



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

CWP-26054-2017

**Reserved on 08.05.2024
Pronounced on 15.05.2024**

Rajpal Jaidka (since deceased) through his LRPetitioner
Versus
Punjab State Power Corporation Ltd. and anotherRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Pawan Kumar, Senior Advocate with
Ms. Vidushi Kumar, Advocate for the petitioner.

Ms. Jarnail Kaur Dhaliwal, Advocate
for the respondents.

NAMIT KUMAR J.

1. The petitioner has approached this Court by way of filing the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ of mandamus directing the respondents to grant interest @ 18% per annum on the delayed payment of retiral dues, benefit of promotional increment on completion of 23 years of regular service and promotion to the post of Assistant Engineer/AAE w.e.f. 30.06.2014, when persons junior to him were promoted, along with all consequential benefits.

2. The brief facts of the case, as have been pleaded in the present petition, are that the petitioner joined the services of the erstwhile Punjab State Electricity Board (now Punjab State Power Corporation Limited) on 01.12.1979 as Lineman and was further promoted to the post of Junior Engineer on 26.06.2000. While he was in service, he was issued a charge-sheet dated 25.07.2012 (Annexure P-1)

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with the allegations that while he was working as Junior Engineer in Sub Division Sanaru w.e.f. 13.10.2000, he has committed various irregularities/violations. The petitioner filed reply dated 05.09.2012 (Annexure P-2) to the charge-sheet. Thereafter, he retired from service, on attaining the age of superannuation, on 30.09.2014. Since the retiral dues of the petitioner were not released, he submitted representation to the respondents for releasing the same. Respondent No.2 vide order dated 09.07.2015 opined that although, the allegations levelled in the charge-sheet against the petitioner have not been proved directly but he has not been held innocent in the inquiry report and since the petitioner has already retired from service, therefore, by taking a lenient view, censure be issued to him and in case there was shortage of any material, recovery is to be effected from him, which may be deducted from his pensionary benefits. Thereafter, in the month of October, 2015, the following retiral dues of the petitioner have been released :-

Sr. No.	Details	Amount (Rs.)
1.	Gratuity	9,35,170/-
2.	Commutation of Pension	4,44,912/-
3.	Leave Encashment (two increments pertaining to year 2013-2014 to be added)	2,20,000/-
4.	Arrears of pension	4,13,680/-

Thereafter, the petitioner submitted representation dated 10.11.2015 claiming the benefit of promotional increment on completion of 23 years of service in terms of Finance Circular No.17/1990. As per the RTI information dated 24.12.2015 (Annexure P-7), the said increment has not been granted to the petitioner as his ACR for 1999-2000 was not

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available. It has further averred in the petition that the petitioner, whose seniority number is 8093 as Junior Engineer, was fully eligible for promotion to the post of Assistant Engineer and he has also passed the necessary departmental tests vide Annexures P-9 and P-10, however, on 30.06.2014, the persons junior to him namely Daljit Singh (Sr. No.8095), Jasvir Singh (Sr. No.8099), Vinod Kumar (Sr. No.8101), Gurmail Singh (Sr. No.8103), Onkar Singh (8106), Ravinder Singh (8113) and Kulwinder Singh (Sr. No.8118), were promoted as Assistant Engineer/AAE and the case of the petitioner was not considered for promotion due to pendency of charge-sheet. During the pendency of the present petition, the present petitioner has unfortunately died and vide order dated 27.11.2018 passed in the application bearing CM No.1745-CWP of 2018, the LR of the petitioner was brought on record. In nutshell, by filing the instant petition, the petitioner is claiming the following three reliefs :-

- (i) Interest on the delayed payment of retiral dues which were released after about 13 months.
- (ii) Promotional increment on completion of 23 years of service.
- (iii) Promotion to the post of AE/AAE w.e.f. 30.06.2014 when persons junior to him have been promoted.

