 635, wherein this Court has laid down that in exercise of its power under Article 136 of the Constitution, the Court normally does not interfere in individual disputes of seniority, promotion, reversion, suspension, pay fixation, etc. It is no doubt true that normally this Court does not interfere in such matters but having regard to the facts of this case, we are of the view that the Tribunal was in error in setting aside the order dated 23-5-1994 altering the date of promotion of the respondent from 1-4-1987 to 1-3-1988 and, since it is likely to affect other employees, we are of the view that it is a fit case which calls for interference by this Court under Article 136 of the Constitution. The impugned judgments of the Tribunal dated 2-3-1995 passed in OA No. 1117 of 1994 and dated 7-9-1995 passed in RA No. 59 of 1995 are, therefore, set aside insofar as the quashing of the order dated 23-5-1994 altering the date of promotion as Senior Accountant from 1-4-1987 to 1-3-1988 is concerned. The respondent will, however, not be required to refund the excess amount received by him towards the pay for the post of Senior Accountant in respect of the period from the date he worked as Senior Accountant after the passing of the order of promotion dated 11-11-1987 till 28-2-1988.”*

18. A Coordinate Bench of this Court in ***Rati Ram (supra)*** has formed a similar opinion. The petitioner was promoted during the period of penalty. The Court approved promotion subsequent to the date of expiry of penalty period. The relevant extracts of the judgment read as:

“2. There could not have been a matter of new policy in October 2007 that a person could not be promoted during the currency of punishment. It could at best only be a restatement of a proposition that has gained approbation in service jurisprudence that a person cannot be rewarded with promotion during the time he is undergoing a punishment for certain misconduct. The learned counsel refers to a decision of the Hon'ble Supreme Court in **State of Tamil Nadu v. Thiru K. S. Murugesan-1995(2) SLR 392**, where the Hon'ble Supreme Court was dealing with a situation of denial of promotion to a person where the consideration for promotion was merit-cum-seniority. The Hon'ble Supreme Court stated that if an employee concerned was promoted during such period of continuation of punishment, it would amount to putting premium on misconduct. Citing this judgment, the learned counsel states that they were considering a case of merit-cum-seniority and for a promotion post on the principle of seniority alone, this judgment will not apply. It will apply, in my view, to all situations and the Hon'ble Supreme Court was merely considering the issue in a case where the criterion for promotion was merit-cum-seniority. It does not include such type of situation. In **L. Rajaiah v. Inspector General of Registration-(1996) 8 SCC 246** the issue of the effect of penalty of stoppage of increment had been considered. The Hon'ble Supreme Court held that even though the penalty imposed on the employee was that of stoppage of increment and not that of withholding of promotion, currency of the former penalty did disentitle the employer to be considered for promotion. **Union of India v. B. Radhkrishna-(1997) 11 SCC 698**, addressed a similar problem like what is noticed in this case. Promotion had been made initially during the currency of the punishment but by a subsequent order, the promotion was made effective only from the date on which the punishment ceased to be operative. The Hon'ble Supreme Court upheld the post-dating

of such punishment, citing the promotion originally granted as improper.

3. *The promotion granted to the petitioner in September 2007 when there was a currency of punishment was, therefore, not justified. However, the counsel states that the punishment period was over with 31.03.2008 and the reversion effected subsequent to the date, was unjustified. I see merit in such a contention and the promotion which was granted in September 2007, shall be taken as having been made on 1st April 2008 for all purposes and any additional emoluments which were drawn during the period shall not be recovered from the petitioner, even as stated so in the impugned proceedings. The order reverting the petitioner, is quashed and the petitioner is entitled to be considered as having been promoted on 01.04.2008 with all attendant benefits.”*

19. In the judgments cited by the respondent, it has been held that there is no need to comply with mandate of Article 311 of the Constitution of India, in case promotion is made by mistake. The competent authority may rectify its mistake without issuing show cause notice and granting personal hearing. The petitioner is not claiming that respondent has reverted him without complying with mandate of Article 311 of the Constitution of India. The petitioner was issued show cause notice and it was adjudicated though post reversion. The petitioner, as held herein above, was not promoted by mistake, thus, judgments cited by respondent in support of its contention that there was no need to comply with procedure contemplated by Article 311 of the Constitution of India and mistake cannot be corrected at any point of time, are not applicable to the present case and do not support pleas of the respondent.

20. In the light of above discussion and findings, the question of promotion in subsequent years has become irrelevant, nevertheless, it is noticed that the petitioner was considered in subsequent years i.e. 2019 and 2020. The promoting authority considered his case along with other candidates but did not select him. The respondent has not made promotions on the basis of seniority but on the basis of merit/performance. The petitioner failed to compete with others. This Court cannot substitute opinion of promoting authority. It was subjective opinion of promoting authority which was based upon past record and viva voce. Thus, claim of the petitioner qua decision of promoting authority in subsequent years is hereby rejected.

21. In the wake of above discussion and findings, it is hereby held that petitioner is entitled to promotion w.e.f. 17.12.2017. He shall not be entitled to arrears but for all other service benefits, his date of promotion as Chief Manager would be 17.12.2017.

22. Disposed of in above terms.

23. Pending application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

04.04.2024
Mohit Kumar

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