



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 1183/2024

Dinesh Kumar Mathur S/o Late Shri S.N.P. Mathur, Aged About
61 Years, R/o 39/4, Pwd Colony, Jodhpur Rajasthan.

-----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary,
Department Of Prsonnel, Government of Rajasthan, Main
Building Secretariat, Jaipur Rajasthan
2. Secretary, Department of Home Affairs, Government of
Rajasthan, Jaipur.
3. Director (II), Police (Wireless), Jaipur Rajasthan.

-----Respondents

For Petitioner(s) : Mr. Ankur Mathur
Ms. Divya Bapna
Ms. Shreshtha Mathur

For Respondent(s) : Mr. B.L. Bhati, AAG, with
Mr. Deepak Chandak

HON'BLE MR. JUSTICE FARJAND ALI

Order

Order pronounced on : 18/10/2024

Order reserved on : 17/09/2024

1. The petitioner has preferred the instant writ petition under
Article 226 of the Constitution of India seeking a direction for the
respondents to grant him promotion on the post of Superintendent
of Police (Wireless) against the vacancy of year 2008-09 and then
consider his case for promotion to the post of Director, Police
Telecommunication.



2. Briefly stated, facts of the case are that the petitioner was initially appointed on the post of Deputy Superintendent of Police in the year 1985 at Police Telecommunication. He was granted promotion to the post of Additional Superintendent of Police in the year 1994. The respondent department offered him promotion to the post of Superintendent of Police (Telecommunication) vide order dated 16.11.2005, however, he forego the said promotion and communicated his non-acceptance, which was accepted vide order dated 03.02.2006. Thereafter, one Jhabbe Singh was given promotion on the said post, who superannuated in the year 2007 and then the post became vacant. As per Rule 28AA of the Rajasthan Police Service Rules, if a person forgoes promotion through written request and if the concerned Appointing Authority accepts his request, the person concerned shall be debarred from consideration for promotion for subsequent two recruitment years for which the Departmental Promotion Committee is held. In pursuance of the said rule, the petitioner's case was not considered for promotion for the next two recruitment years, i.e. 2003-04 and 2007-08. The petitioner was entitled consideration of his case for promotion when the next meeting of the DPC was convened. However, in the meantime, the petitioner faced departmental proceedings which culminated into imposition of penalty of censure vide order dated 13.08.2009. The petitioner faced another departmental proceedings, in which he was subjected to penalty of stoppage of three annual grade increments vide order dated 16.02.2012. Due to pendency of the departmental proceedings, the petitioner was not accorded



promotion in the DPC for the year 2008-09 and 2014-15. Being aggrieved of imposition of penalty of stoppage of three annual grade increments, the petitioner preferred a writ petition bearing S.B. Civil Writ Petition No.9307/2012 before this court, wherein vide order dated 28.03.2014, the order imposing penalty was set aside. The petitioner came to be superannuated w.e.f. 31.07.2017. After his retirement, he was accorded promotion as Superintendent of Police (Wireless) vide order dated 26.02.2020 against the vacancies of the year 2015-16. The case of the petitioner is that since the penalty of stoppage of three annual grade increments has been set aside by this court and the penalty of censure would not come in the way of promotion in his case, therefore, instead of vacancy of 2015-16, he is entitled for promotion to the post of Superintendent of Police (Wireless) for the vacancy of recruitment year 2008-09 after being debarred from promotion in previous two DPCs held for the years 2003-04 and 2007-08. Challenging the action of the respondents in denying him promotion against the vacancy of the year 2008-09, the petitioner preferred an appeal before the Rajasthan Civil Services Appellate Tribunal, Jodhpur, which came to be dismissed vide order dated 23.08.2023 and the review petition preferred against the said order has been dismissed vide order dated 12.09.2023. Hence, the petitioner has approached this court by way of filing the instant writ petition.

3. Learned counsel for the petitioner submits that action of the respondents in denying the petitioner promotion from the date he became entitled is absolutely unjust, arbitrary and illegal. The



sole reason for not according him promotion against the vacancy of the year 2008-09 is the penalty of censure, which was imposed upon him vide order dated 13.08.2009. Learned counsel submits that the penalty of censure would not come in the way of promotion, where the criteria for filling the post has been the seniority or seniority-cum-merit and since the post of Superintendent of Police (Wireless) is a post to be filled in on the basis of seniority and experience, therefore, the petitioner was entitled for promotion to the said post when the DPC for the vacancies of the year 2008-09 was convened. In this regard, learned counsel for the petitioner has placed reliance on the judgment passed by this court in the case of **Rajendra Singh Rao Vs. State of Rajasthan & Ors. [S.B. Civil Writ Petition No.8482/2008 decided on 19.11.2010]**, wherein it is held that the penalty of censure would not be an impediment for promotion in the cases where the sole criteria for promotion is not merit. Learned counsel has also placed reliance upon the judgment delivered by Division Bench of this court in the case of **Shri Ram Khilari Meena Vs. State of Rajasthan and Others - Special Appeal (Writ) No.470/2007 decided on 23.09.2010**. With these submissions, learned counsel prays for acceptance of the writ petition.