3. On issuance of notice of motion, reply has been filed by the respondents wherein it has been stated that the present petition is liable to be dismissed on the ground of delay and laches as the petitioner completed 23 years of service in the year 2003 and he never claimed the said benefit while he was in service and he also never challenged the

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order dated 30.06.2014, when persons junior to him were promoted. It has further been stated that the petitioner retired from service, on attaining the age of superannuation, on 30.09.2014 and at that point of time one charge-sheet dated 25.07.2012 was pending against him. The said charge-sheet was culminated into passing of order of censure vide office order dated 09.07.2015 and on conclusion of the charge-sheet, his case for releasing the retiral dues was processed and the payments were made accordingly.

4. Learned Senior counsel for the petitioner submits that the petitioner retired from service, on attaining the age of superannuation, on 30.09.2014. While he was in service, charge-sheet dated 25.07.2012 was issued to him, which was finally culminated into passing of order of censure on 09.07.2015 and it has further been ordered that the recovery, if any, may be effected from the petitioner, however, till date no recovery has been effected from him. He further submits that retiral dues of the petitioner has been released after about 13 months from his retirement, therefore, he is entitled for interest on the delayed payment of retiral dues. His juniors were promoted on 30.06.2014 and the case of the petitioner was not considered due to pendency of the charge-sheet dated 25.07.2012 and for the same reasons he was also not granted the benefit of promotional increment on completion of 23 years of service. He has referred to the instructions dated 19.02.1997 issued by the Punjab State Electricity Board which deals with “General Criteria for Promotion” and provides that there is no effect of warning or censure on the promotion case of the officer/official. He has also placed reliance upon the judgment dated 15.09.2011 passed by this Court in **‘Jagir**



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Singh Vs. State of Punjab and others' CWP No.16518 of 2008 and Kuldeep Kaur Vs. Punjab and Haryana High Court and another : 2016(3) RSJ 414.

5. Per contra, learned counsel for the respondents submits that the charge-sheet dated 25.07.2012 was pending against the petitioner at the time of his retirement and when the said charge-sheet was culminated into passing of order of censure and recovery on 09.07.2015, the case of the petitioner for releasing his retiral dues was processed and the same have been released in the month of October, 2015. She further submits that the petitioner completed 23 years of service in the year 2003 and he never claimed the said benefit while he was in service. Since the petitioner never challenged the order dated 30.06.2014, when persons junior to him were promoted, therefore, at this stage, he cannot claim promotion w.e.f. the said date.

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

7. Admittedly, charge-sheet dated 25.07.2012 was issued to the petitioner to which he submitted his reply dated 05.09.2012 and the disciplinary proceedings remained pending and finally vide order dated 09.07.2015, the punishing authority passed the order of censure by stating that the charges against the petitioner have not been proved directly in the enquiry and since now the petitioner has already retired from service, therefore, taking a lenient view, censure is issued to the petitioner and in case there was shortage of any material and any recovery is to be effected with regard to the same, the same may be deducted from his pensionary benefits. Neither any recovery has been

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effected from the retiral benefits of the petitioner nor any other proceedings have been initiated by the respondent-Corporation for effecting recovery. The retiral dues of the petitioner have been released after about 13 months. Although, the petitioner completed 23 years of service in the year 2003, his case has not been considered for promotional increment on completion of 23 years of service and a perusal of RTI information dated 24.12.2015 shows that his case was not considered for the said purpose as ACR for the year 1999-2000 was not available. It is also an admitted fact that vide order dated 30.06.2014, persons junior to the petitioner have been promoted and since on the said date, a disciplinary proceedings were pending against the petitioner in pursuance of the charge-sheet dated 25.07.2012, his case was not considered for promotion. Since in the said disciplinary proceedings, the charges levelled against the petitioner in the charge-sheet have not been proved and the petitioner has only been ordered to be censure, therefore, the petitioner is held entitled for the grant of interest @ 6% per annum for the delayed payment of retiral dues and his case is liable to be considered by the respondents for grant of promotional increment on completion of 23 years of service and also for promotion to the post of Assistant Engineer/AAE w.e.f. 30.06.2014, when persons junior to him were promoted.

