
(1999) 04 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14924 of 1998

Mrs. Santosh Kumar Aneja

APPELLANT

Vs

Haryana Seeds Development Corporation Ltd. and others

RESPONDENT

Date of Decision : 07-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 122 PLR 368

Hon'ble Judges : V.K. Bali, J;A.S. Garg, J

Bench : Division Bench

Advocate : R.S. Randhava, for the Appellant; A.K. Pathania, for the Respondent

Judgement

V.K. Bali, J.—Claim for petitioner raked through present petition filed by her under Art. 226 of the Constitution of India is for promotion to the next higher rank from the date her juniors were promoted. Brief facts of the case need a necessary mention.

2. It is the case of the petitioner that she rose to the rank of senior scale Stenographer after having been initially appointed on May 11, 1977 as Stenotypist. In order to augment the family income she sought permission to do some private business which was verbally granted by the Managing Director on February 15, 1984. She was, however, served a memo of charges for doing private business on November 30, 1994. Pursuant to notice aforesaid, she filed her reply on December 30, 1994. She was, however, suspended on March 20, 1995. Thereafter, a notice was issued to the petitioner on May 15, 1996 to show cause as to why action be not taken to dismiss her from service. She submitted her reply to this show cause notice as well on May 21, 1996. The Punishing Authority, vide order dated June 5, 1996 issued a warning to the petitioner to be more careful in future and reinstated her in service but full wages during the suspension period were not allowed. Meanwhile, two juniors to the petitioner, namely, Surinder Bhatia and Mrs. Sunila Kapoor were promoted, subject to outcome of disciplinary proceedings against the petitioner. It is the case of the

petitioner that inasmuch as she was virtually exonerated, she made a representation for being promoted from the date her juniors were promoted to the next higher post and also for grant of full wages during suspension period. This representation of the petitioner was, however, rejected on May 2, 1997. Still not satisfied, the petitioner made yet another representation on July 9, 1997 followed by reminder dated February 27, 1998. She was, however, informed on March 30, 1998 that she was not entitled to promotion with retrospective effect as she had not been fully exonerated. Aggrieved, petitioner submitted an appeal before the Chairman which was rejected on April 28, 1998. It is in these circumstances that the present writ, for the relief, as referred to above, was filed.

3. Pursuant to notice issued by this Court, respondents have entered defence and contested the cause of the petitioner by filing written statement. In the return filed on behalf of the respondent-Corporation, it has, inter alia, been pleaded that the petitioner indulged in trading/business and was a partner of M/s. Apex Enterprises as per partnership deed dated 1-11-1987 and, thus, committed grave misconduct. With a view to afford reasonable and adequate opportunity, explanation of the petitioner was sought vide memo dated October 24, 1994 while confronting her with the incriminating material against her and after finding the explanation of petitioner as not satisfactory, the Punishing Authority decided to initiate disciplinary proceedings against her. She was, thus, charge-sheeted for imposition of major penalty vide memo dated November 30, 1994. Thereafter, regular enquiry was conducted in which the petitioner participated and the Inquiry Officer submitted his report dated December 23, 1995 wherein charges levelled against the petitioner were proved. It has further been pleaded that the petitioner was also heard in person as to why she should not be dismissed from service as proposed in the show cause notice and during the course of hearing on May 31, 1996, the petitioner gave in writing that she started private business at the instance of her husband whom she could not disobey being a devoted Indian wife and requested for mercy and assured that she would never do it again. The Punishing Authority after having considered the written apology and explanation submitted by the petitioner during personal hearing, took a lenient view so that the petitioner is given another opportunity to show more dedication to office work and instead of imposing penalty of dismissal from service, the petitioner was warned to be careful in future. It was also ordered that the salary for the period spent by the petitioner under suspension will be restricted to the subsistence allowance already paid. It is, however, conceded position that the persons junior to petitioner, named above, were promoted during the pendency of disciplinary proceedings against her.

4. Mr. Randhawa, learned counsel for the petitioner, vehemently contends that promotion of juniors to the petitioner, as would be clear from the orders passed on that behalf, was subject to decision of disciplinary proceedings against the petitioner and that inasmuch as the petitioner in ultimate analysis, was given only a warning, it would virtually amount exonerating her from the charges levelled against her. Learned counsel for the respondent-Corporation, however,

contends that it is not a case where petitioner might have been exonerated. Insofar as Inquiry Officer is concerned, he held the charges against the petitioner to be proved and the mere fact that the disciplinary authority had taken a lenient view in the matter, it would not mean that the petitioner had not been punished.

5. We have heard learned counsel for the parties and gone through the records of the case. The only question that needs adjudication in the present case, in our view, is as to whether a simple warning to an employee can result in withholding his/her promotion ? We would have given our independent opinion on the issue but inasmuch as the matter herein is covered by the Government letter bearing No. 5034-2 GS-1-71/32498 dated 18-11-1971, (Para 2(a)(iv)), there is no need to give our independent finding on the issue involved in this case. Relevant para 2(a)(iv) of the letter, referred to above, reads thus :-

"Where on a preliminary investigation of the complaint, a prima facie case has been established against a Govt. employee and he has been served a charge sheet and an Enquiry Officer has been appointed to hold a regular departmental enquiry under Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, or any comparable rule, applicable to the Govt. employee concerned; then he should not be promoted until the enquiry has been completed and he has been exonerated. In a case in which a charge-sheet has been served but the explanation in response to charge-sheet has not been received (and as a result if an Enquiry Officer has been appointed), the case of promotion should be kept pending until decision has been taken as to whether a regular departmental enquiry should or should not be held. If it is decided that such an enquiry should be held, then the Govt. employee should not be promoted until he has been exonerated in the enquiry, if he is ultimately exonerated of all the charges without the imposition of any penalty or is only administered a warning (whether with a copy on the personal file or not), then he should, if otherwise fit for promotion in every respect be promoted with retrospective effect, i.e. from the date on which he was due for promotion and an official junior to him was promoted in case no vacancy was available for the period in question, a temporary post should be created in consultation with the Finance Department and the junior most promoted official should be reverted, if necessary."

6. The averments to the effect that the procedure to be followed in cases where an official whose conduct is subject to enquiry comes for promotion, is provided in Government letter, referred to above, have been made in para 8 of the petition. In corresponding para 8 of the written statement, no reply has been given to the averments made in para 8 of the petition which would amount to admission of the contents of said para. A perusal of para 2(a)(iv) of the letter aforesaid would clearly demonstrate that if an employee is otherwise fit for promotion in every respect he/she should be promoted with retrospective effect, i.e., from the date on which he/she was due for promotion and an official junior to him/her was promoted. It is further provided in the para aforesaid that if no vacancy was available for the period in question, temporary post should be

created in consultation with the Finance Department and the Junior most promoted official should be reverted, if necessary. True, insofar as Enquiry Officer is concerned, he returned a finding of guilt but it was ultimately for the Punishing Authority to consider the quantum of punishment. Concededly, as mentioned above, only warning was given to the petitioner. In view of the Government instructions, referred to above, petitioner is entitled for promotion from retrospective date, i.e., from the date when persons junior to her were promoted. No other point has been raised in this case nor any defence has been projected by the respondents.

7. In view of what has been said above, this petition is allowed and a direction is issued to the respondent Corporation to promote the petitioner from the date persons junior to her were promoted, with all consequential benefits. No orders as to costs.

8. Petition allowed.