



CWP-6344-2017

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-6344-2017

Date of Decision: **August 08, 2025**

Rakesh Kumar Garg

.....Petitioner

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Jugam Arora, Advocate for the petitioner.

Ms. Arundhati Kulshreshtha, AAG, Punjab.

HARPREET SINGH BRAR, J. (Oral)

1. The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari/Mandamus* to quash the impugned action of the respondents, in not considering and granting due retrospective promotion on the post of Executive Officer Grade-II and Executive Officer Grade-I to the petitioner from the date his juniors were given promotions, despite his exoneration from the charge sheet dated 23.08.2006. Further, the petitioner is also seeking to be granted benefit of ACP Scheme which was withheld on account of pendency of chargesheet.

2. Briefly, the facts of the case, as alleged, are that, the petitioner, joined the respondent department as Executive Officer Grade-III on 26.04.1999 and was assigned seniority No.12 (Annexure P-1). On 23.08.2006 the petitioner along with 5 others was charge sheeted vide order No.DLG-LGD-2006/24762 on account of irregularity in payment of



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Rs.90,700/-, which was dropped by the Government vide order dated 22.05.2014 (Annexure P-2) based on the report of the enquiry officer dated 30.11.2010 which exonerated the petitioner of the charges. Further, another chargesheet was issued to the petitioner on 30.10.2008 from which he was exonerated vide order dated 12.08.2014 (Annexure P-3).

3. The Government vide order dated 07.08.2008, considered the promotion cases of Executive Officer Grade-III to the posts of Executive Officer Grade-II, considering candidate up to seniority No.14 in the General category where promotion of the juniors were made on provisional basis subject to the right of seniors on account of pendency of chargesheet, that if the seniors were exonerated from the charges the juniors will be reverted. Vide order dated 07.08.2008 (Annexure P-4), case of the petitioner was kept pending on account of pendency of chargesheet 3. The Junior who got promoted to Executive Officer Grade-II was further promoted to Executive Officer Grade-I vide order dated 29.11.2011.

4. The petitioner made representations dated 15.12.2011 and 01.03.2012 for his due promotions and ACP benefit on completion of 4 and 9 years, which were denied on account of pending charge sheets dated 23.08.2006 and 30.01.2008. Post exoneration from the charges, the government granted the petitioner, promotion as Executive Officer Grade-II while not considering his claim for retrospective promotion from date when his juniors were promoted and were granted promotion as Executive Officer Grade-II and thereafter as Executive Officer Grade-I and granting him benefit of ACP on completion of 4 and 9 years in which regard the petitioner



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made several representations dated 18.03.2015, 10.01.2016, 01.09.2016 and 23.01.2017 (Annexures P-9 to P-12).

5. Learned counsel for the petitioner *inter alia* contends that the benefits of promotion and ACP scheme were withheld from the petitioner on the account of pendency of chargesheet which has been dropped and petitioner has been exonerated from the same.

6. Learned counsel for the respondent could not controvert to the fact that the petitioner had been exonerated from the charges on account of which his promotions and benefits were withheld.

7. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that the after the petitioner was devoid of the promotions from the date which his juniors received it along with the benefit of ACP Scheme on account of charge sheets from which he was exonerated.

8. A Three judge Bench of the Hon'ble Supreme Court in *Union of India v. K.V. Jankiraman, (1991) 4 SCC 109* speaking through Justice P.B Sawant made the following observation.

“26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned



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authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so." (emphasis added)

Further, a Two Judge Bench of the Hon'ble Supreme Court in **K. Samba Moorthy v. Sanjiv Chadha** 2025 INSC 110, speaking through Justice K.V. Viswanathan observed that:-

"30. Insofar as promotion with effect from 28.07.2001 for the post of Manager Grade-III is concerned, we order that the appellant should be granted the same with all monetary benefits since the fundamental defect in the enquiry was due to no fault of the appellant. The defect was also accepted by the Bank when they did not press the appeal. The benefit of promotion to Manager Grade-III from 28.07.2001 is covered in the expression "consequential benefits" as ordered in the judgment of the learned Single Judge dated 20.07.2017 in Writ Petition No. 7616 of 2008. We say so on the facts of the present case." (emphasis added)



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9. An employee who has prevailed against flawed disciplinary action must receive all the fruits of that victory, including full consequential benefits and retrospective promotion.

10. In view of the discussion above, the present writ petition is allowed. Accordingly, the respondents are directed to release all consequential promotional benefits accrued to the petitioner with effect from the date his juniors were considered and granted promotion along with benefit accrued to the petitioner under the ACP scheme together with an interest of 6%, within a period of three months from the date of receipt of a certified copy of this order.

11. Pending miscellaneous application(s), if any, shall also stands disposed of.

(HARPREET SINGH BRAR)
JUDGE

August 08, 2025

P.C

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No