

Before Rajiv Sharma, Rajiv Narain Raina & H.S. Sidhu, JJJ.

**THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH—Appellant**

versus

JASWANT SINGH—Respondent

LPA No.1852 of 2016

Reserved on July 11, 2019

September 3, 2019

Letters Patents – Service matter – Full Bench constituted to decide upon the correctness of ratio in Major Singh Gill 1992 (1) SCT 436 that punishment awarded to an employee in disciplinary proceedings would relate back to the period when the alleged misconduct/offence was committed or detected – On facts, the petitioner was served with a charge sheet in 2000 for the alleged misconduct committed in 1997 – Penalty of stoppage of one increment with cumulative effect was imposed on 07.11.2005 – In appeal it was modified to stoppage of one increment without cumulative effect on 27.04.2012 – The petitioner was not considered for promotion during currency of his punishment from 01.05.2006 to 30.04.2007, afterwards he was promoted as Superintendent Grade-II on 20.08.2007 – He submitted a representation seeking promotion as Superintendent Grade-II from the date his immediate junior was promoted, w.e.f. 21.07.2005, on the plea that his punishment is to relate back to the year of alleged misconduct in 1997 or the date of charge sheet 28.07.2000 – On the representation being rejected, he filed a writ petition which was allowed by learned Single Judge holding that the punishment would relate back to the date of charge sheet, and directed his promotion w.e.f. 21.07.2005, while placing reliance of the judgment in Major Singh Gill case – Held, in Jankiraman case (1991) 4 SCC 109 the Hon’ble Supreme Court firmly ruled against the punishment imposed in disciplinary proceedings relating back to any anterior date and the grant of retrospective promotion from a date prior to imposition of the penalty – The punishment is to take effect from the date it is imposed – The employee is to be considered for promotion taking into account the punishment imposed and the result of the sealed cover – The view has been reiterated in subsequent decisions also – Accordingly, it has necessarily to be held that the judgment in Major Singh Gill case

does not lay down correct law – Appeal allowed by dismissing the writ petition.

Held that, this Full Bench has been constituted consequent on an order dated September 22, 2016, whereby when admitting this Letters Patent Appeal, the Division Bench doubted the correctness of the ratio of the judgment of this Court in Major Singh Gill vs State of Punjab, 1992(1) SCT 436, wherein it had been held that the punishment when awarded to an employee in departmental proceedings “would relate back to the period when the alleged offence/misconduct was committed or in any case when the same was detected.”

(Para 1)

Further held that, the Supreme Court thus firmly ruled against the punishment imposed in disciplinary proceeding relating back to any anterior date and the grant of retrospective promotion from a date before the imposition of penalty. The punishment is to take effect from the date it is imposed and case of the employee for promotion is to be considered taking into account the punishment imposed and the result of the sealed cover.

(Para 34)

Further held that, the view that the claim of consideration for promotion cannot be entertained during the currency of punishment i.e., the period when the punishment was operative and that the punishment would operate only from the date of its imposition on finalization of the departmental proceedings and not from any anterior date has been reiterated in subsequent decisions.

(Para 35)

Further held that, in the light of the aforesaid it has necessarily to be held that the judgment in Major Singh Gill holding that the punishment imposed in departmental proceedings “would relate back to the period when the alleged offence/misconduct was committed or in any case when the same was detected” does not lay down the correct law. The punishment/ penalty takes effect prospectively from the date of its imposition.

(Para 48)

Divya Sharma, Advocate
for the appellant.

Puneet Gupta, Advocate

for the respondent.

HARINDER SINGH SIDHU, J.

(1) This Full Bench has been constituted consequent on an order dated September 22, 2016, whereby when admitting this Letters Patent Appeal, the Division Bench doubted the correctness of the ratio of the judgment of this Court in *Major Singh Gill* versus **State of Punjab**¹, wherein it had been held that the punishment when awarded to an employee in departmental proceedings “*would relate back to the period when the alleged offence/misconduct was committed or in any case when the same was detected.*”

(2) Respondent No.1 was initially appointed as Clerk in Sessions Division Ropar on 03.06.1982. He was given a fresh appointment through proper channel as Clerk in Sessions Division, Chandigarh on 12.10.1983. He was transferred to the High Court on 09.09.1986. He was promoted as Sr. Assistant on 12.05.1989, as Superintendent Grade-II on 20.08.2007 and Superintendent Grade-I on 01.04.2011.

