

CWP-917 of 2014

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

CWP-917 of 2014

Reserved on: 05.11.2024

Pronounced on: 11.11.2024

Avtar Singh

.....Petitioner

Versus

PEPSU Road Transport Corporation and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. S.K. Sharma Budhladawale, Advocate,
for the petitioner.

Mr. Anupam Singla, Advocate, and
Mr. Lalit Goyal, Advocate,
for respondents No.1 and 2.

NAMIT KUMAR, J.

1. Instant petition has been filed by the petitioner under Article 226 of the Constitution of India seeking a writ of *mandamus*, directing the respondents to consider the petitioner for promotion to the post of Sub-Inspector w.e.f. 26.02.2013, the date when persons junior to him have been promoted.

2. Brief facts of the case, as have been pleaded in the petition, are that the petitioner was initially appointed as Conductor on 01.01.1980 on regular basis in the Pepsu Road Transport Corporation (hereinafter referred to as 'PRTC'). It is the case of the petitioner that he was fully eligible for promotion to the post of Sub-Inspector, however, vide order dated 26.02.2013, private respondents No.3 to 6, who were junior to the petitioner, were promoted as Sub-Inspectors.

Thereafter, the petitioner submitted representation dated 27.02.2013

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claiming promotion to the post of Sub-Inspector. However, no action has been taken by the respondents on the said representation. Hence, the present writ petition.

3. Written statement on behalf of respondents No.1 and 2 has been filed wherein it has been stated that petitioner was placed under suspension vide order dated 21.07.2006 and thereafter he was issued a charge-sheet on the ground of mis-conduct and causing fraud by presenting forged police vouchers to the tune of Rs.4,904/-. After holding inquiry, services of the petitioner were terminated vide order dated 03.01.2008, against which the petitioner preferred an appeal, which was accepted by the appellate authority, vide order dated 08.09.2008, and the punishment of termination was converted into the punishment of reduction to initial stage of pay scale. The said order was challenged by the petitioner by filing a civil suit before the civil Court and vide judgment and decree dated 28.05.2013, it was held that in view of the provisions of Regulation 27 of the PRTC (Conditions of Appointment and Service Regulation), 1981 (as amended), the appellate authority was required to state the period for which the order of reduction of initial stage of pay scale will remain effective and whether on the expiry of that period it will operate to postpone future increments or effect the employee's seniority and if so, to what extent. Thereafter, in compliance to the said judgment and decree, the order dated 08.09.2008 was modified vide order dated 05.07.2013 and period of reduction in initial stage of pay scale was prescribed as five years w.e.f. 08.09.2008 and it was also prescribed that petitioner will be

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entitled to get future annual increments as per his service record. It has also been averred in the written statement that the case of the petitioner was considered by the departmental promotion committee in its meeting held on 06.05.2013 for promotion and was rejected on the ground of bad service record as he was undergoing punishment period.

The decision of the DPC is as under: -

“Sh. Avtar Singh, Cond. No.P-II-98, Patiala Depot

The case of this employee was already examined earlier at Sr. No.54. One annual increment of this employee has already been stopped without cumulative effect and due to putting him in the initial stage of pay scale, he has not been promoted. The service record of this employee is still not good. Therefore, the committee recommended to reject his case due to bad service record.”

4. The matter was heard on 17.01.2020 and after hearing counsel for the parties, following order was passed: -

“Petitioner is essentially aggrieved of denial of promotion to the post of Sub Inspector under the Pepsu Road Transport Corporation w.e.f. 26.02.2013 i.e. the date his juniors were so promoted.

Denial of promotion is justified by counsel representing the respondent Corporation by stating that as on the date of convening of the Departmental Promotion Committee, petitioner was under punishment of reduction to initial stage of pay for a period of 5 years w.e.f.08.09.2008.

It transpires that the tenure of punishment ceased to operate w.e.f. 08.09.2013 and the petitioner thereafter superannuated on 30.11.2015.

