



CWP No. 19632 of 1998

**107 IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No. 19632 of 1998 (O&M)
Date of Decision: 20.1.2025**

N.R. Garg (now deceased) through his LR

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Puneet Kansal, Advocate
for the petitioner.

Mr. Rohit Bansal, Senior DAG, Punjab assisted by
Mr. Harmesh Mittal, E.E., P.W.D;
Mr. Manjeet Singh, Superintendent; and
Mr. Navjot Singh, Senior Assistant.

MAHABIR SINGH SINDHU. J.

Present petition has been filed, under Article 226 of the Constitution, for issuance of a writ in the nature of *mandamus* directing the respondents to promote petitioner to the post of Chief Engineer, Public Works Department (Building & Roads Branch), Punjab (for short “PWD”) w.e.f. 20.11.1998.

2. BRIEF FACTS:-

2.1 Petitioner was inducted into the service of PWD, Government of Punjab as Sub-Divisional Engineer in the year 1963 and later on, promoted to the post of Executive Engineer in 1971. Thereafter, he was promoted as Superintending Engineer in September, 1985 and next promotional post is the Chief Engineer.

2.2 On the retirement of Sh. M.K. Sain on 30.09.1998, the post of Chief Engineer fell vacant w.e.f. 01.10.1998. The promotion to the post of Chief Engineer is governed by the Punjab Service of Engineers Class-I Public Works

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Department (B&R Branch) Rules, 1960 (for short “Rules of 1960”). Relevant rule reads as under:-

"9. Promotion within service. (1) *Subject to the provisions of sub rule (2) and (3) below, members of the service shall be eligible for promotion to any of the posts in the service, namely, Executive Engineers, Superintending Engineers and Chief Engineers: Provided that a member of the Service, in whose case of the qualifications mentioned in clause (a) of rule 6 have been waived, shall not be eligible for promotion to the post of Superintending Engineer or above, till he has acquired the necessary qualification.*

Explanation, -*once an officer has been appointed a member of the Service, his promotion within it from one rank to another shall be regarded as promotion in the same cadre.*

(2) *Promotions shall be made by selection on the basis of merit and suitability in all respects and no member of the Service shall have any claim to such promotion as a matter of right or mere seniority.*

(3) *A member of the service shall not be eligible for promotion to the rank of---*

(a) *Executive Engineer unless he has rendered five years service as an Assistant Executive Engineer; (and has passed the Departmental Examination as provided in rule 15)*

Provided that an officer who has rendered six years or more service as an Assistant Executive Engineer shall, unless he is considered unsuitable for promotion, be given preference for such promotion over an eligible Class II officer;

(b) *Superintending Engineer, unless he has rendered seven years service as an Executive Engineer;*

(c) *Chief Engineer, unless he has rendered three years service as Superintending Engineer;*

Provided that, if it appears to be necessary to promote an officer in public interest, the Government may, for reasons to be recorded in writing, either generally for a specified

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period or in any individual case reduce the periods specified in clauses (a), (b) and (c) to such extent as it may deem proper."

2.3 On 24.09.1998, case of petitioner for promotion as Chief Engineer was forwarded to Department of Personnel, Government of Punjab. It is necessary to mention that in the interest of administration, petitioner was given current duty charge w.e.f. 12.10.1998. On 22.10.1998, the case of the petitioner was returned by the Department of Personnel with certain objections; but subsequently, on the request made by petitioner, his case was forwarded to Chief Secretary, Government of Punjab-respondent No.2; who further sent it to the then Chief Minister, Punjab, soliciting necessary approval.

2.4 On 18/19 November, 1998 approval was granted by the Chief Minister. However, despite several requests, respondent No.1 did not issue any office orders regarding promotion of the petitioner. Even reminders were sent by petitioner, but of no use. Ultimately, petitioner retired from the post of Superintending Engineer after attaining the age of superannuation on 30.11.1998; hence present petition.

CONTENTIONS:-**3. ON BEHALF OF PETITIONER:-**

3.1 It is contended that name of the petitioner was duly considered by Departmental Promotion Committee (for short 'DPC') on 02.04.1998 along with other eligible candidates and the same was recommended for promotion to the post of Chief Engineer after considering his merit position.

3.2 Also contended that petitioner was given current duty charge for the post of Chief Engineer (Buildings) vide order dated 12.10.1998. The recommendation made by the DPC for promotion as Chief Engineer were

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forwarded to Chief Minister, Punjab and the same had been duly approved by the Chief Minister on 20.11.1998.