(3) While working as Sr. Assistant he was served with a charge sheet on 28.07.2000 for imposition of major penalty for causing delay in hearing of a case. A regular enquiry was held. Vide order dated 07.11.2005 penalty of stoppage of one increment with cumulative effect was imposed upon him. He preferred service appeal, in which vide order dated 27.04.2012 taking a lenient view the penalty was modified to that of stoppage of one increment without cumulative effect. It was directed that the punishment as imposed should relate back to the date of the order of his punishment.

(4) One Sharda Dogra, the immediate junior of the petitioner in the seniority list, was promoted as Superintendent Grade-II on 21.07.2005. The petitioner was passed over in view of the departmental proceedings pending against him. The said Sharda Dogra was promoted as Superintendent Grade-I on 30.05.2007. The case of the petitioner was not considered as the currency of his punishment was from 01.05.2006 to 30.04.2007. After the expiry of that period the petitioner was promoted as Superintendent Grade-II on 20.08.2007 and Superintendent Grade-I on 01.04.2011.

(5) He submitted representation for modification of the order

¹ 1992(1) SCT 436

dated 27.04.2012 passed in the service appeal to the extent that the punishment imposed on him may relate back to the date of misconduct or to the date of issuance of charge-sheet. The representation was rejected vide order dated 20.09.2012.

(6) He then submitted representation dated 05.10.2012 requesting that he be promoted to the post of Superintendent Grade-II w.e.f 21.07.2005, the date when his immediate junior Sharda Dogra was promoted and that he be granted all consequential benefits including promotions to the post of Assistant Registrar, by taking his penalty of stoppage of one increment without cumulative effect to relate back to the date of alleged commission of the offence i.e the year 1997 or to the date of the issuance of charge sheet on 28.07.2000 i.e when the alleged offence was detected. He wanted that the period of the currency of punishment be reckoned as from 18.04.2000 to 17.04.2001. The representation was rejected vide order dated 11.04.2013.

(7) Aggrieved he filed CWP No.8484 of 2014 which has been allowed. The Ld. Single Judge held that the punishment would relate back to the date of lapse of the petitioner which would be the date of issuance of the charge-sheet i.e., 28.07.2000. He has been directed to be promoted as Superintendent Grade-II w.e.f., 21.07.2005, the date when his junior Sharda Dogra was so promoted with all consequential benefits.

(8) The Ld. Single Judge relied on the decision in *Major Singh Gill* versus *State of Punjab*² where in it was held that the punishment relates back to period when the offence/ misconduct was committed.

(9) The High Court preferred Letters Patent Appeal. The Division Bench vide order dated September 22, 2016 admitted the appeal and stayed the operation of the judgment of the Ld. Single Judge. It felt that the principles laid down in Major Singh Gill's case would require re- consideration.

(10) The following order was passed:

“We have heard learned counsel for the appellant and gone through the record including order dated 27.04.2012 passed by the Appellate Authority on the administrative side whereby a lenient view was taken and punishment was reduced keeping in view the fact that the appellant-employee had suffered for all these years as large number of

² 1992(1) SCT 436

his juniors had been promoted meanwhile. Learned Single Judge vide order under appeal however, has ordered his promotion retrospectively from the date his junior was promoted and all consequential benefits have been granted.

We have also gone through the judgment of this Court in Major Singh Gill vs State of Punjab, 1992(1) SCT 436 relied upon by learned Single Judge. We are of the considered view that principles laid down in Major Singh Gill's case (supra) require reconsideration by a Larger Bench.

Admit.

Let the matter be listed before Larger Bench after obtaining orders from Hon'ble Chief Justice.

Meanwhile, operation of the judgment passed by Learned Single Judge shall remain stayed.”

(11) That is how the matter has been listed before the Full Bench.

State of Punjab vs. Major Singh Gill, 1994(1) SCT 811:

(12) Since the correctness of the ratio of the judgment in case of Major Singh Gill that the punishment imposed in a departmental proceeding would relate back to the period of misconduct or when the misconduct was detected is in issue it would at the outset be necessary to refer to that case.

