

Before Rajiv Narain Raina, J.

JASMER SINGH—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No.1454 of 2011

July, 11 2013

Constitution of India, 1950 - Art.226 - Punjab Police Rules, 1937 (as applicable to Haryana) - Standing Order 127 - Petitioner claimed promotion to post of Exemptee Head Constable on completion of 12 years qualifying service, which were on 22.9.2004 - Before his promotion a penalty of stoppage of two annual increments without permanent effect imposed for accepting illegal gratification - two increments restored and the punishment order had run its length on 30.8.2008 - Petitioner claimed promotion as 2 constables junior to him were promoted on 4.6.2009 - representation for promotion rejected for reason that as per Standing Order 127, the integrity of the petitioner could not be certified - challenge to rejection of representation - Held that even though the punishment had run its course, the substratum of the charge remains - Integrity could not be certified - Writ Petition dismissed.

Held, that in a case of imposition of minor penalties such as withholding of increments without cumulative effect, the substratum of the charge proven through the process of regular departmental inquiry does not disappear. There may be charge-sheet cases not involving moral turpitude, graft, corruption and the like, where the effect of minor punishment on promotional chances may have no adverse effect, or are accepted largely watered down. The effect of minor punishment may be different in its impact while considering cases of promotion to selection and non-selection posts. However, the brooding presence of corruption after the period of punishment has run out may be sufficient reason to deny promotion in the case of a Constable when Standing Order No.127 postulates that integrity has to be certified.

(Para 5)

Further held, that I do not think that the Inspector General of Police, Ambala Range has fallen prey to any irrelevant consideration in the decision making process while passing the impugned order. He cannot be faulted when he says that the integrity of the petitioner cannot be certified in the face of charge of corruption proved. It is only the financial benefits which the petitioner was temporarily deprived of has been made available to him by efflux of time. Restoration of pay and allowances has nothing really to do with right to promotion in accordance with rules, to shoulder duties and responsibilities of a higher post and inspire juniors. That is what truly promotion is all about, not just jobbery.

(Para 7)

Arun K. Kaundal, Advocate, *for the petitioner.*

Harish Rathce, Sr. D.A.G. Haryana.

RAJIV NARAIN RAINA, J.

(1) The petitioner claims promotion to the post of Exemptee Head-Constable (for short- EHC) with effect from 1.9.2008 with all consequential benefits since his junior were promoted on that date. 12 years qualifying service is required for promotion. The petitioner completed qualifying service on 22.9.2004. Before his turn for promotion could come, he was imposed a penalty of stoppage of two annual increments without permanent effect. The penalty was imposed following a regular inquiry into his conduct of taking money from one Praveen Kumar during checking of buses by the Police.

(2) Aggrieved by the punishment order, the petitioner approached this Court in CWP No.4527 of 2009 calling it in question. The writ petition was disposed of on 16.4.2009. The appellate order upholding punishment was set aside and the respondents were directed to pass fresh orders by recording reasons. A fresh order was passed rejecting the appeal. This led the petitioner to file CWP No.14714 of 2009. This writ petition was dismissed. The punishment order was upheld as no ground for interference was found made out. This Court also addressed the grievance of the petitioner with respect to his non-promotion and observed that during the currency of the punishment, the petitioner could be ignored.

(3) The punishment order had run its length on 30.8.2008. The two increments temporarily withheld stood restored. Two persons junior to the petitioner, namely constables Balkar Singh and Rajinder Kumar were promoted by order dated 4.6.2009

(4) The petitioner made a representation on 26.10.2009 claiming promotion while referring to Standing Order No.127 dated 22.9.2008 issued by Director General of Police, Haryana (DGP, Haryana) which requires an official to have 70% good reports with certified integrity for the last ten years to make him eligible for promotion as IHC. Since his case was not taken up by the department nor considered he again approached this Court by filing CWP No.7471 of 2010. This Court disposed of the case on 27.4.2010 with a direction to the respondents to decide the representation dated 26.10.2009 within a period of two months. In compliance of the order of this Court, the impugned order dated 4.6.2010 has been passed rejecting the request for promotion by reason of imposition of penalty based on allegations of accepting bribe. The Inspector General of Police, Ambala Range, has held that by virtue of imposition of penalty, the integrity of the petitioner cannot be certified as Annual Confidential Reports of policemen at the level of Constables is not maintained. The very fact that the penalty was imposed for taking illegal gratification, and the penalty order having been upheld by this Court in CWP No.14714 of 2009 it would not remove its sting merely because the period of punishment has run out and the increments stand restored. This Court in its order dated 22.9.2009 observed:

