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

CWP-28037-2013

Date of Decision: 12.02.2024

OM PARKASH DHINGRA

..... Petitioner

Versus

STATE BANK OF INDIA AND ANOTHER

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Piyush Aggarwal, Advocate for
Mr. Raj Kaushik, Advocate
for the petitioner.

Mr. I.P.S. Doabia, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 01.04.2013 (Annexure P-16) and communication dated 08.04.2013 (Annexure P-17) whereby petitioner has been denied promotion to Middle Management Grade Scale-II (for short 'MMGS-II').

2. The petitioner is a retired officer. The respondent alleging that petitioner has committed irregularities in discharge of his official duties issued notice dated 29.02.2000. (Annexure P-3). The petitioner filed reply to aforesaid notice which culminated order dated 07.01.2001 (Annexure P-6) whereby respondent ordered to recover a sum of Rs.1402/- from the petitioner. The relevant extracts of order dated 07.01.2001 (Annexure P-6) are reproduced as below:

“The above acts of negligence on your part are of a serious

nature for which you deserve severe punishment. I am, however, inclined to take a lenient view considering your long service in the Bank. I have, therefore, decided for a recovery of a sum of Rs.1402/- from your pay as a measure of punishment in terms of Rule 67(d) of State Bank of India officers' Service Rules, which I hereby order accordingly. Please note that a more serious view will be taken if the lapses of such a nature recur on your part."

3. The petitioner did not assail aforesaid order and on 02.02.2001 deposited amount of penalty. The petitioner was eligible to promotion as MMGS-II w.e.f. 01.11.1997. His matter was considered and kept in sealed cover due to pendency of disciplinary proceedings. As the petitioner was subjected to pecuniary punishment of Rs.1402/-, his sealed cover promotion was not given effect. The petitioner again became entitled to promotion in 1998 as well 1999. The respondent carried out exercise of promotion in June-July' 2001, however, did not promote petitioner because pecuniary loss caused by him by that date had not been recovered.

4. The petitioner preferred CWP No.8168 of 2012 before this Court seeking direction to respondents to consider claim of the petitioner for retrospective promotion. This Court vide order dated 03.05.2012 disposed of aforesaid writ petition with following observations:

"The petitioner seeks for consideration of his request for promotion after his retirement. The counsel refers me to a communication made by the Assistant General Manager (Administration) to consider the request for retrospective promotion after retirement sympathetically. The counsel says that the party will be satisfied if sympathetic consideration is taken now and appropriate decision is passed. Such a

consideration, if it is possible, may be taken and they may take such a decision as expeditiously as possible preferably within a period of 12 weeks from the date of receipt of copy of this order.”

3. *Sh. Dhingra was due for promotion to MMGS-II w.e.f. 01.11.1997 under separate dispensation channel, but his result was placed in sealed cover due to disciplinary action. Penalty of Rs. 1402/- was inflicted upon him vide order dated 17.01.2001 and recovery of Rs. 1402/- was made on 02.02.2001 and as per sealed cover procedure his sealed cover for promotion to MMGS-II w.e.f. 01.11.1997 was not given effect to and filed as it is.*

4. *Mr. Dhingra was eligible for promotion for MMGS-II under Special Dispensation Channel for the promotion year 1998 and 1999 for which the promotional exercise was conducted during June and July 2001 respectively. As per Debarment Policy, the eligible officers who have been penalized and whose results are not held in sealed cover are also subject to the same Debarment Policy. The officer is not eligible for consideration of promotion until the amount of pecuniary loss is fully recovered. As the recovery of loss was effected in the instant case on 02.02.2001, therefore, Sh. Dhingra was not eligible for consideration for promotion year (s) prior to 02.02.2001.*

In view of the above, I find no merit in the case of the petitioner Sh., Om Parkash Dhingra. The request for being considered for retrospective promotion after retirement is accordingly rejected. I order accordingly.”

5. The respondent pursuant to aforesaid order passed impugned order dated 01.04.2013 (Annexure P-16) whereby claim of the petitioner has been declined.

6. Learned counsel for the petitioner submits that alleged irregularities on the part of petitioner occurred in 1997 and he was

awarded pecuniary punishment by order dated 17.01.2001 (Annexure P-6). There was no lapse on the part of petitioner still respondent took 4 years to adjudicate alleged irregularities which could be easily ignored as is evident from the fact that petitioner was subjected to pecuniary punishment of Rs.1402/-. The petitioner at the most once could be ignored for promotion whereas he was ignored twice without any rhyme and reason.

7. Per contra, learned counsel for the respondents submits that respondent has passed impugned order in accordance with law. The petitioner was found guilty of irregularities and he was subjected to pecuniary punishment of Rs.1402/-. The penalty was paid on 02.02.2001, thus, he was not considered by Departmental Promotion Committee (for short 'DPC') in June-July' 2001.

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

9. The conceded position emerging from the record is that petitioner was eligible to promotion w.e.f. 01.11.1997. He was not extended benefit of promotion because of pending inquiry. The matter of petitioner was considered and kept in sealed cover. The sealed cover was not opened because vide order dated 17.01.2001 (Annexure P-6), he came to be subjected to pecuniary punishment of Rs.1402/-. The petitioner again became eligible for promotion in 1998 as well as 1999. The DPC did not consider him for promotion in June as well as July' 2001 because recovery of loss was effected on 02.02.2001.

10. From the perusal of order of penalty, it is evident that as per respondent, petitioner had caused financial loss of Rs.1402/-. The loss

related to act and omission committed in 1997. The inquiry was initiated in the year 2000 and he was subjected to punishment on 17.01.2001. The loss, if any, allegedly caused by petitioner was minuscule. The petitioner once could be deprived from promotion, however, he could not be denied promotion twice or thrice. The first time, he was denied promotion on the ground that he has been subjected to disciplinary proceedings and second time he was denied promotion on the ground that he was subjected to penalty of Rs.1402/- which he had paid on 02.02.2001.

11. The findings recorded by respondent are not convincing and are not based upon any statutory provision. The respondent, as per its whims and caprices, more than once, has denied promotion to the petitioners, though, he at the most could be denied promotion once especially when he was punished for causing loss of minuscule amount of Rs.1402/- which he without protest paid.

12. In the wake of above discussion and findings, the impugned order dated 01.04.2013 (Annexure P-16) deserves to be set aside and accordingly set aside. The petition is allowed with all consequential benefits.

(JAGMOHAN BANSAL)
JUDGE

12.02.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>