(13) The facts in the case of Major Singh Gill were that the petitioner therein who belonged to the backward class was appointed as Sub-Divisional Engineer in the Punjab Service of Engineers (Public Works Department) B & R Branch Class-II Service in August 1972. He was confirmed on 6th September, 1974. As per Punjab Service of Engineers Class I PWD (B & R) Rules, 1960, a PSE Class II engineer was eligible for promotion to PSE- Class I after eight years of service and passing a departmental examination. The petitioner therein became eligible for consideration for promotion to PSE Class-I w.e.f., 1.1.1981 on completion of eight years in PSE Class-II. A vacancy for the Backward Class became available w.e.f., 1.1.1985. A meeting of the Screening Committee for consideration of candidates for promotion was held in November and December, 1989. The petitioner however was not considered as there were two enquiries pending against him. One enquiry was for a period after 1985 and was not relevant. The

other enquiry pertained to the period 1973 for which charge-sheet was served upon him in 1975. This enquiry had been completed and it had been tentatively decided to impose punishment of stoppage of one increment with cumulative effect. He assailed his non- consideration for promotion by filing the writ petition. It was contended on his behalf that the enquiry or punishment thereon if imposed would relate back to the year 1973 or at the most to the year 1975 when the chargesheet was served and could not be taken into consideration for promotion w.e.f., 1.1.1985 for which admittedly only 5 years record prior to that date was to be taken into consideration. Ld. Single Judge accepted this contention. It was observed as under :

“XXX XXX XXX

After hearing learned counsel for the parties, I find force in the submission of learned counsel for the petitioner. The punishment when awarded would relate back to the period when the alleged offence/misconduct was committed or in any case when the same was detected. Even if any punishment is awarded to the petitioner now that would relate back to the year 1973 when the alleged misconduct/irregularities took place or the year 1975 when the charge-sheet was served (as it can be said that the irregularities were detected about that time).”

(14) Letters Patent Appeal filed there against was disposed of vide judgment reported as *State of Punjab* versus *Major Singh Gill*³. The judgment of the learned Single Judge was upheld. It was observed as under:-

“7. The position, that thus emerges, is that the only material adverse to Major Singh Gill, in his service record, is this incomplete enquiry, which, even if it were to conclude now, with the awarding of the proposed punishment of the stoppage of one increment, it would relate back to the year 1973 or at any rate 1975, when the charge-sheet was served upon him ”

Relevant Supreme Court decisions :

(15) The view in Major Singh Gill's case, that the punishment imposed in departmental proceedings relates back to the period when the misconduct was committed or when the charge-sheet was filed is

³ 1994(1) SCT 811

not in consonance with the law as settled by the Hon'ble Supreme Court in a long line of cases.

(16) The first case that we may refer to is *Union of India and others* versus *K.V. Jankiraman and others*⁴. A detailed reference to this case may be necessary for not only does it deal with this aspect but it has also been consistently followed in later decisions.

(17) The questions for consideration in before the Supreme Court were spelt out in paragraph 8 of the judgment as under:

“8. The common questions involved in all these matters relate to what in service jurisprudence has come to be known as “sealed cover procedure”. Concisely stated, the questions are:

(1) What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? The “sealed cover procedure” is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Hence, the relevance and importance of the questions.”

The answer of the Supreme Court to Question No.2: “*What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal?*” would substantially answer the question that arises here.

(18) In *Jankiraman's case* the Union of India and the other appellants had challenged the findings recorded by the different Benches of the Central Administrative Tribunal including a judgment of the Full Bench of the Tribunal whereby it had struck down two provisions of Office Memorandum No.22011/1/79. Estt.(A) dated January 30, 1982 issued by the Government of India (Department of

⁴ (1991) 4 SCC 109

Personnel & Training) on the subject of promotion of officers in whose cases “the sealed cover procedure” had been followed but against whom disciplinary/court proceedings were pending for a long time.

(19) In the memorandum the following procedure was laid down:

“3.(i)(a) It may be ascertained whether there is any departmental disciplinary proceedings or any case in a court of law pending against the individual under consideration, or

(b) there is a prima-facie case on the basis of which a decision has been taken to proceed against the official either departmentally or in a court of law.

(ii) The facts may be brought to the notice of the Departmental Promotion Committee who may then assess the suitability of the official(s) for promotion to the next grade/post and for the purpose of this assessment, the D.P.C. shall not take into consideration the fact of the pending case(s) against the official. In case an official is found ‘unfit for promotion’ on the basis of his record, without taking into consideration, the case(s) pending against him, the findings of the D.P.C. shall be recorded in the proceedings. In respect of any other kind of assessment, the grading awarded by the D.P.C. may be kept in a sealed cover.

(iii) After the findings are kept in a sealed cover by the Departmental Promotion Committee subsequent D.P.Cs., if any, held after the first D.P.C. during the period the disciplinary/court proceedings may be pending, will also consider the officer’s case and record their findings which will again be kept in sealed cover in the above manner.