3.3 Further contends that above approval was conveyed by Chief Secretary through Department of Personnel to respondent No.1 vide order dated 20.11.1998. However, despite the aforesaid approval, his promotion order was withheld by the department-respondent No.1 only on the ground that explanation dated 09.11.1998, had been sought from the petitioner.

3.4 Further contends that once the case of the petitioner for promotion to the post of Chief Engineer was approved by the Chief Minister, the respondent No.1 had no authority to withhold his promotion. In fact, the approval granted by the competent authority had resulted into an indefeasible right in favour of the petitioner which could not be tinkered with by respondent No.1.

3.5 Lastly contends that preliminary report dated 09.10.1998 submitted by Sh. B.K. Thapper, Superintending Engineer-cum-Director, Quality Control Cell cannot be given effect inasmuch as the said S.E. had animosity against the petitioner and litigation with regard to their seniority *inter-se* went upto Hon'ble the Supreme Court; thus, the report submitted by said Thapper is a *malice-in-fact*.

4. ON BEHALF OF RESPONDENTS:-

4.1 It is submitted that one post of Chief Engineer fell vacant on 01.10.1998 and the case of petitioner was sent to the Department of Personnel on 24.09.1998 for promotion to the post in question. Also submits that in the interest of administration, petitioner was given current duty charge for the post of Chief Engineer vide order dated 12.10.1998; but that will not confer any right in his favour.

4.2 Further submits that on 22.10.1998, case of petitioner was sent back by the Department of Personnel with certain objections and in the meantime, a

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preliminary report was received from the Chief Vigilance Officer-cum-Director Quality Control, Public Works Department (B&R) vide Memo dated 09.10.1998 with respect to an inquiry ordered by Government of Punjab vide order dated 18.05.1998. In the said report, the action of the petitioner in the capacity of Superintending Engineer was not found in order while reducing the compensation imposed upon a contractor (Virender Kumar Bansal) from Rs.28.70 lakh to nil.

4.3 Also submits that vide Memo No. 10/177/97/BRI(I)/6624 dated 09.11.1998, petitioner was directed to give his explanation within one week and his case for promotion was referred back to Department of Personnel on 10.11.1998, subject to the final outcome of proposed action against him on the basis of report dated 09.10.1998 submitted by the Chief Vigilance Officer (Sh. B.K. Thapper).

4.4 Further submits that petitioner did not reply to the explanation and upon examination of the report submitted by Chief Vigilance Officer, competent authority i.e. Minister, PWD (B&R), Punjab vide order dated 20.11.1998 decided to charge-sheet him under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970.

4.5 Still further submits that though, petitioner submitted his delayed explanation on 23.11.1998; but by that time, decision to issue charge-sheet had already been taken by the competent authority on 20.11.1998. Hence, in the light of Government of Punjab Department of Personnel and Administrative Reforms (Personnel Policies-I Branch) letter No.3/27/97-3PP1/2087 dated 27.02.1998, the petitioner was not promoted to the post of Chief Engineer. Even on 16.04.1999, the Chief Minister, Punjab cancelled the promotion of the petitioner as Chief Engineer.

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Again submitted that during inquiry conducted by M.M. Oberoi, IAS (Retd.), petitioner was found guilty and punishment of 25% cut on pension had been imposed upon him vide order dated 28.05.2009/01.06.2009; which later on, was upheld upto Hon'ble the Supreme Court.

5. Heard learned counsel for the parties and perused the paper-book.

6. **FINDINGS AND OBSERVATIONS:-**

6.1 It transpires that promotion of petitioner to the post of Chief Engineer was withheld on account of certain irregularities alleged against him while working as Superintending Engineer relating to work allotted to aforesaid contractor (Virender Kumar Bansal) on 29.11.1991 for NH-15 Baja Khana to Bathinda. As the contractor failed to complete the work as per schedule; therefore, Executive Engineer concerned imposed a penalty of Rs.28.70 lakh upon him on 11.07.1995.

6.2 Aggrieved against the above penalty, contractor preferred an appeal, which was accepted by present petitioner, whereby penalty of Rs.28.70 lakh was reduced to "nil" and the contractor was asked to remove the shortcomings within 15 days, with further direction to the Executive Engineer to finalize the bill of contractor, with a rider to withhold Rs.20,000/- from the security deposit.

