
(2012) 05 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 12800 of 2011

Satbir Singh Kadian

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Citation : (2013) 1 SCT 281

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : R.K. Malik, with Mr. Mohit Singla, for the Appellant; Harish Rathee, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Augustine George Masih, J.—Petitioner has approached this Court praying for quashing of the order dated 25.5.2011 (Annexure P-13) vide which a punishment has been imposed upon the petitioner which has been made the basis for not confirming him against a permanent post available in the Haryana Forest Service-II (for short HFS-II) cadre. Challenge is also to the order dated 28.2.2011/8.3.2011 (Annexure P-12) vide which punishment of stoppage of one increment with cumulative effect has been imposed upon the petitioner. It is the contention of the counsel for the petitioner that the petitioner was initially appointed as a Range Officer on 1.4.1982 and was promoted as HFS-II on 29.10.1999 vide order dated 19.10.1999. The petitioner was regularized in HFS-II w.e.f. 9.7.1999 vide order dated 17.1.2008. Final seniority list of HFS-II was issued on 5.12.2008 and the name of the petitioner was placed at Sr. No. 19 while one P.S. BIRTHAL was placed at Sr. No. 21 but his date of confirmation has been given as 1.4.2000 to which the petitioner objected stating that since a regular permanent post was available on that date, he should have been confirmed against the same, being senior to P.S. BIRTHAL in the feeder cadre. The reason assigned for not confirming him was the disciplinary proceedings initiated against him under Rule 7 of the Haryana Civil Service (Punishment and Appeal)

Rules, 1987 (for short 1987 Rules) which were pending. This, the counsel for the petitioner contends, is not sustainable on the ground that the charge-sheet was issued to the petitioner on 19.11.2004/10.1.2005. The said chargesheet having been issued after the availability of regular permanent post, the petitioner's claim for confirmation as HFS-II should have been considered against it and he should, in fact, have been confirmed. The same shall have no effect on his confirmation as on 1.4.2000, when the post became available, nothing was against him which would disentitle him to confirmation. This, he submits, on the basis of Rule 12 of the Haryana Forest Department (State Service) Group (B) Rules, 1980 (for short 1980 Rules). He contends that one year probation period has been fixed thereunder and confirmation is to be made from the date when a permanent vacancy occurs if he has been appointed against a temporary post. The maximum period provided for probation under this Rule is three years and even if the maximum period is taken into consideration, although the probation period beyond one year has not been extended, it would expire on 9.7.2002 and till that date, there was no departmental proceedings pending against the petitioner which would disentitle him to confirmation in HFS-II. On this basis, he contends that the order dated 25.5.2011 (Annexure P-13) cannot sustain.

2. As far as the impugned order dated 28.2.2011 (Annexure P-12) is concerned, counsel for the petitioner submits that in a departmental enquiry, which was initiated against him on issuance of the charge-sheet dated 19.11.2004, the Inquiry Officer in his report exonerated the petitioner of the charges. The said report was not accepted by the Punishing Authority and a dissenting note was conveyed to him to which he filed a detailed reply but the same has not been considered by the Competent Authority and a totally non-speaking order dated 28.2.2011 has been passed which, thus, cannot sustain. On this basis, he prays that the present writ petition be allowed.

3. On the other hand, counsel for the respondents submits that the impugned orders are in accordance with law as on the day when the case of the petitioner was considered for confirmation, the departmental proceedings were pending against him. He contends that in the light of the pendency of the proceedings, which had been initiated for punishment under Rule 7 of the 1987 Rules and also when the conduct of the petitioner was itself in doubt, there was no question of confirming him in HFS-II. So far as the order of punishment dated 28.2.2011 passed in the departmental proceedings (Annexure P-12) is concerned, he submits that the said order is justified and well reasoned one wherein the facts mentioned above and the conclusion drawn by the Punishing Authority is in accordance with law and, therefore, does not call for any interference by this Court. Accordingly, he prays for dismissal of this writ petition.

4. I have heard counsel for the parties and gone through the records of the case with their able assistance.

5. For decision of the claim for confirmation of the petitioner in HFS-II, Rule 12 of the 1980 Rules needs reference which reads as follows:-

Probation 12. (1) Persons appointed to any post in the service shall remain on probation for a period of two years, if appointed by direct recruitment and one year, if appointed otherwise:

Provided that-

(a) any period after such appointment spent on deputation on a corresponding or a higher post shall count towards the period of probation;

(b) any period of officiating appointment shall be reckoned as period spent on probation, but no person who has so officiated shall, on the completion of the prescribed period of probation, be entitled to be confirmed, unless he is appointed against a permanent vacancy.

(2) If, in the opinion of the appointing authority the work or conduct of a person during the period of probation is not satisfactory, it may,-

(a) if such person is appointed by direct recruitment, dispense with his services, and

(b) if such person is appointed otherwise than by direct recruitment-

(i) revert him to his former post; or

(ii) deal with him in such other manner as the terms and conditions of the previous appointment permit.

