

(2016) 05 P&H CK 0363
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 25278 of 2014 (O&M)

Kuldeep Kaur

APPELLANT

Vs

Punjab and Haryana High Court

RESPONDENT

Date of Decision : 31-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

High Court Establishment (Appointment and Conditions of Service) Rules, 1973 — Rule 10, 19(4)

Punjab Civil Services (Punishment and Appeal) Rules, 1970 — Rule 10

Citation : (2016) 3 RSJ 414

Hon'ble Judges : Ritu Bahri, J.

Bench : Single Bench

Advocate : Mr. Ashwani Kumar Bura, Advocate, for the Petitioner; Mr. Raman B. Garg, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Ritu Bahri, J.(Oral)—Petitioner is seeking directions for quashing of the proceedings of the meeting held on 19.01.2011 (Annexure P-10) whereby her claim for retrospective promotion to the post of Clerk has been rejected and order dated 21.05.2012 (Annexure P-13) whereby her representation has also been rejected.

2. Petitioner was appointed on the post of Restorer in the Punjab and Haryana High Court on 25.04.1995. She was served with a memorandum dated 15.01.2007 by the Assistant Registrar (Establishment) to explain her position regarding missing of affidavit from CRM No.56285 of 2006 in CRM-M No.40117 of 2006. She submitted her reply dated 18.10.2007 (Annexure P-2) to the memorandum dated 15.01.2007. The stand taken in the reply was that she was a Restorer and was posted as Decision Clerk in the Criminal Branch. The petitioner was assigned the duties to page mark the file of the decided cases before sending these cases for consignment to Record Room. The case file of the above-said case was received at the first instance by the Institution Clerk, who

after going through the orders passed therein marked the case to the dealing Assistant. The dealing Assistant prepared the docket and thereafter the case file was sent to her for consignment to the record room. Petitioner verified that case and there was no fault on her part in performance of her official duties. The petitioner became eligible for promotion to the post of Clerk by virtue of Rule 19(4) of the High Court Establishment (Appointment and Conditions of Services) Rules 1973.

3. The name of the petitioner figured in the list along with other restorers, who were eligible for promotion to the post of Clerk in the year 2008, as per the RTI information (Annexure P-3). The petitioner name was figured at Sr. No.61. In the meeting held on 22.07.2008, the case of the petitioner along with four other Restorers for promotion on the post of Clerks was deferred by the Committee of the respondents as they were facing departmental inquiries at that time. However, the equal number of vacancies be kept reserved for them. The petitioner was given a show cause notice dated 27.05.2009 (Annexure P-5) for minor penalty under Rule 35 of the High Court Establishment (Appointment and Conditions of Services) Rules, 1973 read with Rule 10 of Punjab Civil Services (Punishment & Appeal) Rules, 1970. The petitioner submitted her reply dated 15.06.2009 (Annexure P-6). Finally, vide memo dated 01.09.2009 (Annexure P-7) a penalty of stoppage of one annual increment without cumulative effect was imposed upon Sh. N.S. Tewatia, Dealing Assistant, Sh. Munish Kumar, Clerk and Ms. Kudeep Kaur (petitioner) Restorer. As per the meeting of Establishment-V Committee of High Court took place on 04.09.2009, the case of the Restorers/ Supervisors against eight vacant posts of Clerks was passed over by the Committee on account of imposition of minor penalty.

4. At the same time, the petitioner filed a service appeal against the penalty imposed vide memo dated 01.09.2009 (Annexure P-7) and the same was accepted and the penalty of stoppage of one annual increment without cumulative effect was reduced into a warning to be careful in future. Thereafter, the petitioner made a representation for grant of retrospective promotion and as per the proceedings of the meeting held on 19.01.2011 (Annexure P-10), obtained under the RTI Act, her request for retrospective promotion has been rejected. The petitioner thereafter was promoted on the post of Clerk with immediate effect, vide order dated 27.01.2011 (Annexure P-11).