8. In the judgment dated 15.09.2011 passed by this Court in ***CWP No.16518 of 2008 titled as 'Jagir Singh Vs. State of Punjab and others'***, it has been held that the punishment of censure is not a valid ground to withhold promotion or increments of an official.



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9. In the case of ***Kuldeep Kaur Vs. Punjab and Haryana High Court and another : 2016(3) RSJ 414*** it has been held by this Court that minor punishment of warning cannot be taken a bar for promotion. The relevant paras of the said judgment reads as under :-

*“10. Reference, at this stage, can now be made to a judgment of Division Bench of this Court in **S.S. Karan Vs. Punjab and Haryana High Court and others., 2015(3) S.C.T. 620** whereby the petitioner was denied the promotion on the ground that the punishment of recordable warning when juniors of petitioner were promoted. The writ petition was allowed and it was held that the minor punishment of warning cannot be taken a bar for promotion.*

*11. In **Jagir Singh Vs. State of Punjab and others, passed in CWP No.16518 of 2008, decided on 15.09.2011**, the petitioner was a Senior Assistant and had faced a regular inquiry and thereafter he was exonerated. The disciplinary authority without confronting the petitioner with any “Note of Disagreement” passed an order dated 11th February/5th March, 2003 contrary to the enquiry report. Thereafter, a lenient view was taken and finally the petitioner was issued a warning to remain careful in future. Thereafter, he was denied promotion to the post of Superintendent Gr-II on the basis of above stated minor punishment. While referring to Punjab Government instructions dated 10.12.1993 it was held that the award of Censure may not be any hindrance for promotion/increment. The writ petition was allowed and the petitioner was granted promotion to the post of Superintendent Gr-II with effect from the date when his juniors were promoted with all consequential benefits.*

12. In the present case, the petitioner was issued a show-cause notice dated 27.05.2009 (Annexure P-5) for minor penalty under Rule 35 of the High Court Establishment (Appointment and Conditions of Services) Rules, 1973 read with Rule 10 of Punjab Civil Services (Punishment & Appeal) Rules, 1970. A penalty of stoppage of one annual increment without cumulative effect was imposed upon Sh. N.S. Tewatia, Dealing Assistant, Sh. Munish Kumar, Clerk and Ms. Kuldeep Kaur (petitioner) Restorer, vide memo dated 01.09.2009 (Annexure P-7). The



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respondents while accepting the appeal filed by the petitioner and the punishment were reduced into a warning to be careful in future. The respondents, however, have granted the benefit of retrospective promotion to Sh. N.S. Tewatia, Dealing Assistant, who was punished along with the petitioner with minor punishment. The same benefit is not extended to the petitioner simply on the ground that 8 persons, who were promoted as Clerks, have not been impleaded as party in the writ petition and the petitioner cannot be promoted as there was no vacant post.

13. In compliance to the order dated 12.04.2016, Sanjiv Kumar, Dimpi Kumar, Raj Rani Sharma, Ashok Kumar and Ms. Kamlesh Kaur, were impleaded and have filed their respective affidavit that they have no grievance qua the promotion given to the petitioner to the post of Clerk with effect from the date she was entitled for promotion.

14. The case of the petitioner is squarely covered by the above-said judgments. Accordingly, the present writ petition is allowed and directions to the respondents to reconsider the claim of the petitioner for promotion from the date when her juniors were promoted, with all consequential benefits, within a period of four months from the date of receipt of certified copy of this order.”

