

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/01277/2017

Orders pronounced on: 29.10.2019
(Orders reserved on: 30.09.2019)CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

HC Hushinder Kumar S/o

Late Sh. Brij Pal Singh,

aged 49 years,

working as Head Constable,

U.T. Police, Chandigarh

R/o 2786/B,

Sector 42-C, Chandigarh,

Group C.

By: **MR. SANDEEP SIWATCH, ADVOCATE.**

Applicant

Versus

1. Union of India through the Secretary,

Government of India, Ministry of Home Affairs,

North Block, New Delhi.

2. Chandigarh Administration, Chandigarh through Administrator

3. Inspector General of Police,

Union Territory, Chandigarh Police Headquarters,

Additional Deluxe Building,

Sector 9-D,

Chandigarh.

By: **MR. ARVIND MOUDGIL, ADVOCATE.**

...

Respondents

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of order dated 24.11.2014 (Annexure A-1) and 5.6.2015 (Annexure A-2) vide which the respondents have rejected his representation for promotion as Head Constable from the date, his batch-mates of 1988 were so promoted and prays for grant of promotion from due date, with all consequential benefits like arrears of pay and allowances, seniority etc.
2. The facts of the case, which led to filing of the O.A., and as projected by the applicant, are that applicant was appointed as Constable on 16.5.1988 and confirmed as such w.e.f. 1.4.1992. He was visited with a penalty of stoppage of three increments, on temporary basis, vide order dated 25.8.2009 (Annexure A-3/4). In May/June, 2009, process was initiated for promotion to the post of Head Constable, which is governed by Punjab Police Rules, 1934, and as such Constables were to be sent to Lower School Course (LSC). Even though being within the consideration zone, the applicant was not sent on indicated course due to pointed penalty, though juniors to him (S/Shri Surinder Singh, Gurchetan Pal Singh, Satbir Singh, Kamaljit Singh and Paramjit Singh, who were also visited with major penalties) were sent for such training, including vide order dated 8.6.2009 (Annexure A-5) and 16.10.2009. The case of the applicant in short is that the penalty inflicted upon him was minor one and as such it could not be used to debar him from LSG course for promotion to the post of Head Constable, at par with his batch mates, more so when it has caused double jeopardy to him. Aggrieved thereby, applicant filed O.A.No. 873-CH-2009. In reply, a stand was taken by Administration

that decision had been taken by then that Constables were not required to be deputed for LSC till amendment in Rule 13.7 of Punjab Police Rules, 1934 is carried out. Thus, O.A. was disposed of on 13.11.2009 (Annexure A-6), as infructuous, on the ground that as and when rules are amended and decision is taken to send Constables for LSC, the case of applicant will also be considered.

3. It is only in 2013, that applicant was sent for LSC Course and was promoted as Head Constable, but by this time he had lost his promotion at par with his batch mates of 1988. He submitted a representation for grant of promotion from due date, which was turn down vide order dated 24.11.2014 (Annexure A-1), and further request was also declined on 5.6.2015 (Annexure A-2), on the ground that applicant was sent for LSC course on his turn. The applicant has challenged both these orders, basically on the ground of violation of Articles 14 and 16 of the Constitution of India and seeks parity with his batch mates. Hence, the O.A.

4. The respondents have filed a detailed reply. They submit that the name of applicant was considered with his batch mates in 2009, but he could not be sent on LSC due to pendency of departmental enquiry for taking bribe and doubtful ACRs. The applicant was visited with major punishment of stoppage of three increments vide order dated 25.8.2009. he was deputed for LSC w.e.f. 1.1.2013 vide order dated 1.12.2012 and was promoted as Head Constable vide order dated 11.5.2013. They deny the claim of applicant that he had unblemished record of service.

5. The applicant had also filed an M.A. No. 060/01630/2017 seeking condonation of delay, which was opposed by respondents by filing a

reply. However, a coordinate Bench of this Court had allowed the M.A. vide order dated 1.2.2018, and condoned the delay in filing the O.A.

6. We have heard the learned counsel for the parties at length and examined the pleadings on file with their able assistance.

7. The learned counsel for the applicant vehemently attacked the impugned orders on the ground that in terms of rule 13.8 (A) of the Punjab Police Rules, 1934, only the infliction of a major punishment could be a bar to admission to or retention in lists A, B or C, and in this case, the applicant was visited with a minor penalty of stoppage of 3 increments temporarily and as such it could not be used to deny his participation in LSC Course for promotion as Head Constable, thus, applicant is entitled to promotion at par with his batch mates of 1988 with all the consequential benefits. On the other hand, learned counsel for the respondents vehemently argued that since applicant was visited with major penalty and was undergoing disciplinary proceedings and as such he could not be sent for LSC Course in 2009. As soon as the next batch was sent for training in 2013, the applicant's name was also included in the same and as such it is prayed that O.A. be dismissed.

8. We have considered the submissions of respective counsels minutely.

9. It is apparent from the record that rule 13.8 (a)(1) of Punjab Police Rules, 1934, provides, inter-alia, that the infliction of any major punishment shall be a bar to admission to order retention in lists A, B or C, provided that (a) for special reasons to be recorded by the Superintendent in each case and subject to confirmation by the Deputy Inspector General, this disqualification may be waived and (b) after six months continuous good conduct in the case of censure or confinement

to quarters or expiry of the period, a constable may be re-admitted at the discretion of the Superintendent.

10. The question that arises for our consideration is whether, the applicant was visited with a major or minor penalty. Learned counsel for the applicant placed reliance on a decision of Hon'ble Jurisdictional High Court in C.W.P. No. 8760 of 1989 titled **ISHWAR SINGH VS. DIGP & OTHERS**, rendered on 10.5.2006 in which imposition of punishment of stoppage of two increments temporarily was held to be a minor penalty and as such it was concluded that same could not be used to deny the petitioner therein participation in promotional course, as penalty could be restored after period was over. One cannot have any dispute with regard to proposition of law laid down in the indicated case and the applicant would have succeeded in his claim but it is also equally true that if applicant is allowed any benefit, he would steal a march over other persons, who by virtue of time, have become his seniors. Surprisingly, not even a single person by name has been impleaded as a respondent in the O.A. In the absence of necessary and proper parties, no orders adverse to their interest can be passed by a court of law. This issue is no longer res-integra.

11. In the case of **J.S. YADAV V. STATE OF U.P.** (2011) 6 SCC 570, it has been held that "No order can be passed behind the back of a person adversely affecting him and such an order, if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. ... The litigant has to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection

process, he is bound to implead at least some of the successful candidates in representative capacity."

12. In **VIJAY KUMAR KAUL V. UNION OF INDIA** (2012) 7 SCC 610 it has been ruled that "Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that ***they are senior to the appellants and have been conferred the benefit of promotion to the higher posts.*** In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardize their interest. When they have not been impleaded as parties such a relief is difficult to grant." (emphasis ours).

13. In other decisions as well, it has been clearly ruled that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice.

14. In the wake of aforesaid discussion and legal proposition, this O.A. is dismissed being not maintainable. The parties are, however, left to bear their own costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(MS.ARCHANA NIGAM)
MEMBER (A)**

Place: Chandigarh
Dated: 29.10.2019

HC*