5. Learned counsel for the petitioner has argued that the respondents have given promotion to Sh. N.S. Tewatia, Dealing Assistant, who was punished along with one annual increment without cumulative effect, vide order dated 01.09.2009 (Annexure P-7). He has been granted promotion on his due date of promotion to the post of Superintendent Grade-II, then Superintendent Grade-I and thereafter promoted on the post of Assistant Registrar. Further the learned counsel has referred to the orders (Annexure P-14) passed in the case of Kanwaljit Singh Walia and Harjeet Kaur-II, who were issued warning of one annual increment without cumulative effective. Thereafter, they were promoted from the date when

official juniors to them have been promoted. Order of imposition of penalty upon Kanwaljit Singh Walia is Annexure P-14 and his promotion order to the post of Senior Assistant is dated 09.07.2014 (Annexure P-15).

6. The stand taken by the respondent(s) in the written statement is that there were eight vacant posts of Clerks, which comprised 5 posts of Clerks (including the post reserved for the petitioner) kept reserved on 30.07.2008 (Annexure P-4). All the 8 posts of Clerks were recommended to be filled up by the 8 Restorers as per Annexure P-8 and the minutes of the meeting of the aforesaid Committee. These 8 officials include 2 officials senior to the petitioner, namely, Ms. Kamlesh Kumari and Mr. Kanwaljit Singh Walia. This recommendation (Annexure P-8) was approved by Hon"ble the then Chief Justice on 14.09.2009 and all the above said persons were promoted as officiating Clerks against the available vacancy, vide office order dated 14.09.2009 (Annexure R-1). The petitioner cannot be promoted as Clerk from that date without reverting one of those 8 persons and he has not impleaded those persons as party in the present writ petition. The petitioner at the same time has rightly been promoted, vide order dated 27.01.2011 (Annexure P-11), on the recommendation made by the Establishment-IV Committee and approved by Hon"ble the then Chief Justice. Even if the punishment of stoppage of one annual increment with cumulative effect is reduced to warning to be careful in future, which would not fully exonerate the petitioner from imposition of minor penalty of "censure" and he could only be considered for promotion on prospective basis from the date after the conclusion of the departmental proceedings as held by the Hon"ble Supreme Court in *State of M.P. v. I.A. Qureshi*, 1998 (9) SCC 261. The petitioner was eligible for promotion to the post of Clerk and was in the zone of consideration at the time of filling up the posts of Clerk in the years 2008, 2009 and 2011. Her name was considered on each occasion and the promotion was deferred in July, 2008 by keeping one post of Clerk reserved for her. However, the said reserved post of Clerk was consumed in September, 2009 when the petitioner was considered again for promotion and ignored. The petitioner thereafter was promoted as Clerk in January, 2011. It is further clarified that Sh. N.S. Tewatia was promoted as Superintendent Grade-II in the month of May, 2007 much prior to initiation of departmental proceedings against him. He was further promoted to the post of Superintendent Grade-I on 14.05.2010 and thereafter he was further promoted to the post of Assistant Registrar in the month of March, 2014 and the petitioner cannot seek any parity with Sh. N.S. Tewatia. The petitioner has been granted promotion as Clerk with immediate effect vide order dated 27.01.2011 (Annexure P-11). It is further explained in the written statement that in the two complaints (one anonymous and another pseudonymous) against Ms. Harjeet Kaur were found to be false on inquiry by the District and Sessions Judge-cum-Registrar (Vigilance), Punjab on 25.09.2008 and the same was accordingly filed by Hon"ble the then Chief Justice on 02.10.2008.

7. Vide order dated 12.04.2016 of this Court, on the oral request made by the petitioner, Sanjiv Kumar, Dimpri Kumar, Raj Rani Sharma, Ashok Kumar and Ms.