In the normal course, on the conclusion of the disciplinary/court proceedings, the sealed cover or covers may be opened, and in case the officer is completely exonerated i.e. no statutory penalty, including that of censure, is imposed, the earliest possible date of his promotion but for the pendency of the disciplinary/court proceedings against him, may be determined with reference to the position(s) assigned to him in the findings in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The officer concerned may then be promoted, if necessary

by reverting the juniormost officiating person, and he may be given a notional promotion from the date he would have been promoted, as determined in the manner indicated above. But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion.

If any penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the court proceedings against him, the findings in the sealed cover/covers shall not be acted upon. The officer's case for promotion may be considered in the usual manner by the next D.P.C. which meets in the normal course after the conclusion of the disciplinary/court proceedings. The existing instructions provide that in a case where departmental disciplinary proceedings have been held under the relevant disciplinary rules, 'warning' should not be issued as a result of such proceedings. If it is found as a result of the proceedings that some blame attaches to the officer, then the penalty of censure at least should be imposed. This may be kept in view so that no occasion arises for any doubt on the point whether or not an officer has been completely exonerated in disciplinary proceedings held against him."

(20) As per paragraph (iii) of this memorandum after the findings are kept in a sealed cover by the Departmental Promotion Committee due to the pendency of departmental/Court proceedings etc. if any subsequent D.P.C is also held after the first D.P.C. during the period the disciplinary/court proceedings are pending, it was also required to consider the officer's case and keep the findings in a sealed cover.

(21) On the conclusion of the disciplinary/court proceedings, the sealed cover or covers may be opened. In case the officer was completely exonerated and no penalty including that of censure was imposed, the earliest possible date of his promotion, but for the pendency of the disciplinary/court proceedings against him was to be determined with reference to the position(s) assigned to him in the findings in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The officer concerned was to be given notional promotion from that date but no arrears of pay were payable to him for the period of notional promotion preceding the date of actual promotion.

(22) If any penalty was imposed on the officer as a result of the disciplinary proceedings or if he was found guilty in the court proceedings against him, the findings in the sealed cover/covers were not be acted upon. The officer's case for promotion was then to be considered in the next D.P.C. which meets in the normal course after the conclusion of the disciplinary/court proceedings.

(23) The Tribunal struck down the following portion in the second sub-paragraph after clause (iii) of paragraph 3 :

“If any penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the court proceedings against him, the findings in the sealed cover/covers shall not be acted upon”.

(24) It directed that if the proceedings result in a penalty, the person concerned should be considered for promotion in a Review DPC as on the original date in the light of the results of the sealed cover as also the penalty imposed. It was held that his claim for promotion could not be deferred for the subsequent DPCs as provided in the instructions.

(25) It held that deferment of the claim for promotion to the subsequent DPCs amounted to a double jeopardy besides being violative of Articles 14 and 16 of the Constitution.

(26) The Tribunal directed that when an employee is visited with a penalty as a result of the disciplinary proceedings there should be a Review DPC as on the date when the sealed cover procedure was followed and the Review DPC should consider the findings in the sealed cover as also the penalty imposed.

(27) Hon'ble Supreme Court held that the Tribunal was not right in striking down the portion of the second sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum.

(28) It was held that an employee who had been found guilty of a misconduct could not be treated on par with the other employees who were not so guilty. Therefore there was no discrimination, when, in the matter of promotion, he is treated differently. It was further held that an employee could not be rewarded with retrospective promotion from a date when for his conduct before that date he is penalised “*in praesenti*”.

(29) Repelling that the denial of promotion amounted to double jeopardy it held that when an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised,

he could not be said to have been subjected to a further penalty on that account. Denial of promotion to the employee in such circumstances was not a penalty but a necessary consequence of his conduct.

(30) The relevant observations of the Court are as under:

“**29.** According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is

not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second subparagraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal.”

(31) The direction of the Tribunal that when a penalty is imposed on an employee as a result of the disciplinary proceedings there should be a Review DPC as on the date when the sealed cover procedure was followed and the Review DPC should consider the findings in the sealed cover as also the penalty imposed had the effect of relating back the penalty imposed on a later date to the date of first DPC.

(32) This view was not approved by the Supreme Court.

