

Before Permod Kohli, J.

KULJINDER SINGH,—Petitioner

versus

**REGISTRAR, PUNJAB AND HARYANA
HIGH COURT,—Respondent**

CWP No. 17930 of 2009

30th August, 2010

Constitution of India, 1950—Art. 226—Enquiry Officer finding Dealing Assistant of High Court responsible for causing delay in listing of an application—Finding of fact based upon appreciation of evidence—No violation of principles of natural justice—No interference in orders imposing penalty of stoppage of increment—Persons junior to petitioner promoted during currency of disciplinary proceedings—Whether denial of promotion from date of his juniors amounts to double jeopardy—Held, no—Petitioner suffered penalty, thus, entitled to promotion only after his punishment is over—However, petitioner held entitled to be considered for grant of proficiency step-up increment and one special (Golden Jubilee) increment.

Held, that there is a specific finding recorded in the enquiry report that the petitioner is responsible for causing the delay of 7½ months. The finding was recorded after discussing the evidence produced before the enquiry officer including the documentary evidence. It is also admitted case of the petitioner that the civil misc. application was marked to him. It is settled principle of law that the High Court, while exercising the power of judicial review, under Article 226 of the Constitution of India, does not sit as a Court of appeal. In exercise of the power of judicial review the High Court can only examine the decision making process and not the decision itself. It is not the case of the petitioner that there has been a violation of principle of natural justice or the order has been passed contrary to any rule or law. Thus, no interference is warranted into the orders passed by the respondents imposing the penalty of stoppage of one increment without cumulative effect.

(Paras 5 & 6)

Further held, that petitioner was awarded punishment of stoppage of one increment,—*vide* order dated 14th March, 2007. Persons junior to the petitioner were promoted during the currency of the disciplinary proceedings i.e. between 2002 to 2007. Penalties suffered by the petitioner came to be completed in the year 2009 when the petitioner became entitled to next increment. He was, accordingly, promoted on 7th May, 2009 after the punishment was over. It is not a case that the petitioner was exonerated in the enquiry which alone could have been a cause for retrospective promotion of the petitioner. Petitioner has suffered the penalty and thus, he could only be promoted after the punishment awarded is over which promotion has been granted to the petitioner. No right of petitioner is infringed nor there is any denial of promotion at any stage.

(Paras 7& 8)

Amit Jhanji, Advocate, *for the petitioner.*

Rajesh Garg, Advocate, *for the Respondents.*

PERMOD KOHLI, J.

(1) *Vide* impugned order dated 19th January, 2009, penalty of stoppage of one increment, without cumulative effect, for causing delay of about 7½ months in getting Civil Misc. No. 27834 of 2001 listed for hearing was imposed upon petitioner. A service appeal preferred by the petitioner came to be dismissed by the Hon'ble Administrative Judge,—*vide* order dated 19th January, 2009 (Annexure P 14). Order was communicated to the petitioner,—*vide* letter dated 18th May, 2009.

(2) Besides challenging the aforesaid order, the petitioner is also seeking his promotion from the date his juniors were promoted to the post of Superintendent-Gr. II. An Additional relief of proficiency step-up increment is also claimed.

(3) Briefly stated, the facts leading to the filing of this petition are :

- (i) The petitioner was appointed as Clerk on 21st April, 1982 in the Hon'ble Punjab and Haryana High Court. He was promoted as Senior Clerk in the year 1987 and as Senior Assistant with effect from 12th January, 1995. He was posted in the Writ

Branch in January 1998 and posted on seat defined as 'W-12'. During his posting on this seat, a Civil Misc. No. 27834 of 2001 in Civil Writ Petition No. 1027 of 1995, titled **Ambala Urban Estate Welfare Society versus HUDA and another** was filed on 7th August, 2001 for reconstruction of record of the writ petition. This Civil Misc. Application was marked to the petitioner on 3rd October, 2001.