Kamlesh Kaur, were also impleaded as respondent Nos.4 to 8 and notices were issued to them. Thereafter, respondent Nos.4 to 8 have filed their respective affidavit stating therein that they have no grievance qua the promotion given to the petitioner to the post of Clerk w.e.f. the date she was entitled for promotion on the basis of her service record and they do not want to pursue the writ petition.

8. The judgment of Supreme Court in *State of M.P. v. I.A. Qureshi*, referred to above by the respondent(s) would not be applicable to the facts of the present case whereby the recommendation for promotion had been made to the DPC. This recommendation were kept in sealed cover during the pendency of the inquiry and in such circumstances the Supreme Court held that the promotion can be granted to an employee only on the prospective basis from a date after the conclusion of the departmental proceedings.

9. The Supreme Court further considering in this case the circular issued by State of Madhya Pradesh whereby the competent authority while considering the punishment of warning was to consider the facts and circumstances under which the warning had been given and then either grant or refuse the promotion. The said circular would not be applicable to the facts of the present case.

10. Reference, at this stage, can now be made to a judgment of Division Bench of this Court in *S.S. Karan v. Punjab and Haryana High Court and others.*, 2015(3) SCT 620 whereby the petitioner was denied the promotion on the ground that the punishment of recordable warning when juniors of petitioner were promoted. The writ petition was allowed and it was held that the minor punishment of warning cannot be taken a bar for promotion.

11. In *Jagir Singh v. State of Punjab and others*, passed in CWP No.16518 of 2008, decided on 15.09.2011, the petitioner was a Senior Assistant and had faced a regular inquiry and thereafter he was exonerated. The disciplinary authority without confronting the petitioner with any "Note of Disagreement" passed an order dated 11th February/5th March, 2003 contrary to the enquiry report. Thereafter, a lenient view was taken and finally the petitioner was issued a warning to remain careful in future. Thereafter, he was denied promotion to the post of Superintendent Gr-II on the basis of above stated minor punishment. While referring to Punjab Government instructions dated 10.12.1993 it was held that the award of Censure may not be any hindrance for promotion/increment. The writ petition was allowed and the petitioner was granted promotion to the post of Superintendent Gr-II with effect from the date when his juniors were promoted with all consequential benefits.

12. In the present case, the petitioner was issued a show-cause notice dated 27.05.2009 (Annexure P-5) for minor penalty under Rule 35 of the High Court Establishment (Appointment and Conditions of Services) Rules, 1973 read with Rule 10 of Punjab Civil Services (Punishment & Appeal) Rules, 1970. A penalty of stoppage of one annual increment without cumulative effect was imposed upon

Sh. N.S. Tewatia, Dealing Assistant, Sh. Munish Kumar, Clerk and Ms. Kuldeep Kaur (petitioner) Restorer, vide memo dated 01.09.2009 (Annexure P-7). The respondents while accepting the appeal filed by the petitioner and the punishment were reduced into a warning to be careful in future. The respondents, however, have granted the benefit of retrospective promotion to Sh. N.S. Tewatia, Dealing Assistant, who was punished along with the petitioner with minor punishment. The same benefit is not extended to the petitioner simply on the ground that 8 persons, who were promoted as Clerks, have not been impleaded as party in the writ petition and the petitioner cannot be promoted as there was no vacant post.

13. In compliance to the order dated 12.04.2016, Sanjiv Kumar, Dimpi Kumar, Raj Rani Sharma, Ashok Kumar and Ms. Kamlesh Kaur, were impleaded and have filed their respective affidavit that they have no grievance qua the promotion given to the petitioner to the post of Clerk with effect from the date she was entitled for promotion.

14. The case of the petitioner is squarely covered by the above-said judgments. Accordingly, the present writ petition is allowed and directions to the respondents to re-consider the claim of the petitioner for promotion from the date when her juniors were promoted, with all consequential benefits, within a period of four months from the date of receipt of certified copy of this order.

15. It is made clear that if the necessary benefits are not granted to the petitioner within the above-said period, then the petitioner would be at liberty to claim the same with 9% interest from the date the benefits due till the payment is made.