
(1993) 12 P&H CK 0104
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1935 of 1993

Bakhshish Singh D.S.P.

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 13-12-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Police Service Rules, 1959 — Rule 6(1)

Citation : (1993) 105 PLR 384

Hon'ble Judges : N.K. Kapoor, J; Amrit Lal Bahri, J

Bench : Division Bench

Advocate : Harbhagwan Singh and P.S. Dang, for the Appellant; R.K. Joshi, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

A.L. Bahri, J.—Short question but of great significance that arises in this case is about the time for which an adverse entry recorded against a police officer would effect his chances of promotion. Petitioner Bakhshish Singh joined Punjab Police Force on April 8, 1968, as a probationary Assistant Sub Inspector. He was confirmed as such on April 8, 1969. He was deputed to undergo Upper School Course in 1972 and after he completed the course, he was promoted as Sub Inspector in 1972. With effect from September 15, 1979, he was confirmed as such, vide order dated June 26, 1980. He was subsequently brought on list "F". The petitioner was confirmed as Inspector on May 7, 1979. Respondent No. 4 Mani Ram was confirmed as Inspector with effect from February 15, 1980, as would be clear from order Annexure P-2. In this manner, Mani Ram was junior to the petitioner. An adverse entry was recorded in the annual confidential report of the petitioner for the period April 1, 1984, to March 31, 1985. This was the result of strained relations developed with the Senior Superintendent of Police, Shri S.S. Bains, on account of petitioner's action of conducting a raid on a rice mill at Sangrur. Representation filed against the aforesaid adverse remarks was allowed vide order Annexure P-5. The adverse remarks were expunged on acceptance of

his earlier representation, the petitioner thus represented that he be promoted to the rank of Deputy Superintendent of Police with effect from the date person junior to him was promoted. This representation annoyed the Director General-cum-Inspector General of Police respondent No. 2, who moved the State Government that the remarks already expunged should not be treated as "expunged in toto". The petitioner filed a Civil Writ Petition in this Court, which was withdrawn in order to get review of the order aforesaid. The petitioner served a notice u/s 80 of the CPC and ultimately filed a civil suit, which was decreed on May 15, 1991, upholding order of the Punjab Government dated August 9, 1989. Copy of the civil Court judgment is Annexure P-5. The result thereof was that this adverse entry existing on the service record of the petitioner stood quashed. This judgment and decree was not challenged. The petitioner again made a representation that respondent No. 4 Mani Ram, who was junior to him was promoted and his case for promotion be considered from the date person junior to him was promoted. Vide order Annexure P-7, the petitioner was promoted as Deputy Superintendent of Police on temporary basis subject to approval of the Punjab Public Service Commission, from the date he was to assume charge. This order is dated February 14, 1992. The petitioner again represented vide Annexure P-8 to the State Government that he should have been promoted retrospectively from the date respondent No. 4 Mani Ram was promoted as Deputy Superintendent of Police and he should be allowed subsequent promotions also. This representation was rejected by the Government vide order Annexure P-9 dated August 29, 1992. The petitioner has also produced copies of commendation certificates, which are Annexures P-10 to P-16. He further relies upon an order annexure P-17, for promotion to the post of Deputy Superintendent of Police, wherein reference has been made to Rule 6(1) (i) (a) of the Punjab Police Service Rules, 1959 and government instructions contained in letter-November 13, 1990. The rule aforesaid referred to the minimum period of six years to officiate as Inspector of Police for being promoted to the rank of Deputy Superintendent of Police. This period was subsequently reduced to four years and vide instructions of 1990, referred to above, by another year.

2. On notice of motion having been issued, written statement has been filed on behalf of the official respondents (No. 1 to 3). The stand taken up is that there was an other adverse entry in the service record of the petitioner for the period September 4, 1981 to March 31, 1989, which was conveyed to the petitioner on June 25, 1982. The petitioner concealed this fact in the writ petition. On merits, it is stated that on consideration of the entire service record and the alone adverse entry, as mentioned above, the petitioner was not considered suitable for promotion to the rank of Deputy Superintendent of Police retrospectively. The alone adverse entry aforesaid was taken into consideration and keeping in view serious nature of the entry, he was not considered for promotion.

3. In the replication filed by the petitioner, it is asserted that the aforesaid adverse entry was a stray and stale entry and was not at all relevant for the

purposes of granting promotion. The entry was communicated and a representation was filed against the same, copy of which is an Annexure P-18. However, the same was rejected vide order dated December 7, 1982, Annexure P-19.

4. The adverse entry for the period September 4, 1981, to March 31, 1982, as communicated to the petitioner, was as under:-

"He maintains very intimate relations with the anti social elements, was warned for giving shelter to a notorious criminal of Ludhiana district, who was absconding in a murder case."

5. The contention of learned counsel for the petitioner is that under Rule 6(1) (i)a) of Punjab Police Service Rules, 1959, petitioner on putting in six years service as Inspector was eligible for promotion to the post of Deputy Superintendent of Police. This period of six years was subsequently reduced to four and three years respectively and thus the service record of the petitioner for such number of years only is required to be seen for the purposes of finding out suitability or otherwise of the petitioner for promotion to the post of Deputy Superintendent of Police. The adverse entry existing in the service record (annual confidential reports) beyond such period would lose significance, particularly the type of adverse entry recorded in the case of the petitioner.

