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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-29522-2023
Date of decision: 05.01.2024

MAN MOHAN SHARMA
...Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER
...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Dharampal Chhachhia, Advocate
for the petitioner.

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JASGURPREET SINGH PURI, J.

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of mandamus directing the respondents to promote the petitioner to the post of Accounts Officer from the date when his junior i.e. Sh. Suresh Kumar, Senior Accountant was promoted with all consequential benefits along with interest @ 15% per annum on the arrears being occurred.

2. The brief facts of the present case are that the petitioner was appointed to the post of Accountant on 30.09.1998 and thereafter, he was promoted to the post of Senior Accountant in the year 2001. The petitioner remained on leave from 01.01.2013 to 13.01.2013 and again with effect from 13.01.2013 to 14.05.2013 due to illness. The petitioner had applied for leave but the same was not sanctioned but he was served with two different charge-sheets for different periods and thereupon, disciplinary proceedings had commenced

against the petitioner in both the charge-sheets. In the first charge-sheet which was dated 30.05.2014, a detailed departmental inquiry was conducted into the allegations regarding absence against the petitioner in which his absence was not found to be lawful and as per the inquiry report, he was at fault but the punishing authority vide Annexure P-1 dated 19.08.2016 took a lenient view and issued him a warning to be careful in future and leave of kind due was treated to be his absence period. Thereafter, with regard to the second charge-sheet, again in the inquiry the charges stood proved against the petitioner but again vide Annexure P-4 dated 24.01.2020, the punishing authority took a lenient view and issued him a warning to be careful in future and keeping in view his health, he was sanctioned EOL for the absence period.

3. During the time the petitioner was absent and was facing disciplinary proceedings, two juniors of the petitioner, namely, Suresh Kumar, Senior Accountant and Ravi Mahajan, Senior Accountant were promoted and a specific clause was inserted in their promotion order that their promotion shall be subject to outcome/final decision of the disciplinary case against the petitioner and if the petitioner is exonerated in the said disciplinary case, then he will be considered at his seniority.

4. The second inquiry proceedings culminated into the order dated 24.01.2020 (Annexure P-4), wherein warning was issued to the petitioner but the petitioner not having good health applied for voluntary retirement and he was voluntarily retired from service on 30.06.2020. Thereafter, the petitioner received all the retiral benefits, although as per the learned counsel for the petitioner with some delay. The present is a writ petition filed after about 3½ years of the retirement of the petitioner, which was a voluntary retirement

seeking only one relief that he should be now promoted as Accounts Officer from the date the aforesaid two persons, who were junior to him were promoted in which a condition was inserted that in case the petitioner is exonerated in the disciplinary proceedings, then he will be considered at his seniority. The claim of the petitioner therefore in the present writ petition is only seeking promotion to the post of Accounts Officer from the date his juniors have been promoted because there was no punishment order against the petitioner since both the aforesaid orders i.e. Annexure P-1 and Annexure P-4 are the orders by which the punishing authority has issued warning to the petitioner which does not constitute punishment.

5. I have heard the learned counsel for the petitioner.

6. The petitioner after being absent for long time due to illness faced two disciplinary proceedings and vide Annexure P-1 and Annexure P-4 by taking a lenient view, warning was issued to the petitioner by the punishing authority. During the pendency of his absence and his disciplinary proceedings, two persons, who were junior to the petitioner were promoted as Accounts Officer with a condition that if the petitioner is exonerated in the disciplinary proceedings, then he will be considered at his seniority. After the aforesaid order Annexure P-4 was passed on 24.01.2020, the case of the petitioner for voluntary retirement was considered and he was voluntarily retired on 30.06.2020. The voluntary retirement was based upon the illness of the petitioner and even taking of lenient view by the punishing authority was also because of his illness. Now the present writ petition has been filed in December, 2023, which is almost 3½ years after he retired on 30.06.2020 seeking promotion as Accounts Officer with effect from the date when his juniors have

been promoted. Such kind of grievance raised by the petitioner at this stage after 3½ years of his retirement seeking promotion retrospectively is not sustainable. It is not only hit by delay and laches but otherwise also it is the case of the petitioner himself that due to his chronic illness he was absent from duty and a lenient view was taken by the punishing authority and he has been permitted to retire voluntarily. Therefore, now at this stage, the petitioner cannot claim promotion with effect from the date when his juniors have been promoted. So far as the clause which was inserted in the order of promotion of the aforesaid two persons that in case the petitioner is exonerated in the disciplinary proceedings then he will be considered at his own seniority is concerned, undoubtedly the order of warning is not a punishment but there was no such clause in the promotion order to show that the petitioner will be promoted in case he is exonerated. The clause which was inserted in the promotion order of the aforesaid two persons was only that the petitioner will be considered at his seniority and therefore, does not provide any entitlement to the petitioner to seek promotion on the strength of the aforesaid clause. Therefore, the only prayer which was made by the petitioner in the present writ petition seeking promotion to the post of Accounts Officer cannot be accepted especially at this stage and the present writ petition is liable to be dismissed.

7. Consequently, the present writ petition is hereby dismissed.

8. During the course of arguments, the learned counsel for the petitioner also submitted that whatever retiral benefits were given to the petitioner, there was a delay of about 1½ years. If that be so, the petitioner shall be at liberty to make a comprehensive representation to the competent authority seeking interest on the delayed retiral benefits, if any. In case any such

representation is made by the petitioner within a period of four months from today, then the competent authority shall consider and decide the representation pertaining to the aforesaid grievance of interest on the delayed retiral benefits in accordance with law within a period of two months thereafter and in case the petitioner is found entitled for the interest, then the same shall be paid to the petitioner within next two months.

(JASGURPREET SINGH PURI)
JUDGE

05.01.2024
Chetan Thakur

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No