6.3 Later on, preliminary inquiry was conducted in the matter by Chief Vigilance Officer-cum-Director, Quality Control, Punjab, PWD (B&R), and vide report dated 09.10.1998, it was observed as under:-

" The perusal of proceedings of hearings conducted by Sh.N.R.Garg, Superintending Engineer, C.W.Circle, Ferozepur indicates that the Superintending Engineer over stepped this power while passing the orders on the following grounds.

1. The matter before the Superintending Engineer was whether the compensation levied by the Executive Engineer, C.6. Division, Pb PWD B&R Br. Bathinda was in order-The Superintending Engineer passed order. The compensation is reduced to Rs. NIL meaning thereby waiving off the entire compensation of Rs. 28.70 lacs levied by the Executive Engineer.



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2. *The perusal of the proceedings of the hearings also Indicates that the contractor had been delaying the completion of work on one pretext or the other which was overlooked by the Superintending Engineer. Thus the Superintending Engineer while ordering the reduction of compensation of Rs. NIL did not adequately watch the Govt. interest.*

3. *The Superintending Engineer while conducting hearings under clause II extended the time limit of the work without any written request from the contractor and recommendations of the Executive Engineer, which is not in order as Clause-II deals with compensation only and not with time extension.*

4. *While passing the orders, the Superintending Engineer fixed the date of completion of work as 24.4.97, which was not the matter before him to decide under clause-II of the contract agreement.*

5. *The release of the security deposit of the contractor or was also not the matter before him to decide which be ordered to be released after 3 months from the deemed date of completion i.e. 24.4.97.*

Thus the action of Sh. N.R. Garg the then Superintending Engineer, C.W.Circle, Pb PWD B&R Br. Ferozepur is not in order.”

6.4 Thereafter, petitioner was issued charge-sheet dated 04.05.1999 and substance of charges reads as under:-

“Charge No. 1: Negligence of Superintending Engineer and misuse of powers.

No. 2 : Responsible for huge loss of Rs. 28.70 lakhs to Government by remitting the compensation with malafide intention in connivance.

No. 3: Responsible for excess payment of Rs. 6,26,186/- in connivance with Sh. Balbir Singh, Executive Engineer and Varindra Const. Co., Bagha Purana.”

6.5 The Inquiry Officer, M.M. Obeori, submitted his report dated 03.08.2004; thereby allegations levelled against the petitioner were found to be genuine, while observing as under:-

“During the inquiry, the evidence produced, and from the orders of C.O., it is clear that the whole earth work on the berm was

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not carried out by the contractor and work worth Rs.20,000/- was got done later on through work order. In this situation to fix the date of completion of work, was an unthought fact. According to the record the work was allotted to the contractor during the year 1991-92 and the period to complete it was fixed as one and a half year. In this way, the work should have been completed at the most within the year 1993-94. But during 1994 from the sample checking by the Vigilance Department the shortfalls in the quality of work were detected. Though the evidence produced during inquiry this fact is not found that due to the checking of vigilance for how much time the work was stopped and for what period the department could not supply the bitumen. In the order of the C.O. nothing has been mentioned about these points. Though during the proceedings report was obtained regarding the supply of bitumen. The penalty imposed by the Executive Engineer without any reason, at the time of taking quasi judicial decision for making it as nil the order is absolutely wrong and it was a negligence in performing the duty and responsibility. The creation of such order shows the connivance of the C.O. with the contractor.

According to the conditions of agreement the maximum penalty can be imposed upon the contractor upto 10% of the total cost. In this case the Executive Engineer had imposed penalty upto 10% only which was, after hearing the request of the contractor, made Nil. But in his order he did not mention the reasons for exempting the penalty. He had decided the other matters which had no concern with the proceedings under clause 2 and recorded the same. From the proceedings recorded by the C.O. it is found that there was a shortage of bitumen supply of 200 Tonnes. About this short supply the responsibility was of the department, will have was to supply the material in proper quantity but it has failed to do so.

Due to the exemption of full penalty the contractor had derived the benefit of Rs.28.30 lacs. According to the saying of C.O., under Clause 2 the order of the S.E. cannot be challenged at administrative level. During the inquiry, from the evidence produced It is clear that against this order of C.O. no legal action has been taken by the department or at the Government level. In this way, the

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contractor despite doing the work with delay becomes exempted from the penalty imposed upon him though for the delay he too was careless. The order of the C.O. seems to be arbitrary wherein there is apparent the misuse of powers by him. This matter becomes of serious nature because the contractor had derived undue big benefit.

In this way, the charges levelled against CO. are proved.”

