

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-20882-2015

Date of Decision:12.02.2024

NARESH KUMAR

..... Petitioner

Versus

NATIONAL FERTILIZER LIMITED & ANR Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. S.S. Rana, Advocate
for the petitioner.

Mr. Vipin Mahajan, Advocate with
Ms. Chandandeep Kaur Ahluwalia, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 12.12.2014 (Annexure P-7) whereby claim of the petitioner for promotion w.e.f. 01.01.2014 has been declined. The petitioner is further seeking direction to treat his custody period as 'on duty period'.

2. The petitioner on 02.04.1991 joined respondent-department as Helper. He was promoted as Operator w.e.f. 01.01.2011. He came to be arrested in FIR No. 216 dated 17.11.2013, under Sections 364, 302 and 34 of IPC. The petitioner remained in Police/Judicial custody from 17.11.2013 to 14.03.2014. As per promotion policy of respondent, an employee is entitled to promotion on completion of 3 years service as

Operator Grade-I. The respondent did not promote the petitioner because he was in custody on 01.01.2014 and he had not completed 3 years on account of Police/Judicial custody. As soon as, petitioner completed 3 years of actual service, he was promoted.

3. Learned counsel for the petitioner submits that petitioner vide judgment dated 19.09.2014 (Annexure P-5) has been acquitted from all the charges, thus, period of Police/Judicial custody should be treated as 'on duty period'.

In support of his contention, he relies upon judgment of this Court in '*Vinod Kumar Vs. State of Punjab and others*' 2016 SCC OnLine P&H 14157, '*Sunder Singh Vs. State of Haryana*' 2001 (2) SCT 849 as well as judgment of Supreme Court in '*Brahma Chandra Gupta Vs. Union of India*' 1984 (2) SCC 433.

4. Per contra, learned counsel for the respondents submits that petitioner did not remain in custody on account of lodging of an FIR by respondent. The petitioner was implicated alleging commission of offence punishable under Section 302 of IPC. The respondent had no concern with registration of said FIR. The acquittal of petitioner in the said FIR does not mean that he was on duty even during Police/Judicial Custody period. The judgments cited by petitioner are applicable where there is FIR by employer and at a later stage, it is found that employee was not at fault and FIR was wrongly registered.

In support of his contention, he relies upon judgment of Supreme Court in '*Union of India and Jaipal Singh*' 2004 (1) SCC 121 and '*Ranchhodji Chaturji Thakore Vs. The Superintendent Engineer, Gujarat Electricity Board*' 1996 (11) SCC 603.

5. I have heard arguments of both sides and scrutinized the record with their able assistance.

6. From the perusal of record, it comes out that petitioner was entitled to promotion w.e.f. 01.01.2014. For the purpose of promotion, he was supposed to complete 3 years service as Operator Grade-I. The petitioner remained in custody from 17.11.2013 to 14.03.2014. The FIR was not lodged by respondent. The FIR had no bearing with service of the petitioner. The petitioner came to be acquitted by Trial Court and respondent promoted him as soon as he completed 3 years of regular service. As per policy, the respondent extends promotion on completion of 3 years service at the end of calendar year. The petitioner completed 3 years service on 31.12.2014 and he was promoted w.e.f. 01.01.2015.

7. The petitioner is claiming promotion w.e.f. 01.01.2014 on the ground that period spent in custody should be ignored and it should be treated as 'on duty period'. The petitioner has placed reliance upon the judgments of this Court in **Vinod Kumar** (supra), **Sunder Singh** (supra) and judgment of Supreme Court in **Brahma Chandra Gupta** (supra). It is apt to notice here that in all the cases cited by petitioner, the employee was implicated in FIR lodged at the instance of employer. The employee came to be acquitted and it was found that he was not at fault. Finding the employee innocent, the courts directed to extend financial benefit even for the period employee remained under suspension or in custody. In the case in hand, the petitioner remained in custody in an FIR which had no concern with his employment.

8. Concededly, petitioner remained in custody for 4 months. The said period by no stretch of imagination, when there was no fault of

the employer, can be considered as ‘on duty period’ and considered for the purpose of counting 3 years period of service. The respondent has rightly promoted the petitioner w.e.f. 01.01.2015 and excluded Police/Judicial custody period from minimum prescribed period of 3 years.

9. In the wake of above discussion and findings, the present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

12.02.2024
Ali

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