10. Further, the instructions dated 19.02.1997 issued by the erstwhile Punjab State Electricity Board regarding “General Criteria for promotion” provides that there is no effect of warning or censure on the promotion case of the officer/official. The said instructions reads as under :-

***“Punjab State Electricity Board
(Office of Secy. ESTB, BR. 1" Patiala)***

FROM

*The Secretary,
Punjab State Electricity Board
Patiala*

To

- 1. All GMs/EIC/CEs in the PSEB*
- 2. Chief Controller/Fin., PSEB, Patiala.*
- 3. All CADs/CA/Cost Controller, Patiala*



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4. ADGP/V&S, PSEP, Patiala.
5. All SEs/Directors in the PSEB.
6. All XENs in the PSEB:
7. All by Secretaries/U. Secretaries in the PSEB.

Memo NO. 21054/21754 /Misc-49 Dated 19.02.1997

Subject:- General Criteria for promotion.

Promotion in the PSEB are made on the basis of either seniority-cum-merit or by selection according to respective service regulations. General guidelines for making promotions were issued vide this office Memo No. 73836/74536/Misc-49 dated 24.04.1996 so that uniform pattern is followed in making promotions. These instructions are silent on certain issues such as disciplinary cases & evaluation of assessment. For making promotions to various posts, decisions taken by the Board or orders by authorities competent for making promotions are presently taken as guidelines for considering promotion cases. After careful review of these guidelines and orders, it has been felt that method of evaluation of employees has to be quantified for making true assessment of the case of the employees for promotion. It is made clear that this is not a case of an employee being awarded double punishment. These instructions simply try to quantify the overall Record of an employee, in view of the disciplinary cases against him. The matter has therefore, been reconsidered by the Board and it has been decided to follow the following promotion criteria and guidelines for making promotion so that uniform criteria is followed in making promotions to various posts in the PSEB:-

(A) Effect of Punishment awarded in disciplinary Cases on promotion.

1. LETTER OF ADVICE

At present, Letter of Advice issues in a disciplinary case does not have any effect on the promotion case of an officer/official, the same should continue in future also.

2. LETTER OF WARNING

At present letter of warning have no effect on the promotion case of the officer/official, but if there are many letter of warning then these are viewed by seeing over-all record.



To have uniform pattern, it has been decided that 3 letters of warning should be qua 2 in effect to the downgrading of one ACR one step below:-

For example: If an employee is issued 3 letters of warning his one ACR which is "Good" will be downgraded as Average due to the effect of "Letters of Warning"

3. ISSUE OF CENSURE

With present guidelines, one Censure nullified one good A.C.R. It was felt. that it gives the same effect on different gradation of ACR's. Outstanding is also nullified on the other side Good is also nullified. Thus, the employee with outstanding ACR is put to dis-advantage. It has therefore been decided that one Censure should downgrade one ACR one step below so that it gives uniform effect on all employees e.g. The Outstanding ACR of the employees having Censure in that year will be downgraded to very good & if he has a very Good ACR, it will be downgrade to Good, and so on."

11. So far as interest on the delayed payment of retiral benefits is concerned, a Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others : 1997(3) S.C.T. 468*** has held that where there is an inordinate delay in releasing benefits and the delay is not justifiable, employee will be entitled for interest. The relevant paragraph of said judgment is as under:-

"Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for



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the period of delay on the amount as was due to him on the date of his retirement.”

12. Apart from this, a Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana : 2014(13) RCR (Civil) 355***, had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of the said judgment is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

13. In view of the above, the present petition is allowed and the respondents are directed to grant interest @ 6% per annum on the delayed payment of retiral dues w.e.f. 01.12.2014 (after two months of his retirement) till the actual date of payment and to consider the case of the petitioner for grant of promotional increment on completion of 23 years of service and for promotion to the post of Assistant Engineer/AAE w.e.f. 30.06.2014, when persons junior to him have been ordered to be promoted, with all consequential benefits, within a period of 03 months from the date of receipt of certified copy of this order.

15.05.2024

kothiyal

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No