

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-13009-2019 (O&M)
Date of Decision: 20.03.2024

Jagtar SinghPetitioner
Versus
State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Amit Sharma, and
Mr. V. K. Shukla, Advocates for the petitioner.

Mr. Arun Gupta, DAG, Punjab.

AMAN CHAUDHARY, J.

CM-19358-CWP-2023

Allowed, as prayed for. Short reply filed on behalf of respondent
Nos.1 to 3 is taken on record.

MAIN CASE

1. The prayer made in the present petition is to quash the impugned order dated 13.06.2018, Annexure P-6, whereby the claim of the petitioner for promotion has been rejected and for directing the respondents to grant promotion along with consequential benefits, from the date his juniors were promoted.
2. Learned counsel submits that the petitioner has not been promoted to the post of Social Education and Panchayat Officer along with his juniors, solely on the ground of the pendency of a charge-sheet, which was subsequently dropped vide order dated 27.02.2016 and thus, is entitled to be granted promotion from the due date. He places reliance on the judgment of Hon’ble the Supreme Court in **Union of India vs. K.V. Jankiraman** 1991(4) SCC 109.
3. Learned State counsel contends that since the charge-sheet was

subsisting against the petitioner, he could not be promoted and that there is no provision in the Rules for granting the same notionally. Hence prays for dismissal of the petition.

4. Heard learned counsel on either side.

5. Evidently, the impediment in the non-consideration of the petitioner, a Gram Sewak, re-designated as Village Development Organiser, placed at seniority No. 348, for promotion, to the post of Social Education and Panchayat Officer, in sum and substance was the issuance of a charge-sheet on 27.07.2011, whereafter, the persons junior to him were promoted on 28.07.2014.

6. A reference to **K.V. Jankiraman** (supra), would be worthwhile, relevant paras whereof read thus:

“8. The common questions involved in all these matters relate to what in service jurisprudence has come to be known as “sealed cover procedure”. Concisely stated, the questions are: (1) What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? The “sealed cover procedure” is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Hence, the relevance and importance of the questions.

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17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

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26. 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 been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee 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 employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the, administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum :

"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 concerned 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."

27. To this extent we set aside the conclusion of the Tribunal on the said point."

7. **In Gurpal Singh vs. High Court of Judicature for Rajasthan,**

(2012) 13 SCC 337, the petitioner, who was absolved of criminal charges as also

exonerated in the departmental enquiry, was held entitled for consideration for

promotion notionally from the date when an officer junior to him was promoted, by observing thus:

“43. This now leads us to the last submission of Mr. Calla that upon exoneration in the departmental proceedings, the petitioner was required to be considered for promotion from the date a person junior to him was promoted.

44. In view of the authoritative judgment rendered by this Court in the case of Jankiraman (supra), the submissions made by Mr. Calla would have to be accepted. In the aforesaid judgment it was held that:-

"26. 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 been promoted but for the disciplinary/criminal proceedings."

45. In this case, it is a matter of record that upon exoneration in the departmental enquiry, the petitioner was reinstated in service. No punishment was inflicted on him at all. However, during the pendency of the criminal trial as also the departmental proceedings, he was not considered for promotion, when the cases of persons junior to him were considered. In our opinion, the High Court erred in directing in the Full Court Resolution dated 29th November, 2008, and the communication dated 24th January, 2009 that the petitioner shall not be entitled for any promotion.”

8. Pertinently, in the case at hand, neither was the procedure of sealed cover adopted at the relevant time when the juniors of the petitioner were promoted nor was his consideration, which in **Ajay Kumar Shukla vs. Arvind Rai**, (2022) 12 SCC 579, was held akin to a fundamental right, made for promotion, after the charge-sheet against him was dropped.

9. As is apparent from the impugned order as also the written statement, the stand is absolutely evasive, inasmuch as, the claim of the petitioner for promotion relates back to the order dated 28.07.2014, the date on which his juniors were promoted. The dropping of the charge sheet dated 27.07.2011, having

come about on 27.02.2016, that is, prior to his having retired from service on 30.04.2016, when he attained the age of superannuation. As a logical corollary, the respondents cannot deny the claim and this Court would strongly, be inclined to lean in his favour being fortified by the law enunciated, as referred to hereinabove.

10. In sum, on an overall circumspection, the impugned order dated 13.06.2018 is hereby set aside. The petitioner be granted notional seniority, pay fixation and consequential benefits arising therefrom, by placing him above the ones' lower in merit *albeit* appointed prior to him, as also those younger in age within a period of two months. However, no actual monetary benefits would enure to him for the said period.

(AMAN CHAUDHARY)
JUDGE

20.03.2024
Rajeev (rvs)

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No