

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(230)

CWP No. 17835 of 2020 (O&M)
Date of Decision : 01.02.2024

Dr. Rajbir Singh Chahal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. I.P. Goyat, Advocate for the petitioner.
Mr. Pankaj Middha, Additional Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance of the petitioner is that he was senior most Sub Divisional Officer working in the Animal Husbandry and Dairying Department eligible to be promoted to the post of Deputy Director Animal Husbandry.
2. Learned counsel for the petitioner submits that the case of the petitioner was considered for promotion keeping in view the fact that he was a senior most Sub Divisional Officer and fulfill all the requirements for promotion but he was not promoted on the ground that there is an FIR No. 75 dated 28.01.2020 pending against him and keeping in view the fact that the criminal proceedings were treated to be pending against him, he was not promoted to the said post of Deputy Director and

the employees juniors to him were promoted on 29.09.2020 vide Annexure P-5.

3. Learned counsel for the petitioner submits that denying the petitioner the promotion to the post of Deputy Director on the ground that the criminal proceedings are pending is contrary to the settled principle of law, hence, respondents are under obligation to re-consider the claim of the petitioner for promotion to the post of Deputy Director with effect from the date the employees juniors to him were promoted.

4. Learned State counsel submits that once concededly on the day when the juniors were promoted, the claim of the petitioner was considered but keeping in view the fact that there was an FIR registered against him due to which fact department was of the opinion that criminal proceedings were pending against the petitioner, the petitioner could not be promoted during the pendency of the criminal proceedings, hence, there is nothing wrong in the action of the department in not promoting the petitioner to the post of Deputy Director.

5. Learned State counsel further submits that thereafter, on 09.11.2020, a charge-sheet for initiating disciplinary proceedings have also been issued and the petitioner has already retired from service after attaining the age of superannuation on 28.02.2021, hence, no relief can be given to the petitioner, at this stage as he has already retired.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. The only question is whether, the respondents could have withheld the promotion of the petitioner despite being the senior most in the Cadre on the ground that there were criminal proceedings pending against him. No doubt, the FIR No. 75 dated 28.01.2020 was pending against the petitioner on the day when the name of the petitioner for promotion to the post of Deputy Director was considered but whether, mere pendency of the FIR will be good enough to deny the benefit of promotion to the petitioner or not. It is a conceded position even as of now in the FIR No. 75 dated 28.01.2020, no charges were ever framed against the petitioner. Rather no challan was submitted against the petitioner and the petitioner was exonerated after the investigation.

8. That being the factual position qua FIR No. 75 dated 28.01.2020, once no charges were framed against the petitioner, cannot be said that the criminal proceedings were pending against the petitioner on the day when he was considered for promotion and his juniors were promoted to the post of Deputy Director.

9. The said question of law has already been settled by the Hon'ble Supreme Court of India while passing order in ***Union of India Vs. K.V. Jankiraman, (1991) 4 SCC 109***, wherein, the pendency of criminal proceedings as well as disciplinary proceedings has been explained. As per the judgment of Hon'ble Supreme Court of India in ***K.V. Jankiraman(supra)***, departmental proceedings can be treated to be pending in case a charge-sheet has been served similarly qua the criminal proceedings in case, charges have been framed against an accused, the

criminal proceedings can be treated to be pending. The relevant paragraph of the said judgment is as under :-

“On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point....”(Emphasis added).”.

10. In the present case, not even the challan was submitted against the petitioner and in the investigation, the petitioner was exonerated by the investigating agency, hence, on the date when the petitioner was considered for promotion for the post of Deputy Director Animal Husbandry, there were no charges framed against the petitioner in respect of FIR No. 75 dated 28.01.2020 and rather, he was exonerated by the Investigating Agency, denying the benefit of promotion on the ground that the criminal proceedings were pending against him, is contrary to the settled principle of law settled by the Hon’ble Supreme Court of India in ***K. V. Jankiraman (supra)***.

11. Learned counsel for the respondents has not been able to rebut the said proposition of law.

12. Keeping in view the facts and circumstances of the present case stated here-in-before, denying of the promotion to the petitioner in the facts and circumstances of the present case by treating that the criminal proceedings were pending, is totally arbitrary and illegal and contrary to the settled principle of law.

13. Accordingly, the writ petition is allowed. The respondents are directed to consider the claim of the petitioner for promotion to the post of Deputy Director with effect from the date, the employees, who were juniors to the petitioner have been promoted and in case, petitioner is found fit in all respects, appropriate order granting him the said benefit be given from the date the juniors were promoted. Let the consideration be taken place within a period of eight weeks from the date of receipt of copy of this order and appropriate order in terms of the present direction be passed.

14. Petition is allowed in above terms.

Any miscellaneous application, if pending, stands disposed of.

February 1st, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No