"On the basis of a news item published in the newspaper, the petitioner was proceeded against with the allegation that he had taken Rs.500/- as bribe from a person while carrying out checking of the bus. Counsel for the petitioner would refer to the statement given by the complainant to urge that he has not supported the allegation. No doubt, the complainant has partly resiled from his earlier version to say that he could not place the petitioner to be one who has taken this money, but he has supported the allegation that at the time of checking, the money was demanded and paid by him. This version of the complainant has not been fully accepted and the authorities concerned have

taken a view that petitioner was the one who was responsible for checking the bus and hence would be the person against whom these allegations were made. This appreciation on the part of the respondent-authorities cannot be faulted. The court in exercise of writ jurisdiction cannot interfere in re-appreciating the facts and the material on record. The grievance of the petitioner is that he has not been promoted and his juniors so promoted would also not mean much as during the currency of the punishment, the petitioner would rightly be ignored for promotion. No case for interference in exercise of writ jurisdiction, thus, is made out.

The writ petition is accordingly dismissed."

(5) In a case of imposition of minor penalties such as withholding of increments without cumulative effect, the substratum of the charge proven through the process of regular departmental inquiry does not disappear. There may be charge-sheet cases not involving moral turpitude, graft, corruption and the like, where the effect of minor punishment on promotional chances may have no adverse effect, or are accepted largely watered down. The effect of minor punishment may be different in its impact while considering cases of promotion to selection and non-selection posts. However, the brooding presence of corruption after the period of punishment has run out may be sufficient reason to deny promotion in the case of a Constable when Standing Order No.127 postulates that integrity has to be certified. I recall two stanzas of the poem- Missing Dates- by William Empson which I have truly understood today:

*"Slowly the poison the whole blood stream fills,
It is not the effort nor the failure tires.
The waste remains, the waste remains and kills.
It is not your system or clear sight that mills
Down small to the consequence a life requires;
Slowly the poison the whole blood stream fills..."*

(6) When neither the law nor the Punjab Police Rules, 1937 as applicable to Haryana postulate maintaining of ACRs of mercilessly transferable Constables on grounds of exigencies of service and administrative

reasons, then the only relevant material useable against a Constable would remain noting sheets of satisfactory or unsatisfactory work and conduct which should show the man with or without blemish and, therefore, the relevance of punishments imposed in the past become relevant. the waste remains, the waste remains and kills.

(7) I do not think that the Inspector General of Police, Ambala Range has fallen prey to any irrelevant consideration in the decision making process while passing the impugned order. He cannot be faulted when he says that the integrity of the petitioner cannot be certified in the face of charge of corruption proved. It is only the financial benefits which the petitioner was temporarily deprived of has been made available to him by efflux of time. Restoration of pay and allowances has nothing really to do with right to promotion in accordance with rules, to shoulder duties and responsibilities of a higher post and inspire juniors. That is what truly promotion is all about, not just jobbery.

(8) I am also not prepared to accept the argument put forth by Mr. Arun Kaundal, learned counsel appearing for the petitioner that constables Ashok Kumar and Roshan Lal suffered minor penalty of stoppage of one annual increment with temporary effect for accepting illegal gratification stand promoted as EHCs and therefore, the petitioner should be treated in the same manner by this Court. Very often what the administrator can do the Court cannot even think of. That is where the difference lies.

(9) Mr. Rathee, learned Senior Deputy Advocate General, Haryana, points out to the written statement filed that the promotion given to Ashok Kumar has been withdrawn and Roshan Lal is under show cause notice for withdrawal of promotion, and in all probability the final order has been passed.

(10) For the reasons stated above, no ground warranting interference is made out in this petition which is devoid of merit and is dismissed. There will be no costs.