4. A reply to the writ petition has been filed on behalf of the respondents. Learned AAG representing the respondents submits that the petitioner had foregone promotion when he was offered the same against the vacancies of the year 2003-2003 and therefore, in terms of Rule 28AA of the Rajasthan Police Service



Rules, he was debarred from consideration for promotion for subsequent two recruitment years for which the Departmental Promotion Committee is held, i.e. 2003-04 and 2007-08. Thereafter, the DPC was held in the year 2008-09 and 2014-15, but the petitioner was not accorded promotion due to pendency of departmental proceedings against him, which culminated into penalty of censure and stoppage of three annual grade increments respectively. Later on when the DPC was held for the vacancies of the year 2015-16, the petitioner was accorded promotion post his retirement vide order dated 26.02.2020. Learned AAG submits that the respondents have acted strictly in accordance with the rules and within the four corners of law and as such, no interference is called for the instant writ petition, which deserves dismissal.

5. I have heard and considered the rival submissions, gone through the material placed on record and the judgment cited by the parties.

6. The admitted facts of the case are that the petitioner was offered promotion to the post of Superintendent of Police, Telecommunication vide order dated 16.11.2005, but due to his personal reasons, he chose to forgo the same and his request was accepted by the department vide order dated 03.02.2006. Rule 28AA of the Rajasthan Police Service Rules provides that in case a person on his appointment by promotion to the next higher post either on the basis of urgent temporary appointment or on regular basis on the recommendation of the Departmental Promotion



Committee, forgoes such an appointment through his written request and if the concerned Appointing Authority accepts his/her request, the person concerned shall be debarred from consideration for promotion (both on the basis or urgent, temporary appointment or on regular basis) for subsequent two recruitment years for which the Departmental Promotion Committee is held and the name of such person who chose to forgo promotion shall not be included in the seniority-cum-eligibility list to be placed before the Departmental Promotion Committee for subsequent two recruitment years. In terms of the said rule, the petitioner was debarred from promotion for the next two DPC, which were held for the vacancies of the year 2003-04 and 2007-08. Meanwhile, the petitioner was subjected to departmental proceedings, in which he was awarded the penalty of censure vide order dated 13.08.2009. The petitioner was subjected to another departmental proceedings, in which he was punished with the penalty of stoppage of three annual grade increments vide order dated 16.02.2012, which he challenged by way filing S.B. Civil Writ Petition No.9307/2012 before this court where he succeeded and the order imposing penalty was set aside. The respondents have clearly mentioned in their reply that the reason for non consideration the case of the petitioner for promotion in the DPC for the years 2008-09 and 2014-15 was pendency of the departmental proceedings.

7. It is well-settled by a catena of judgments including the one cited by the petitioner in the case of **Rajendra Singh Rao Vs. State of Rajasthan (supra)** that the penalty of censure would



not come in the way of promotion, where the criteria for promotion is seniority-cum-merit. Another judgment upon which the learned counsel for the petitioner has placed reliance is in the case of **Shri Ram Khilari Meena (supra)**, wherein after noticing several Apex Court judgments, the Division Bench of this court held as under:-

"In view of settled position of law as noticed above, even if there existed any minor penalty or some minor adverse remark here and there, promotion could not be denied to the appellant because the criteria for promotion in this case as not entirely merit based but was on 'seniority-cum-merit' where seniority has to be given more weightage is compared to merit. In that criteria, even penalty of censure could not be a ground to deny promotion to the appellant because what is to be seen is minimum necessary merit requisite for efficiency of administration and in that view of the matter, a senior person, even though less meritorious, shall have primacy in the matter of promotion and comparative assessment of merit is not required to be made."

8. Coming to the case at hand, the post for which the petitioner is making claim is of Superintendent of Police (Wireless), which is not a post where sole criteria of selection is the merit. The requisites for promotion to the said post are B.E. honours in Electronics or Telecommunication of University established by Law in India or any other academic qualification declared equivalent thereto by the Govt, with 2 years experience in wireless communication system and 5 years service as Addl. S.P. Wireless



provided that if no such officer is available substantive Dy. S.P. Wireless having 10 years experience may be considered. As per the pleadings made in writ petition, the petitioner is possessing the requisite qualifications as well as the experience as required under the rules and since the penalty of censure would not come in the way of the promotion to the said post, therefore, in the considered view of this court, the petitioner became entitled for promotion for the vacancy of the recruitment year 2008-09 at which point of time, he had already been debarred from promotion in the two DPCs held for the vacancies for the years 2003-04 and 2007-08 in terms of Rule 28AA of the Rajasthan Police Service Rules and as has been discussed above, the penalty of censure would not be an impediment for the promotion of the petitioner. Further upon according promotion to the petitioner from the year 2008-09, he would also be eligible for consideration for promotion to the post of Director, Police Telecommunication.

9. In view of the discussion made hereinabove, the instant writ petition deserves to be and is hereby allowed. The respondents are directed to review DPC for the year 2008-09 for promotion to the post of Superintendent of Police (Wireless) to reconsider the case of the petitioner, and if adjudged suitable, ignoring the penalty of censure, to promote him on the post of Superintendent of Police (Wireless) against the vacancy of year 2008-09. The petitioner shall be entitled for all the consequential benefits in pursuance of his promotion. The respondents shall also review the subsequent DPCs for consideration of his case for promotion to the post of Director, Police Telecommunication and if adjudged



suitable, then the same shall be granted to him without delay.
The compliance of this order shall be made within a period of
three months from the date of receipt of a copy of this order.

10. The stay application shall stand disposed of.

11. No order as to costs.

(FARJAND ALI),J

15-Pramod/-