

(2013) 08 P&H CK 0821
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 1328 of 2011

Inspector Baljeet Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13, 7

Citation : (2013) 172 PLR 475

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Jai Vir Yadav, for the Appellant; Harish Rathee, D.A.G. Haryana, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J.—When the case of the petitioner was considered for promotion from the rank of Inspector to Deputy Superintendent of Police, he was passed over on account of an FIR No. 44 dated 6.7.2006 registered in Police Station, SVB, Gurgaon under Sections 7 and 13 of the Prevention of Corruption Act, 1988 then pending against him. During investigation, the petitioner was found innocent and a cancellation report was submitted before the trial Court. The charge against the petitioner was based on a complaint made by one Anil Kumar Sharma resident of Gurgaon alleging that the petitioner had demanded a water purifier RO system. The sanction for prosecution of the petitioner was declined by the Director General of Police, Haryana by order dated 10.10.2006 as no case was found made out under the Prevention of Corruption Act. The Director General of Police found no ill intention on the part of the petitioner for calling upon the complainant to bring the RO Water Filter system to the Police Station and the only consideration was to get a good system on a concessional rate preferably under Rs. 8000/-. There was also no intention not to pay the amount. The cancellation report was filed on 11.8.2008 and remained pending till 13.1.2012 when the trial Court accepted the cancellation report nullifying the

FIR. It is apparent that the petitioner could have no control over the period from 11.8.2008 till 13.1.2012 with the sword of Damocles hanging over his head. The written statement in the present case in response to the present petition was filed on 10.5.2011 when the cancellation of an FIR was under process. No other defence was taken by the respondent-State save pendency of proceedings before the trial Court. Apart from the aforesaid Vigilance case, a regular departmental enquiry was also ordered through summary of allegations dated 24.10.2007 based on the same incident. The Superintendent of Police, Jhajjar held the enquiry and found the petitioner innocent of the charge vide order dated 8.1.2008.

2. There is no dispute that Inspectors junior to the petitioner arrayed as respondents No. 4 to 8 in this petition were promoted as Deputy Superintendents of Police by bringing their names on promotional list "G" by order dated 31.12.2010 and promoting them simultaneously to the rank of Deputy Superintendent of Police in the pay scale Rs. 9300-34800 plus grade pay of Rs. 5400/- with immediate effect. The promotion order is Annexure P-5. There is no dispute that the petitioner is senior to Inspectors falling from serial No. 13 to 17 (Private Respondents).

3. Mr. Yadav relies on the ratio culled in Union of India Vs. K.V. Jankiraman, etc. etc., to contend that when a Government servant is deprived of promotion for no fault of his or when there is no refusal to discharge duties of the higher post then the principle of "no work no pay" has no application and consequential deprivation of rights require curing by payment of difference of full salary for the period of forced deprivation of tangible rights to be easily had.

4. For the foregoing, this writ petition was filed on 20.1.2011 claiming promotion with effect from 31.12.2010 with all consequential benefits is allowed. The petitioner retired from service on reaching the age of superannuation on 31.1.2011 as an Inspector.

5. Heard Mr. Jai Vir Yadav, learned counsel for the petitioner and Mr. Harish Rathee, learned Senior DAG, Haryana for the State.

6. Mr. Yadav, submits that the petitioner's supersession on 31.12.2010 in the face of juniors promoted was without just cause or legal justification. Sanction to prosecute the petitioner in FIR No. 44/6.7.2006 was declined by the Director General of Police, Haryana on 10.10.2006. The cancellation report was presented before the trial Court by the State Government through the prosecution department on 11.8.2008. The departmental proceedings had ended in exoneration of the petitioner on 8.1.2008. If the cancellation report remained pending before the trial Court up to 13.1.2012, the date when the FIR was finally cancelled then the period spent from 11.8.2008 to 13.1.2012 could not have been used to deprive promotion on 31.12.2012 when five Inspectors junior to the petitioner were promoted as Deputy Superintendent of Police and who are private respondents. There was no fault on the part of the petitioner. The official

respondents had already applied their mind and found the petitioner innocent in both the domestic enquiry and in the criminal case, by firstly declining sanction in 2006 and then filing cancellation report in 2008. The petitioner was, therefore, intentionally ignored for wrong reasons citing pendency of FIRs as one under process. There is merit in what Mr. Yadav argues. The petitioner was deliberately kept beyond the outskirts of discharging duties of higher status and responsibility in a higher pay scale for which he has been deprived of and disadvantaged in the presence of juniors holding higher office.

7. Mr. Rathee, has nothing substantial to urge before this Court in defence of the in-action of the respondents in ignoring the petitioner for promotion despite mandatory notice served. Resultantly, this writ petition is allowed. For the reasons afore-stated a direction is issued to the official respondents to consider opening sealed cover, if any, of the consideration by the Departmental Promotion Committee that led to promotion of juniors on 31.12.2010 and in case sealed cover procedure was not followed, then to consider promoting the petitioner as Deputy Superintendent of Police by deeming fiction holding with effect from the date the admitted juniors were promoted and to do so within 30 days of receipt of a certified copy of this order. In the event of promotion being accorded the impugned order dated 31.12.2010 be corrected and the petitioner's name be inserted at Serial No. 12-A above Inspector Sukhbir Singh, RR/98-respondent No. 4 and to give all consequential benefits including full arrears of difference of salary with effect from 31.12.2010; re-fixation of last pay drawn by issuing fresh Last Pay Certificate for purposes of pension. The arrears of re-calculated pension and pensionary benefits including DCRG etc. as a result of honours bestowed and paid to the petitioner within two months from the date of receipt of a certified copy of this order. The redrawn seniority list as ordered by this Court in the post instructed by then be circulated with the name of the petitioner at the appropriate place in the cadre of Superintendents of Police and a copy sent to the petitioner within the time frame allowed for quick response. In that event the petitioner would also be entitled to interest on monetary dues payable under this order with effect from the date of filing of the writ petition i.e. 20.1.2011 *ex debito justitiae* through omnibus prayer (b) even though interest on payments withheld is not specifically claimed in prayer (a) @ 6% per annum simple, this Court can step in to put the petitioner to the position when money due was denied. The State would have liberty to recover interest component of this order from erring officers too busy in feathering their own nests in abject apathy of their lesser mortals in lower ranks.