6.6 After taking into consideration the inquiry report and material available on record, the competent authority i.e. the Minister concerned, imposed punishment of 25% cut on pension of petitioner vide order dated 28.05.2009/01.06.2009.

6.7 It is relevant to mention here that petitioner filed CWP No.18076 of 2003, whereby challenge was made to charge-sheet dated 04.05.1999; but later on, writ petition was amended and whereby, inquiry report dated 03.08.2004 as well as punishment order dated 28.05.2009/01.06.2009 were also challenged.

6.8 Above writ petition came up for hearing before the then learned Single Judge on 20.01.2016 and the same was dismissed, while observing as under:-

“The record would go on to show that work had been allotted to the contractor on 29.11.1991 pertaining to the NH15 Baja Khana to Bathinda kilometers 258.33 to 285.05 and the time limit was of 18 months which was expiring on 26.05.1993. The time limit was thereafter extended upto 30.06.1994 and 30.06.1995. Due to the inability of the contractor to complete the contract as per the time schedule, the XEN had imposed a penalty of 28.70 lacs on 11.07.1995. The same was appealed against by the said Contractor and there was a stay also by the Executive Engineer on 13.09.1995. The said stay continued and thereafter, at the time of the completion of the work, vide order dated 25.04.1997 (Annexure P-24), the compensation of 28.70 lacs was reduced to NIL by the petitioner. The contractor was directed to remove the shortcomings within a

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period of 15 days and further directions were issued to the XEN to finalize the bill and only withhold 20,000/-from the security deposit and three months time was extended as a deemed date of completion of the work. The relevant portion of the order reads thus:-

“The compensation levied by the XEN is reduced to nil. The contractor may remove the short comings in the work within a period of 15 days. Thereafter, the XEN shall proceed to finalize the bill of the contractor. XEN may withhold an amount of Rs.20,000/- from the security deposit of the contractor and further action in release of the security be taken in terms of the agreement after a period of three months from 24.4.97 which is being deemed as date of completion of work.”

It is in pursuance of this outright benefit granted to the contractor that the petitioner was charge sheeted. The inquiry officer has found in his report that thereafter also, the Contractor had not completed the remaining work and work order No. 20 of 1997 had to be issued as per voucher no. 58 dated 18.09.1997. It has, thus, been concluded that the petitioner had benefitted the contractor in an illegal manner and caused loss to the Government. It has been further found by the inquiry officer that the petitioner had kept the application of the contractor pending from 05.02.1996 which was concerned with the penalty imposed by the Executive Engineer till the very end when he reduced the demand to NIL. In view of his order, the Executive Engineer had to ignore the rules and instructions and had made the balance payment of 6.26 lacs within a period of 4-1/2 days without obtaining requisite certificates from the SDE and, therefore, the loss of the said amount was also caused and benefit was given to the contractor.

There was no application made by the contractor for extension of time or any request of the Executive Engineer and the matter before him for extending the period mentioned in the agreement and to fix the deemed date as completed on 27.04.1997 was a misuse of power. The work was allotted in 1991-92 and had thus only been allegedly completed in 1997 and therefore, the charge was found to be proved of serious nature and the contractor

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had got undue benefit. It is further not disputed that the XEN also namely Balbir Singh was acted against vide order dated 22.01.2000 (Annexure P-20) and there was stoppage of two annual increments with cumulative effect. Thus, from the above discussion, it is apparent that the petitioner has exceeded his jurisdiction while performing his duties and acted in a very arbitrary manner while waiving compensation which had been imposed by the Executive Engineer and thus benefited the contractor by closing the contract in a hasty manner.”

6.9 It is noteworthy that against the aforesaid dismissal order, LPA No. 382 of 2016, was preferred at the instance of petitioner; but the same had also been dismissed by the then Division Bench on 14.03.2016, *inter alia*, observing as under:-

“Learned Single Judge held that the appellant could not point out any breach of statutory rules or procedure in the conduct of enquiry and the principles of natural justice had been complied with. It could not be established that the authority issuing the charge-sheet lacked competence to do so. The judgment of Hon'ble the Supreme Court in Vishwanath Sood Vs. Union of India and another [AIR 1989 SC 952] relied on by the appellant was distinguished by holding that the case dealt with therein was under the Arbitration Act where determination of compensation for delay in execution being made final by the agreement could not be subject matter of arbitration, but the present case was one of the misconduct during service in conferring undue benefit on the contractor.