(33) From the observations in Jankiraman's case the following propositions can be taken to have been settled:

- (i) An employee who is visited with penalty in disciplinary proceedings and whose case was kept in a sealed cover cannot be given promotion from the original due date.
- (ii) An employee found guilty of a misconduct cannot be placed on par with the other employees. His case has to be treated differently. There is no discrimination when in the matter of promotion, he is treated differently.
- (iii) Such an employee cannot be given promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. In other words an employee who is held guilty and penalised in departmental proceedings cannot be promoted at least till the date on which he is penalised,
- (iv) By not promoting him till the date on which he is

penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct.

- (v) While considering the case of an employee for promotion the promoting authority can take into consideration the penalty or penalties awarded to the employee in the past and deny him promotion on that ground.
- (vi) The promoting authority can also take into consideration the penalty imposed at a later date in pending departmental proceedings, which are in relation to conduct prior to the date when the authority considers the promotion.

(34) The Supreme Court thus firmly ruled against the punishment imposed in disciplinary proceeding relating back to any anterior date and the grant of retrospective promotion from a date before the imposition of penalty. The punishment is to take effect from the date it is imposed and case of the employee for promotion is to be considered taking into account the punishment imposed and the result of the sealed cover.

(35) The view that the claim of consideration for promotion cannot be entertained during the currency of punishment i.e., the period when the punishment was operative and that the punishment would operate only from the date of its imposition on finalization of the departmental proceedings and not from any anterior date has been reiterated in subsequent decisions.

(36) In *State of T.N. versus Thiru K.S. Murugesan and others*⁵ the respondent was working as Assistant Statistical Officer. The State had initiated proceedings against him for misconduct in the year 1978. By order dated 6-12-1982 punishment of stoppage of three increments without cumulative effect was imposed on him. On appeal the punishment was set aside in August 1984 and re-inquiry was directed. On fresh inquiry, the same punishment was imposed by proceedings dated 6-9-1984. The respondent was not considered for promotion to the post of Deputy Director during the year 1983-84. He filed OA No. 138 of 1991 before the Administrative Tribunal, Madras. The OA was

⁵ (1995) 3 SCC 273

allowed by the order dated 16-6-1993. It directed reconsideration of his case for promotion with effect from 1983-84. Accordingly, his case was considered and he was promoted with effect from 31-8-1988.

(37) The only question before the Supreme Court was whether non-consideration of the respondent's promotion for the year 1983-84 was legal. The Tribunal had held that promotion could not be withheld on account of imposition of the penalty of punishment of stoppage of three increments as it would amount to "double jeopardy".

(38) Allowing the appeal of the State of T.N. Hon'ble Supreme Court held as under:

“5. We find no substance in the contentions. It is already seen that on 6-12-1982, the punishment of stoppage of two increments was imposed and it was in vogue on 6-11-1984, when the list was approved by the Government. The punishment was reiterated after fresh inquiry. Rule 3 of the Rules provides that “promotion to the posts of Director of Statistics, Deputy Director of Statistics shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal”. In other words, the claim of Assistant Statistical Officer for promotion to Deputy Director shall be considered on grounds of merit and ability alone. Unless the seniority is approximately equal, seniority has no role to play and needs to be relegated to the background.

6. A Bench of three Judges of this Court in *Union of India v. K.V. Jankiraman*, (AIR at p. 2018, para 8) considered thus: (SCC p. 123, para 29)

“According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An

employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal.”

7. It would thus be clear that when promotion is under consideration, the previous record forms the basis and when the promotion is on merit and ability, the currency of punishment based on previous record stands as an impediment. Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impermissible under the

Rules and it would be a premium on misconduct. Under these circumstances, we are of the opinion that the doctrine of double jeopardy has no application and non-consideration is neither violative of Article 21 nor Article 14 read with Article 16 of the Constitution.”

(39) In *Union of India* versus *K. Krishnan*⁶, the respondent was a postman. He appeared for the required test for promotion to the Postal Assistants' cadre in which he was successful. Before he could be promoted he was found guilty in a disciplinary proceeding and awarded punishment of withholding of increment in salary for a period of one year and six months. Because of this penalty the decision to promote him was not implemented. He approached the Central Administrative Tribunal. The Tribunal allowed his prayer holding that he was entitled to be promoted with effect from December 1, 1989 with consequential benefits. It was held that the denial of promotion to him amounted to a second punishment which is not permissible.

(40) Hon'ble Supreme Court set aside the judgment observing as under:

“3. The learned counsel for the appellants has relied on the provisions of Rule 157 of the Post and Telegraph Manual — Volume III, which inter alia provides that even where the competent authority considers the candidate fit for promotion in spite of punishment in a departmental proceeding, the promotion shall not be given effect to during the currency of the penalty. The learned counsel for the respondent in reply reiterates the ground mentioned in the impugned judgment.