6. On the other hand, Shri R.K. Joshi, Additional Advocate General, Punjab, has argued that the entire service record of the petitioner was required to be taken into consideration at the relevant time of promotion to the post of Deputy Superintendent of Police. At least the service record of the petitioner after his promotion to the post of Inspector was necessarily required to be taken into consideration. No rule or instructions on the subject provide the number of years for which annual confidential reports are required to be considered for the purpose of promotion to the post of Deputy Superintendent of Police. According to him, the police is a disciplined force and any type of adverse entry recorded in the functioning of the officer, which is of serious nature, is to be taken into consideration in order to find suitability or otherwise of the candidate.

7. After giving due consideration to the respective arguments addressed by learned counsel for the parties, we find force in the contention of learned counsel for the petitioner. At the outset, it may be stated that promotion cannot be claimed as a matter of right. The only right that a Government servant can claim is for consideration for promotion. Such a right accrues when persons junior to him are promoted and his name is ignored. Furthermore the question of promotion is to be determined in accordance with the relevant rules governing the service, i.e. taking into consideration the provisions giving eligibility and mode of promotion. The rules may provide academic qualifications as well as experience to bring the person in the zone of consideration for promotion and thereafter the rules may further provide the mode of promotion, i.e. "Seniority-cum-Merit" or "Merit-cum-Seniority". The element of seniority in both these

principles is inherent. In one of the principles it gains little more importance and in the other it is the merit which overshadows seniority. In case of "Seniority-cum-Merit", the person senior-most, if he is fulfilling the eligibility clause/qualifications, and as per service record he is not unsuitable for the job, he would be promoted; whereas in the case of "Merit-cum-Seniority", the element of selection of most suitable person in service is prominent and the rules may provide to consider some of the senior most persons for the purposes of promotion and among them the more meritorious or most suitable person, as per service, record may be preferred and promoted.

8. In the present case the service is governed by Punjab Police Service Rules. Under Rule 6, an Inspector becomes eligible for promotion to the post of Deputy Superintendent of Police after completion of six year's service and, as already stated above, subsequently this period was reduced to four years and three years respectively under the instructions. Reference be made to Annexure P-17. In this order reference is made to Government instructions dated November 13, 1990, that the period stood reduced to three years that an Inspector becomes eligible for promotion to the post of Deputy Superintendent of Police. If there are some adverse entries in the service record prior to the promotion to the post of Inspector of Police, obviously these cannot be taken into consideration again while determining the case on promotion to the post of Deputy Superintendent of Police. By promotion the sting attached to the adverse entries stands taken out. Present is a case where two adverse entries existed in the period of the petitioner after his promotion to the post of Inspector of Police. Since one of the adverse entries for the relevant year 1984 stood expunged, the same cannot be considered for the purposes of promotion. It is only the adverse entry of the year 1981-82, as reproduced above, which is for consideration as to whether after expiry of the requisite period for the purpose of promotion to the post of Inspector of Police would lose significance or not. At the outset, it may be stated that as far as adverse entries relating to Integrity and honesty of the State employee are concerned, these remain effective for ten years. It was so observed by the Full Bench in the case of Punjab State and Ors. v. Kulwantbir Singh,¹ (1991)99 Pun LR 1. As far as other adverse entries are concerned, there are no instructions or judicial pronouncements on the subject as to upto what period they remain effective. It is in this context that the question involved in the present case needs to be determined. Examining the case of the petitioner vis-a-vis other Inspectors, Junior to petitioner promoted later on, may be after recording of the adverse entry of 1981-82, such of the Inspectors would become eligible for consideration for promotion after expiry of the relevant period provided under Rule 6(1)(i)(a) of the Rules. If their record is found good, i.e. they are found suitable for promotion, they would steel march over the petitioner, although record of the petitioner for such number of years also is considered good, he would be deprived of the promotion merely because of some adverse entry existing prior to such period, which is considered necessary for the purposes of promotion. In this manner, there will be discrimination in the matter

of promotion in the service and this would violate Articles 14 and 16 of the constitution. Thus, from the discussion above, it would be clear that while fixing the relevant time of determining the question of promotion, the service record of the persons eligible for promotion will be considered for the same number of years, as is required to be considered as provided under the rules, i.e. six years, four years and three years on respective dates, I the present case after the latter adverse entry recorded in the service record of the petitioner was expunged, the matter was considered by the authorities for promotion of the petitioner to the post of Deputy Superintendent of Police on February 14, 1992, when order Annexure P-7 was passed. His representation claiming promotion w.e.f. 1987 was declined. As is clear from the written statement filed by the respondents, while declining promotion earlier adverse report for the period September 4, 1981, to March 31, 1982, was taken into consideration. He was not found fit for promotion prior to November 28, 1991, that order of promotion was passed on February 14, 1992. Obviously the alleged adverse entry was ten years old at that time. As it is not clear from the pleadings of the parties and the documents produced as to when the period of six years was reduced to four years, it cannot be determined in this case as to whether the sting of the adverse entry recorded stood removed on such relevant dates.

9. Since person junior to the petitioner was appointed in 1987, it is not considered necessary as to whether the petitioner could be promoted earlier on account of reduction in the number of years spent on the post of Inspector to be taken into consideration for the purpose of promotion allowing the maximum period of six years to elapse after the aforesaid adverse entry was recorded in the service record of the petitioner. At least in 1987, when person junior to the petitioner was promoted, he was eligible to be considered for promotion.

10. For the reasons recorded above, this writ petition is allowed with the direction to the respondents to consider the case of the petitioner for promotion to the post of Deputy Superintendent of Police with effect from the date person junior to him was so promoted and to allow him all the necessary consequential benefits. There will be no order as to costs.