
(2014) 10 SHI CK 0039
In the High Court Of Himachal Pradesh
Case No : CWP No. 6967 of 2014-G

Naresh Kumar Vaidya

APPELLANT

Vs

State of Himachal

RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:

Citation : (2014) 10 SHI CK 0039

Hon'ble Judges : Sureshwar Thakur, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : J.L. Bhardwaj, Advocate for the Appellant; Shrawan Dogra, A.G., V.S. Chauhan and M.A. Khan, Addl. A.Gs, Advocate for the Respondent

Judgement

Rajiv Sharma, J.—Petitioner was appointed as a Clerk on 27.3.1984. He completed ten years" of service on 27.3.1994. He was to be placed as Junior Assistant in the pay scale of Rs. 1500-2700. He was served with a charge-sheet on 20.9.1994. The Departmental Promotion Committee met on 21.11.1994. Case of the petitioner was not considered since charge-sheet was issued to him. Penalty of "censure" was imposed upon him. He was again charge-sheeted for willful absence from duty on 18.7.1995. He was imposed minor penalty of stoppage of two increments with effect from 1.3.2000 to 28.2.2002. He was placed as Junior Assistant in the pay scale of Rs. 4400-7000 with immediate effect on 7.10.2002. He made a representation to respondent No. 2 for considering his case with effect from 27.3.1994. The representation was rejected on 30.12.2002. He again made representation on 17.12.2005. It was rejected on 7.8.2007. Petitioner approached the erstwhile Himachal Pradesh Administrative Tribunal for the redressal of his grievance. The original application was transferred to this Court after the abolition of Tribunal and was assigned CWP (T) No. 16535/2008. It was disposed of on 23.3.2010. Petitioner was permitted to make a representation. He made a representation. Petitioner was not informed about the outcome of the representation. He was informed on 22.8.2014 that the representation made by him pursuant to judgment of this Court dated 23.3.2010

stood rejected on 30.11.2010.

2. We have gone through Annexure P-9 dated 30.11.2010. Petitioner was appointed as a Clerk on 27.3.1984. He completed ten years of service on 27.3.1994. He was required to be placed as Junior Assistant immediately after the completion of ten years. Charge-sheet was issued only on 20.9.1994. Between the relevant period, i.e. 27.3.1984 to 27.3.1994, no charge sheet was issued to the petitioner. Petitioner has been imposed penalty of "censure" and minor penalty of stoppage of two increments. Penalties of "censure" and stoppage of two increments were minor penalties. In case the stoppage of two increments was with cumulative effect, it would have been major penalty. According to para 16.13 of the Hand Book on Personnel Matters Volume-I (Second Edition), the imposition of penalty of censure does not stand against the consideration of an employee for promotion.

3. Their Lordships of the Hon"ble Supreme Court in Jagan Narain Vs. Food Corporation of India and Others, have held that the promotion cannot be withheld due to imposition of minor penalty of recovery of amount. Their Lordships have held as under:

"6. Seen in the background of the two Circulars dated 13.12.2001 and 19.12.2001, it is evident that the promotion of petitioner by order dated 24.1.2005 was not the result of any oversight. It should be noticed that as on 24.1.2005, the minor penalty proceeding had come to an end by levying penalty of Rs. 5,000/-. Even as on 8.11.2004 what was pending was only a minor penalty proceeding. Therefore, having regard to the Circulars dated 13.12.2001 and 19.12.2001, neither the pendency of minor penalty proceedings nor the imposition of minor penalty by way of recovery of Rs. 5000/- would come in the way of the employee being considered for promotion or being promoted. It, therefore, follows that there was no justification for cancelling the said promotion dated 24.1.2005. If the appellant was thus entitled to promotion and the cancellation of the promotion was not warranted, the case of the appellant being considered again for the very same promotion and adoption of sealed cover procedure in view of the pendency of subsequent disciplinary proceedings will not arise (vide : Delhi Jal Board Vs. Mahinder Singh, ."

4. Accordingly, in view of the analysis and discussion made hereinabove the writ petition is allowed. Annexure P-5 dated 7.8.2007, Annexure P-9 dated 30.11.2010 and Annexure P-8 dated 22.8.2014 are quashed and set aside. Petitioner shall be deemed to be placed as Junior Assistant immediately after the completion of ten years, i.e. 27.3.1994 notionally for the purpose of pensionary/retiral benefits after re-fixing his pay. Pending application(s), if any, also stands disposed of. No costs.