4. We have considered the matter closely and in our opinion the view taken by the Tribunal both in the impugned judgment and in the earlier decisions holding that as a result of the provisions of Rule 157 forbidding the promotion of a State employee during the currency of the penalty results in a second punishment, is not correct. There is only one punishment visiting the respondent as a result of the conclusion reached in the disciplinary proceeding leading to the withholding of increment, and the denial of promotion during the currency of the penalty is merely a consequential result thereof. The view that a government servant for the

⁶ 1992 Supp (3) SCC 50

reason that he is suffering a penalty or a disciplinary proceeding cannot at the same time be promoted to a higher cadre is a logical one and no exception can be taken to Rule

157. It is not correct to assume that Rule 157 by including the aforementioned provision is subjecting the government servant concerned to double jeopardy. We do not find any merit in the argument that there is no justification or rationale behind this policy; nor do we see any reason to condemn it as unjustified, arbitrary and violative of Articles 14 and 16 of the Constitution of India. On the other hand, to punish a servant and at the same time to promote him during the currency of the punishment may justifiably be termed as self-contradictory. The impugned judgment is, therefore, set aside.

5. It has been stated by the learned counsel for the parties that except for the above punishment, the respondent is fit for promotion and that the currency of the penalty will expire on September 14, 1990. In that view he may be promoted immediately thereafter with effect from September 15, 1990, provided he is not otherwise disqualified for promotion by incurring some other disqualification. The appeal is accordingly allowed but without costs.”

(41) In *Chairman, State Bank of India versus Golak Bihari Dehury*⁷, the respondent was employed in the Junior Management Grade Scale 1 with the appellant-Bank. Disciplinary proceedings were initiated against him. On 12-5-1987 he was imposed penalty of reduction of basic pay by three stages. The appellate authority by order dated 23-7-1989, reduced the punishment to reduction of basic pay by one stage only. The reviewing authority by order dated 29-3-1990, set aside the order of the appellate authority and restored the original punishment of reduction of basic pay by three stages.

(42) The respondent was not considered for promotion to Middle Management Grade Scale II (hereinafter referred to as ‘MMGS-II’) with effect from 1-8-1986 in view of the debarment policy followed by the appellant-Bank in the matter of promotions. In relation to the penalty of reduction to a lower stage in a time scale the said policy

⁷ (1996) 7 SCC 63

prescribed:

“1. Reduction to a lower stage in a time scale.— The officer is not eligible for consideration for promotion till the rigour period is over i.e. till the pay is restored to the level before the punishment.”

(43) The respondent filed writ petition challenging the order of punishment as also his non-consideration for promotion to MMGS-II with effect from 1-8-1986. The High Court held that the non-consideration of the respondent for promotion to MMGS-II during the period the punishment was operative resulted in violation of the right under Article 16 of the Constitution. It was held that punishment awarded to the respondent in the disciplinary proceedings did not in any way disentitle him from being considered for promotion to MMGS-II with effect from 1-8-1986 if he was otherwise eligible for being so considered. He was accordingly directed to be considered for promotion. In appeal Hon'ble Supreme Court held as under:

“7. The only question which requires consideration is whether in pursuance of the debarment policy laid down by the appellant-Bank, the respondent has been rightly excluded from consideration for promotion on account of the penalty of reduction of pay being operative when such promotion came up for consideration. This question has been considered by this Court in *Union of India v. K. Krishnan*. In that case the punishment of withholding of increment in salary for a period of one year and six months had been imposed on the employee and as a result of the said penalty the employee, who was successful at the test for promotion prior to the imposition of penalty, was not promoted in view of Rule 157 of the Post and Telegraph Manual— Vol. III which provided that even where the competent authority considers the candidate fit for promotion in spite of punishment in a departmental proceeding the promotion shall not be given effect to during the currency of the penalty. This Court, after referring to the said Rule, has observed : (SCC p. 52, para 4)

“We have considered the matter closely and in our opinion the view taken by the Tribunal both in the impugned judgment and in the earlier decisions holding that as a result of the provisions of Rule 157 forbidding the promotion of a State employee during the currency of the penalty results in

a second punishment, is not correct. There is only one punishment visiting the respondent as a result of the conclusion reached in the disciplinary proceeding leading to the withholding of increment, and the denial of promotion during the currency of the penalty is merely a consequential result thereof. The view that a government servant for the reason that he is suffering a penalty or a disciplinary proceeding cannot at the same time be promoted to a higher cadre is a logical one and no exception can be taken to Rule 157. It is not correct to assume that Rule 157 by including the aforementioned provision is subjecting the government servant concerned to double jeopardy. We do not find any merit in the argument that there is no justification or rationale behind this policy; nor do we see any reason to condemn it as unjustified, arbitrary and violative of Articles 14 and 16 of the Constitution of India. On the other hand, to punish a servant and at the same time to promote him during the currency of punishment may justifiably be termed as self-contradictory.”