The scope of judicial review in the matter of disciplinary proceedings being limited, and there being no procedural or other infirmity in the disciplinary proceedings, the writ petition was rightly dismissed.

Learned counsel for the appellant has argued that the findings of the Enquiry Officer are contrary to the record and that there were valid reasons for the delay in execution of the work by the contractor as there was deficiency in supply of bitumen by the department and it was this reason which led to the delay in

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completion within time. Consequently, the action of the appellant in reducing the compensation for delay to NIL was not arbitrary or mala fide.

The appellant is seeking to argue on merits of findings of the enquiry officer, which is impermissible in judicial review.

We find no infirmity in the order of the Ld. Single Judge and the present appeal is dismissed. Consequently, the accompanying applications are dismissed.”

6.10 Dis-satisfied with the order passed by Division Bench, petitioner approached Hon’ble the Supreme Court by way of SLP (Civil) No. 26172 of 2016; but remained unsuccessful and the same was dismissed vide order dated 10.04.2017.

6.11 As noticed above, before issuance of promotion orders of petitioner, the report of Chief Vigilance Officer had come into existence on 09.10.1998. In the said report, petitioner was indicted for having over-stepped his power while reducing the amount of compensation from Rs.28.70 lakh to “nil” regarding work done by the contractor.

Records clearly reveal that compensation of Rs.28.70 lakh imposed against the contractor by the Executive Engineer was waived off at the hands of petitioner, without there being any basis to that effect. Resultantly, petitioner was called upon to furnish an explanation, which he submitted on 23.11.1998, but the same did not find favour with the authorities. As a result thereof, petitioner was charge-sheeted on 04.05.1999. Thus, in such a scenario, when disciplinary proceedings were initiated against the petitioner, then there was no occasion to offer him promotion to the post of Chief Engineer.

6.12 Although, it was vehemently contended on behalf of the petitioner that once approval had been granted by the Chief Minister, there was no occasion to withhold his promotion to the post in question.

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6.13 The above argument, at first glance, seems to be very attractive; but the same is deceptive, in view of the settled legal proposition that mere approval on file and/or intra-departmental communication or file noting(s) would not confer any right upon a person, until an office order is issued to that effect. Reference in this regard can be made to ***Bachhittar Singh Versus State of Punjab 1962 SCC Online SC 11*** and paragraph Nos. 9 & 10 of the same are recapitulated as under:-

“9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

10. The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh¹, is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is

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*accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the “order” of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following from the judgment of this Court in the **State of Punjab v. Sodhi Sukhdev Singh:-***

“Mr Gopal Singh attempted to argue that before the final order was passed the Council of Ministers had decided to accept the respondent's representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent.”

Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.”

6.14 Still further in ***Mahadeo and others Versus Sovan Devi and others*** (2023) 10 SCC 807, it was held as under:-

“15. It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. This Court examined the said question in a judgment reported as

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Omkar Sinha v. Sahadat Khan. Reliance was placed on ***Bachhittar Singh v. State of Punjab*** to hold that merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government, two things are necessary. First, the order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and second, it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up, the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. The said judgment was followed in ***K.S.B. Ali v. State of A.P.5, and Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.***”

6.15 Of course, records reveal that approval was granted by the Chief Minister for promotion of petitioner on 20.11.1998; but no order in this regard had ever been issued by the competent authority.

At the same time, it is also discernible from the records that in view of the ensuing date of superannuation of petitioner i.e. 30.11.1998, above approval was granted subject to outcome of inquiry report dated 09.10.1998 submitted by Chief Vigilance Officer.

6.16 Since petitioner did not submit his response to the aforesaid report within stipulated period; therefore, Minister-in-Charge, being the competent authority, decided to charge-sheet him on 20.11.1998. As already discussed, the inquiry report dated 03.08.2004 as well as the punishment order dated 28.05.2009/01.06.2009, thereby imposing 25% cut on the pension of petitioner have attained finality upto Hon’ble the Supreme Court; therefore, no *mandamus* is warranted in his favour while exercising powers under Article 226 of the Constitution.

6.17 Even otherwise, it does not stand to any logic for a prudent man that when any Govt. employee has been visited with punishment, then he ought to be promoted during currency of punishment and that too, at the higher echelons of service.



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7. In view of the above, there is no option, except to dismiss the petition.

8. Ordered accordingly.

Pending application(s), if any, shall also stand disposed off.

Original records be returned to the quarter concerned.

20.01.2025

SN

(MAHABIR SINGH SINDHU)
JUDGE

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