- (ii) It is stated that Civil Writ Petition No. 1027 of 1995 was to be heard along with two writ petitions in terms of the order dated 30th November, 1995 and the other two writ petitions were pertaining to the seat No. 'W-3' therefore. Civil Misc. No. 27834 of 2001 was also transferred to the said seat. It is further stated that on receipt of the civil misc. application, he found that the main case, i.e. CWP No. 1027 of 1995 stood transferred to the seat No. 'W-2'. He returned the civil misc. application on 8th October 2001 to the civil misc. clerk with the report that this writ petition stands transferred to seat No. 'W-2'.
- (iii) This civil misc. application, however, again sent back to the petitioner on 20th November, 2001. The petitioner claims to have brought this position to the knowledge of the Superintendent (Writ) and Assistant Registrar (Writs)
- (iv) In the meantime, a complaint was lodged to the Hon'ble the Chief Justice on 24th May, 2002. On this complaint, Hon'ble the Chief Justice ordered enquiry for fixing the responsibility. An enquiry was thus constituted which was conducted by Assistant Registrar (Writs) who submitted a detailed enquiry report on 12th September, 2002. Petitioner was held responsible for causing delay in listing the application for reconstruction of record.
- (v) After the aforesaid preliminary enquiry, a chargesheet dated 16th May, 2003 was issued upon the petitioner for causing delay of about 7½ months in getting the Civil Misc No. 27834 of 2001 listed before the Court.

(vi) After receiving the reply from the petitioner, the Enquiry Officer held that the charge against the petitioner was proved,—*vide* his enquiry report dated 24th October, 2006. The petitioner submitted his representation in respect of the enquiry report. The disciplinary authority, however, imposed the penalty of stoppage of one increment without cumulative effect,—*vide* letter dated 14th March, 2007.

(4) Mr. Amit Jhanji, learned counsel appearing for the petitioner has taken me to the report of the preliminary enquiry as also to the main enquiry after the service of chargesheet to argue that the findings against the petitioner are factually incorrect. It has been vehemently argued that petitioner was not responsible for delay in listing of the application in view of the fact that the original writ file of the petition was transferred to another seat and thus, the delay cannot be attributed to the petitioner. His entire argument relate to the validity of the enquiry report. The enquiry report is not under challenge. What has been challenged is the order of imposition of penalty and the order of the appellate authority.

(5) I have also considered the enquiry report. There is a specific finding recorded that the petitioner is responsible for causing the delay of about 7½ months. The finding was recorded after discussing the evidence produced before the enquiry officer including the documentary evidence. It is also admitted case of the petitioner that the civil misc. application was marked to him. It is settled principle of law that the High Court, while exercising the power of judicial review under Article 226 of the Constitution of India, does not sit as a Court of appeal. In exercise of the power of judicial review, the High Court can only examine the decision making process and not the decision itself. It is not the case of the petitioner that there has been a violation of principle of natural justice or the order has been passed contrary to any rule or law. Hon'ble Supreme Court in case titled **Apparel Export Promotion Council versus A. K. Chopra (1)**, has held that in departmental proceedings, the disciplinary authority is the sole judge of facts once the findings of fact based upon appreciation of evidence are recorded, the High Court in writ jurisdiction, may not, normally interfere in those factual findings unless it is found that the recorded findings were based either in no evidence or that the findings were wholly perverse and/

or legally tenable. It is further held that the adequacy or inadequacy of the evidence is not permitted to be canvassed. High Court does not sit as an appellate authority in departmental proceedings while exercising the power of judicial review.

(6) Thus, no interference is warranted into the orders passed by the respondents imposing the penalty of stoppage of one increment without cumulative effect.

(7) This takes the Court to the second relief claimed in the petition regarding promotion from the date persons junior to the petitioner were promoted. Petitioner was awarded punishment of stoppage of one increment, —*vide* order dated 14th March, 2007. Persons junior to the petitioner were promoted during the currency of the disciplinary proceedings, i.e., between 2002 to 2007. Penalties suffered by the petitioner came to be completed in the year 2009 when the petitioner became entitled to next increment. He was, accordingly, promoted on 7th May, 2009 after the punishment was over. It is not a case that the petitioner was exonerated in the enquiry which alone could have been a cause for retrospective promotion of the petitioner. Petitioner has suffered the penalty and thus, he could only be promoted after the punishment awarded is over which promotion has been granted to the petitioner. Mr. Jhanji has argued that the denial of promotion to the petitioner from the date of his juniors amounts to double jeopardy. A similar issue has been considered by the Hon'ble Supreme Court in **State of T. N. versus Thiru K. S. Murugesan (2)** in which, following observations have been made :

“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.”

(Ajai Lamba, J.)

(8) In view of above legal position, no right of petitioner is infringed nor there is any denial of promotion at any stage.

(9) The last prayer of the petitioner for grant of proficiency step-up increment and Golden Jubilee increment has to be conceded and the petitioner cannot be denied these increments if he has completed the requisite period of service. The claim of the petitioner for grant of proficiency step-up increment and Golden Jubilee increments may be considered and if there is no legal impediment, the benefit be released within a period of two months.

(10) This writ petition is partially allowed in respect to the last relief referred to above and dismissed in respect to the other reliefs.