8. Similarly, in *Union of India v. K.V. Jankiraman*, this Court has laid down : (SCC p. 123, para 29)

“An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct.”

9. Having regard to the law laid down in the aforesaid decisions, we are of the view that the action of the appellant-Bank in not considering the respondent for promotion to MMGS-II during the currency of the penalty of reduction in basic pay that was imposed on him cannot be held to be violative of his right guaranteed under Article 16 of the

Constitution of India and the High Court was not justified in interfering with the said decision of the appellant-Bank on that ground. The directions given by the High Court for considering the case of the respondent for promotion to MMGS-II with effect from 1-8-1986 cannot be sustained and are, therefore, set aside. The appeal is allowed accordingly. No costs.”

(44) In *L. Rajaiah* versus *Inspector General of Registration & Stamps, Hyderabad*⁸, Hon'ble Supreme Court held that when seniority-cum-fitness is the criteria, imposition of the penalty of stoppage of increment dis-entitled the employee to be considered for promotion during the currency of the said punishment as during such currency he was under disability undergoing punishment. It was observed as under:

“4. A reading thereof clearly indicates that notwithstanding anything contained in special ad hoc rules, all promotions to non-selection category or grade shall, subject to the provisions of Rule 16, may be made in accordance with seniority-cum-fitness unless promotion of a member has been withheld as a penalty. Though due to stoppage of increment, he is not ineligible for consideration for promotion, he is otherwise entitled to be considered in accordance with the rules, namely, seniority-cum-fitness. However, when seniority-cum-fitness is the criteria, the imposition of the penalties for one year on 1-3-1988 and in another enquiry, stoppage of increment for five years from 1-3-1989, i.e., till 28-2-1994, dis-entitled him to be considered; so he did not regain fitness for consideration for promotion as he was under disability undergoing punishment. Consequently, when the promotion to the post of Senior Assistant is on the basis of merit and ability under special rules, fitness is one of the considerations for the purpose. Since he was undergoing punishment during the relevant period, he is not eligible for consideration for promotion. Therefore, his juniors have stolen march over the appellant as Senior Assistants. He cannot thereby have any grievance. However, he is entitled to be considered for promotion according to rules after 1-3-1994.”

⁸ (1996) 8 SCC 246

(45) In *Union of India* versus *B. Radhakrishna*⁹, the respondent was working as Junior Accountant in the Postal Accounts Services of the Government of India (Karnataka Division). By order dated 17-12-1985 passed in departmental proceedings penalty of withholding of increment for a period of two years was imposed on him. On the recommendation of the DPC he was promoted as Senior Accountant by order dated 11-11-1987 with effect from 01.04.1987. Subsequently, by order dated 23-05-1994 the said order was modified and the promotion of the respondent was made effective from 01.03.1988, i.e. from the date on which the penalty of withholding of increment ceased to operate. Aggrieved by that order he filed a petition (OA No. 1117 of 1994) before the Central Administrative Tribunal, Bangalore Bench. The said petition was allowed by the Tribunal. The Tribunal has held that the respondent was promoted to the functional post in November 1987 with effect from 01.04.1987 and that since he had discharged the functions of that post it would be unjust and arbitrary to reopen the matter after a long lapse of time and revise the date of promotion. The Tribunal directed that the date of promotion of the respondent be maintained as 01.04.1987.

(46) The Union of India appealed before the Supreme Court. The contention of the Union of India was that the earlier order dated 11.11.1987 promoting the respondent as Senior Accountant w.e.f. 01.04.1987, on which date the punishment of withholding of two increments imposed on him was operative was not correct and that it had been rightly rectified by granting promotion w.e.f. 01.03.1988, i.e. the date on which the said punishment ceased to operate was accepted. The appeal was allowed. The judgments of the Tribunal quashing the order dated 23.05.1994 altering the date of promotion of the respondent as Senior Assistant from from 01.04.1987 to 01.03.1988 was set aside.