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Counsel for the Corporation is directed to complete instructions as to whether between the period of the penalty having worked out i.e. 08.09.2013 and upto the date of retirement of the petitioner whether any DPC was convened for the purposes of promotion to the post of Sub Inspector. In the eventuality of any such DPC having been held, counsel would also apprise the Court the justification for not considering the petitioner for promotion.

List on 28.04.2020.”

5. In compliance of the said order, additional affidavit of Parneet Shergill, Managing Director, PRTC, Patiala, was filed wherein it has been stated as under: -

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“2. That in reply to the aforesaid order of this Hon'ble Court, it is submitted that after 08/09/2013, the meeting of the Departmental Promotion Committee was convened on 03/07/2014 and 27/4/2015, however, the case of the petitioner for promotion was rejected after examining the same. In fact the services of the petitioner were terminated in the year 2008 after fair and proper enquiry for playing fraud with PRTC as the petitioner had issued forged police lorry voucher of Rs. 4904/-. The petitioner filed appeal before the appellate authority & the appellate authority i.e. the M.D., PRTC while taking a lenient view substituted the punishment of termination of service to that of reduction to initial scale of pay for a period of 5 years w.e.f. 08.09.2008 vide office order no. 242 dated 05.7.2013. Hence the effect of this order was from 08.09.2008 to 08.09.2013. It is further submitted that the DPC's were constituted on 03.07.2014 & 27.04.2015 for the promotion from the post of Conductor to that of Sub

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Inspector. It is hereby submitted that for considering the case of an employee for promotion the record of previous years ACR's and service record of last 5 years is examined. Therefore in consideration zone of 5 years i.e. from 03.07.2009 to 03.07.2014 & from 27.04.2010 to 27.04.2015 record of petitioner was not upto the mark as the petitioner was undergoing punishment period of about 4 years when the first DPC was constituted on 03.07.2014 & about 3 year when second DPC was constituted on 27.04.2015. Therefore it is ample clear that 5 years past service record was not upto mark when both the DPC's were constituted. Hence the case of petitioner was not considered for promotion. It is also submitted here that the petitioner was retired from the services on 30.11.2015.

3. That in view of the above and due to the fact that in the consideration zone, the service record of the petitioner was not upto the mark, therefore, the case of the petitioner for promotion was rejected by the DPC convened on 03.07.2014 and 27/4/2015."

6. Thereafter, matter was heard on 30.11.2022 and the following order was passed: -

"As per the additional affidavit filed on behalf of respondents No.1 and 2, the case of the petitioner for promotion could not be considered during the period that he was under punishment, which would have expired on 08.09.2013. It is further stated that the two subsequent Departmental Promotion Committee's convened before the retirement of the petitioner, took into account his past service for five years and, therefore, he was not considered eligible for promotion.

Subject to what the respondents have to say, this Court is prima facie of the opinion that it would

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tantamount to debarring the petitioner for a total period of ten years for being considered for promotion.

Learned counsel for respondents No.1 and 2 seeks time to place on record the necessary rules/instructions.

Adjourned to 15.02.2023.”

7. Thereafter, matter was heard on 02.11.2023 and the respondents were directed to place on record relevant record pertaining to ACRs of the petitioner. In pursuance thereto, ACRs of the petitioner have been reproduced in the additional affidavit dated 10.01.2024 filed by Arvind Gupta, Legal Advisor, PRTC, Patiala, and the same is as under: -

“3. That the ACR record of the petitioner is reproduced hereunder in a tabulated form for the kind consideration of this Hon'ble Court.

Sr. No.	ACR Year	ACR Remarks
1.	1979-1980	Average
2.	1980-81	Average
3.	1981-82	Average
4.	1982-83	Average
5.	1983-84	Average
6.	1984-85	Good
7.	1985-86	Good
8.	1986-87	Average
9.	1987-88	Good
10.	1988-89	Average
11.	1989-90	Average
12.	1990-91	Good
13.	1991-92	Average
14.	1992-93	Average
15.	1993-94	Average
16.	1994-95	Average
17.	1995-96	Good
18.	1996-97	Average
19.	1997-98	Good
20.	1998-99	Average

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21.	2000-01	Average
22.	2001-02	Good
23.	2002-03	Good
24.	2003-04	Good
25.	2004-05	Good
26.	2005-06	Good
27.	2006-07	Not written/available
28.	2007-08	Below Average
29.	2008-09	Not written/available
30.	2009-10	Average
31.	2010-11	Good
32.	2011-12	Very Good
33.	2012-13	Good
34.	2013-14	Good
35.	2014-15	Good”

8. During the pendency of the present petition, petitioner has retired from service on attaining the age of superannuation on 30.11.2015.

