

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

**C.M. No.3800 of 2015 in/and
C.W.P. No.18874 of 2001
Date of Decision : 25.03.2015**

P.S. Saini

..... Petitioner

Versus

Haryana Vidyut Prasaran Nigam Ltd. and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Ashwani Talwar, Advocate
for the applicant-petitioner.

Mr. H.S. Sethi, Advocate
for the non-applicants-respondents No.1 and 2.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

C.M. No.3800 of 2015

For the reasons recorded, the application is allowed.

Replication to the written statement and documents (Annexures P-10 to P-13) are taken on record.

C.W.P. No.18874 of 2001

By this petition the petitioner has claimed two reliefs. First is that he should be promoted as Assistant Engineer and Assistant Executive Engineer from the date his junior, respondent No.3, was so promoted and

the second is for grant of pay and allowances for the said period.

The undisputed facts are that the petitioner was senior to the respondent No.3. In the year 1979 the respondent No.3 was considered for promotion to the post of Assistant Engineer but the petitioner was not so considered because his confidential record for some years was not available. Thereafter the petitioner represented and by order dated 17.03.1999 (Annexure P-1) his plea was accepted and he was granted retrospective promotion as Assistant Engineer from the date his junior was so promoted. The order however denied the payment of pay and allowances from the back date on the ground that there was no vacancy of Assistant Engineer available after 1979.

Learned counsel for the petitioner has argued that the only reason why the petitioner was not considered when his junior was considered was the fact that the respondents had misplaced his annual record and it was only after having realized their mistake that he was granted retrospective promotion from the date his junior was promoted as Assistant Engineer. He has further relied upon document (Annexure P-5) whereby the instructions were issued by the respondents and it had been laid down that when any person is deprived of promotion due to fault of the department the payment of the arrears cannot be denied to him.

In my opinion, this argument has to be accepted. Once the grievance of the petitioner that it was not his fault that his record was not available was accepted and he was given retrospective promotion as Assistant Engineer from the date his junior was promoted, he could not have been denied pay and allowances on the ground that there was no post

available. Had the respondents not misplaced the record of the petitioner he could have been promoted in place of respondent No.3 and this confusion could not have arisen. The applicability of instructions (Annexure P-5) is also undisputed. Consequently, the prayer with regard to pay and allowances w.e.f the date his junior was promoted is liable to be allowed.

Learned counsel for the petitioner has further prayed that he should be promoted as Assistant Executive Engineer from the date when respondent No.3 was promoted.

In this regard, learned counsel for the respondents No.1 and 2 has pointed out that Regulation 11 of PSEB Services of Engineering/Elect. (Recruitment) Regulations-1965 (as applicable to the respondents) states as under:-

“11. APPOINTMENT BY PROMOTION

Appointment by promotion shall be made on the basis of merit and suitability in all respects with due regard to seniority. No officer shall have any claim to promotion as a matter of right on the basis of mere seniority.

Provided that a member of the Service shall not be eligible for promotion to the post of Assistant Executive Engineer and above until he has passed the Departmental Accounts Examination and Safety Code Examination prescribed for Engineering Officers unless exempted by the Board from passing the said examination. The Board may, however, promote an officer, who has not passed the Safety Code Examination, as Assistant Executive Engineer on provisional basis subject to the condition that he shall pass the said examination within a period of 3 months of his promotion or such extended period as may be allowed by the Board.”

Learned counsel for the respondents No.1 and 2 has further

pointed out that as per this regulation, for promotion to the post of Assistant Executive Engineer and above it is mandatory that the employee should have cleared the Departmental Accounts Examination and on the date when respondent No.3 was promoted as Assistant Executive Engineer (after having cleared the said exam) the petitioner had not cleared the exam and as soon as the petitioner cleared the exam in the year 1991 he was given deemed date of promotion from that date.

In my opinion, the stand of the respondents No.1 and 2 has to be accepted. Once the regulation specifically laid down that passing of the exam is a precedent condition for promotion and, on the date the respondent No.3 was promoted he had passed the examination and the petitioner had not passed the said examination, the petitioner can not claim the promotion from the date his junior was promoted. It is undisputed that there was no bar to the petitioner for attempting the said examination. Consequently, this prayer is denied.

In the circumstances, the petition is disposed of in the above terms. The respondents No.1 and 2 are directed to pay the arrears of pay and allowances to the petitioner within three months from the date of receipt of a certified copy of this order, failing which, the petitioner would be entitled to claim the same with interest @ 8% p.a. from the date/s the amount/s fell due till the date/s of payment.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

March 25, 2015

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