The Hon'ble Court observed as under:

“5. The learned counsel for the appellants has invited our attention to the judgment of this Court in *Union of India v. K. Krishnan*. In that case this Court was dealing with the provisions of Rule 157 of the Posts and Telegraphs Manual, Vol. III, which provides that even where the competent authority considers the candidate fit for promotion in spite of punishment given in a departmental proceeding the promotion shall not be given effect to during the currency of

⁹ (1997) 11 SCC 698

the penalty. The impugned judgment of the Tribunal in that case was based on the decision in Parveen Kumar Aggarwal. This Court, while setting aside the judgment of the Tribunal, has laid down: (SCC p. 52, para 4)

“4. We have considered the matter closely and in our opinion the view taken by the Tribunal both in the impugned judgment and in the earlier decisions holding that as a result of the provisions of Rule 157 forbidding the promotion of a State employee during the currency of the penalty results in a second punishment, is not correct. There is only one punishment visiting the respondent as a result of the conclusion reached in the disciplinary proceeding leading to the withholding of increment, and the denial of promotion during the currency of the penalty is merely a consequential result thereof. The view that a government servant for the reason that he is suffering a penalty or a disciplinary proceeding cannot at the same time be promoted to a higher cadre is a logical one and no exception can be taken to Rule 157. It is not correct to assume that Rule 157 by including the aforementioned provision is subjecting the government servant concerned to double jeopardy.”

6. The order dated 11-11-1987 promoting the respondent as Senior Accountant with effect from 1-4-1987, on which date the punishment of withholding of two increments imposed on the respondent was operative, was, therefore, not correct and it has rightly been rectified and the promotion has been granted with effect from 1-3-1988, i.e., the date on which the said punishment ceased to operate.

7. The respondent, in his written reply, has placed reliance on the decision of this Court in Council of Scientific and Industrial Research v. K.G.S. Bhatt⁴ wherein this Court has laid down that in exercise of its power under Article 136 of the Constitution, the Court normally does not interfere in individual disputes of seniority, promotion, reversion, suspension, pay fixation, etc. It is no doubt true that normally this Court does not interfere in such matters but having regard to the facts of this case, we are of the view that the Tribunal was in error in setting aside the order dated 23-5-1994 altering the date of promotion of the respondent

from 1-4-1987 to 1-3-1988 and, since it is likely to affect other employees, we are of the view that it is a fit case which calls for interference by this Court under Article 136 of the Constitution. The impugned judgments of the Tribunal dated 2-3-1995 passed in OA No. 1117 of 1994 and dated 7-9-1995 passed in RA No. 59 of 1995 are, therefore, set aside insofar as the quashing of the order dated 23-5-1994 altering the date of promotion as Senior Accountant from 1-4-1987 to 1-3-1988 is concerned. The respondent will, however, not be required to refund the excess amount received by him towards the pay for the post of Senior Accountant in respect of the period from the date he worked as Senior Accountant after the passing of the order of promotion dated 11-11-1987 till 28-2-1988.”

(47) A Division Bench of this Court in *D.S. Jassal* versus *Union of India*¹⁰ after referring to the judgment in *Major Singh Gill's* case held that the observations made therein that the penalty imposed would relate back to the date when the misconduct was committed were made in the special circumstances of the case and no principle of universal application was intended. The relevant observations are :

“16. On a careful perusal of the facts noted in the above case, it was found that 5 years service records prior to the date when the case of the employee was taken up for consideration for promotion had to be evaluated by the DPC. As it would be unjust to direct such an employee to wait for another years from the expiry of currency of penalty to assess his service records, this Court made an observation in the special circumstances of the above case that penalty imposed would relate back to the date when the misconduct was committed. It is to be noted that in the above case this Court has never laid down a principle of law that if an employee who was found guilty and penalized is entitled to promotion retrospectively from the date when the misconduct was committed. The proposition that an employee who was found guilty and penalized should be considered for promotion retrospectively would lead to a situation where he was treated equally with an employee who had put in unblemished service. Such a premium to an

¹⁰ 2016(1) SCT 228

employee who committed misconduct is unknown to service jurisprudence.”

(48) In the light of the aforesaid it has necessarily to be held that the judgment in Major Singh Gill holding that the punishment imposed in departmental proceedings “would relate back to the period when the alleged offence/misconduct was committed or in any case when the same was detected” does not lay down the correct law. The punishment/ penalty takes effect prospectively from the date of its imposition.

(49) Accordingly this appeal is allowed. The judgment under appeal is set aside. The writ petition is dismissed.

Tribhuvan Dahiya