(3) On the completion of the period of probation of a person, the appointing authority may,-

(a) if his work or conduct has in its opinion been satisfactory-

(i) confirm such person from the date of his appointment if appointed against a permanent vacancy; or

(ii) confirm such person from the date when a permanent vacancy occurs, if appointed against a temporary vacancy, or

(iii) declare that he has completed his probation satisfactorily if there is no permanent vacancy; or

(b) if his work or conduct has in its opinion been not satisfactory-

(i) dispense with his services, if appointed by direct recruitment, if appointed otherwise, revert him to his former post or deal with him in such other manner as the terms and conditions of previous appointment permit; or

(ii) extend his period of probation and thereafter pass such order, as it could have passed on the expiry of the first period of probation:

Provided that the total period of probation, including extension, if any, shall not exceed three years.

6. A perusal of the above Rule would show that a person appointed other than by direct recruitment shall have a probation period of one year. The maximum period provided for probation is 3 years. On completion of the period of probation, if the work or conduct, in the opinion of the Appointing Authority is satisfactory, confirmation order of such a person is to be passed from the date of his appointment, if appointed against a permanent vacancy. In case he is appointed against temporary vacancy, he shall be confirmed from the date when a permanent vacancy occurs. If there is no permanent vacancy available, the Appointing Authority shall declare that he has completed his probation period satisfactorily. Provision for extension of the period of probation has also been provided, which can be done by the Appointing Authority on expiry of the first period of probation by passing such an order of extension.

7. Petitioner was promoted as HFS-II on 9.7.1999. The mandated period of probation was one year at the first instance and it is not in dispute that there is no order further extending his probation period. The petitioner, thus, was entitled to confirmation in case a permanent vacancy was available, on completion of one year's service. In case the permanent vacancy is not available, the order of confirmation should have been passed from the date the said vacancy became available. In the present case, as is apparent from the pleadings and the record, a permanent vacancy became available for consideration of the petitioner for confirmation on 1.4.2000. This can be spelt out in the light of the fact that P.S. Birthal, who is admittedly junior to the petitioner, has been confirmed w.e.f. 1.4.2000 meaning thereby that the permanent vacancy being available and a junior having been confirmed on the said post, petitioner had a prior right of confirmation if there was nothing adverse against him either in his work or his conduct.

8. The only thing, which is reflected in the impugned order and the pleadings against the petitioner, is that charge-sheet under Rule 7 of the 1987 Rules was served on the petitioner on 19.11.2004. It has further been stated by the counsel for the respondents that for the year 2003-2004, there are adverse entries in the Annual Confidential Report of the petitioner. But these cannot be made the basis for not confirming the petitioner against a vacant post of HFS-II as no order extending the period of probation beyond one year was passed by the Competent Authority and in any case if the probation period is deemed to have been extended, it could not have gone beyond a period of three years from the date of his promotion which would expire on 9.7.2002 and on which date, there was nothing adverse against the petitioner. If that be so, the impugned order dated 25.5.2011 (Annexure P-13) cannot sustain and is hereby quashed.

9. Moving on to the impugned order of punishment dated 28.2.2011, the same does not indicate any of the grounds which have been taken by the petitioner in his reply against the show cause notice issued to him, which was a dissenting note by the Punishing Authority not accepting the report of the Inquiry Officer exonerating him in the departmental proceedings. When an Inquiry Officer

returns a finding holding the delinquent employee not guilty of the charges levelled against him, the Punishing Authority, if it does not agree with the said findings, is required to give sound reasoning by giving a detailed dissenting note and also to serve a show cause notice upon the delinquent employee. A right to respond to the dissenting note has been conferred on the employee, which the petitioner exercised in the present case. If such a right has been exercised, the Punishing Authority is required to pass a reasoned order considering the pleas taken by the employee in his reply to the show cause notice. In the impugned order dated 28.2.2011, nothing of this kind is mentioned. There is another reason why the pleas taken by the petitioner should have been considered and discussed by the Punishing Authority as no appeal is provided against this order under the Statute where the petitioner can, if such a situation arises as in the present petition, agitate his claim. When a final authority which, in fact, is the Punishing Authority, has to pass such an order of punishment, it is expected, desirable and required in law that the said order should be a speaking order. There is not even a reflection of the pleas taken by the petitioner in his reply in the order of punishment, although it is mentioned that a reply has been filed by the petitioner to the show cause notice. The impugned order is a totally nonspeaking order which cannot, thus, be sustained. Accordingly, order dated 28.2.2011 is hereby quashed. Liberty, however, is granted to respondent No. 1 to pass a fresh well reasoned speaking order.

10. In view of the above, the present writ petition is allowed; impugned order dated 25.5.2011 (Annexure P-13) is hereby quashed qua the petitioner and a direction is issued to the respondents to confirm the petitioner as HFS-II w.e.f. 1.4.2000 i.e. the date person junior to him has been confirmed and in any case from the date the permanent vacancy became available whichever is earlier. This order be passed within a period of two months from the date of receipt of certified copy of the order. It has already been mentioned above while quashing the order dated 28.2.2011 (Annexure P-12) that respondents are at liberty to file a fresh speaking order in accordance with law.

11. At this stage, counsel for the petitioner submits that a reference has been made with regard to his Annual Confidential Report for the period 2003-2004 being adverse, which he submits has not been conveyed to the petitioner till date. This fact is not disputed by the counsel for the respondents. A direction is, thus, issued to respondents that the petitioner shall be conveyed the adverse confidential report for the year 2003-2004, if any, within a period of two months from the date of receipt of certified copy of this order. If there is none, this fact be also conveyed to the petitioner within the above stipulated time of two months.