9. Learned counsel for the petitioner has submitted that the effect of punishment awarded to the petitioner was over on 08.09.2013 and thereafter two DPCs were held on 03.07.2014 and 27.04.2015 for promotion to the post of Sub-Inspector and the claim of the petitioner was wrongly not considered for promotion to the post of Sub-Inspector in the said two DPCs.

10. *Per contra*, learned counsel for respondents No.1 and 2, while referring to paras 2 and 3 of the additional affidavit dated 15.03.2022, has submitted that since the petitioner was undergoing punishment period of about four years when first DPC was constituted on 03.07.2014 and about three years when second DPC was constituted on 27.04.2015 and the service record of the petitioner for the last five

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years was considered and since the same was not upto the mark when both the DPCs were convened, therefore, he has rightly not been promoted to the post of Sub-Inspector.

11. I have heard learned counsel for the parties and perused the record.

12. The facts are not in dispute that the petitioner was initially appointed as Conductor on 01.01.1980 and the services of the petitioner were terminated vide order dated 03.01.2008 after holding regular departmental inquiry. An appeal was filed by the petitioner. The appellate authority vide order dated 08.09.2008 modified the punishment of termination to that of reduction in initial stage of pay scale. Against the said order, petitioner filed a civil suit before the civil Court and vide judgment and decree dated 28.05.2013, it was held by the trial Court that in view of the provisions of Regulation 27 of 1981 Regulations, the appellate authority was required to state the period for which the order of reduction in initial stage of pay scale will remain effective and whether on the expiry of that period, it will operate to postpone future increments or effect the employee's seniority and if so, to what extent. Thereafter, in compliance to the said judgment and decree, punishment order dated 08.09.2008 was modified by the appellate authority, vide order dated 05.07.2013, vide which the period of reduction in initial stage of pay scale was prescribed as five years w.e.f. 08.09.2008 and it was prescribed that the petitioner will be entitled to get future annual increments as per his service record. In the interregnum, vide impugned order dated 26.02.2013, persons junior to

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the petitioner (respondents No.3 to 6) were promoted to the post of Sub-Inspector while ignoring the claim of the petitioner. The effect of the punishment awarded to the petitioner was over on 08.09.2013. Thereafter, two DPCs were convened for promotion to the post of Sub-Inspector on 03.07.2014 and 27.04.2015 but he was not granted promotion to the said post. It is the case of the respondents that since the respondents have considered last five years' service record of the petitioner and in the said period of five years, the record of the petitioner was not upto the mark as petitioner was undergoing punishment period of about four years when meeting of the first DPC was held on 03.07.2014 and about three years when second DPC was held on 27.04.2015, therefore, he was not considered for promotion. The said stand of the respondents cannot be accepted for the reason that once the effect of punishment was over on 08.09.2013, the respondents were duty-bound to consider the ACRs of preceding five years' service rendered by the petitioner along with other record for further promotion to the post of Sub-Inspector as otherwise it would amount to denial of promotion to the petitioner upto next five years from 08.09.2013 when the effect of punishment was over and that would further amount to giving multiple punishments to the employee as on the one hand, his increments have been stopped for five years and on the other hand, he is not being even considered for further promotion in the next five years even after the effect of the punishment is already over.

13. In this view of the matter, the present petition is partly allowed. Respondents No.1 and 2 are directed to reconsider the claim

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of the petitioner for notional promotion to the post of Sub-Inspector w.e.f. 03.07.2014, when first departmental promotion committee was convened, after the effect of the punishment was over on 08.09.2013, with all consequential benefits. The necessary exercise shall be carried out within a period of three months from the date of receipt of certified copy of this order.

11.11.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No