

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1171 of 2012

DATE OF DECISION: OCTOBER 29, 2015

RAM PRASAD SINGH

...PETITIONER

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. ASHWANI KUMAR CHOPRA, SR.ADVOCATE
WITH MR. AKSHIT CHAUDHARY, ADVOCATE
FOR THE PETITIONER.

MR. G.S.BAL, SR.ADVOCATE
WITH MS. MANJU SHARMA, ADVOCATE,
FOR RESPONDENTS NO.1 TO 3.

M. JEYAPPAUL, J.

1. Writ petitioner Ram Prasad Singh aggrieved by the dismissal of his Original Application filed before the Central Administrative Tribunal, Chandigarh Bench (for short 'Tribunal') praying for promotion by adjusting him against vacant post of Junior Engineer Grade-II has come forward with the present writ petition.

2. Writ petitioner Ram Prasad Singh who was originally appointed as Casual Khalasi on 22.10.1988 and was later on promoted as Wireman w.e.f. 29.10.1992, applied for the selection post of Junior Engineer Grade-II against 25% Intermediate quota on 19.1.2015. He was selected and posted as Junior Engineer Grade-II as per the posting orders dated 2.1.2008, after he successfully completed relevant training at the Electric Training Centre,

Ghaziabad.

3. One Lukman Ali filed Original Application No.419-HR of 2006 challenging the promotion of the writ petitioner to the post of Junior Engineer Grade-II. The plea of Lukman Ali was that the promotion ought to have been made purely on the basis of merit and not on the basis of common seniority of candidates belonging to different seniority units. Learned Tribunal allowed the Original Application filed by Lukman Ali and directed the Department to give promotion to Lukman Ali in the place of the writ petitioner herein, as Lukman Ali was found fit for promotion based on merit. But learned Tribunal, factoring in the fact that the writ petitioner herein had already qualified the selection and had also undergone training, directed the official respondents to consider the possibility of adjusting him against vacant post of Junior Engineer Grade-II, if available. The above order passed by the learned Tribunal in O.A. 419-HR of 2006 had reached finality.

4. The grievance of the writ petitioner is that the official respondents had not adjusted him against vacant post of Junior Engineer Grade-II as per the directions issued by learned Tribunal in O.A. No.419-HR of 2006. It has also been submitted by the writ petitioner that the official respondents had unjustly declined to enlarge the panel of selection to accommodate the writ petitioner in the light of the above direction issued by the Tribunal.

5. The official respondents have resisted the claim of the writ petitioner on the ground that enlargement of the panel would violate the law

laid down by the Hon'ble Supreme Court. There was no question of considering the candidate against future vacancy other than the notified vacancy, it was contended. The competent authority considered the direction issued by the learned Tribunal in O.A. No.419-HR of 2006 and found that it was no feasible to accommodate the writ petitioner against the existing vacancy by enlarging the panel.

6. Learned Tribunal in the instant case held that in terms of the Instructions issued by the Railway Authorities in October, 1984, enlargement of panel would occasion only in a case where the vacancies had been incorrectly assessed or increase of vacancies had arisen during the process of selection or administrative error had crept-in due to seniority disputes which were decided subsequently. In view of the above, the Tribunal has held that the question of enlargement of panel had not arisen in the instant case and therefore, the writ petitioner cannot claim promotion by adjustment against the vacant post of Junior Engineer Grade-II.

7. Learned senior counsel appearing for the writ petitioner vehemently submitted that there was no question of enlargement of panel to accommodate the writ petitioner against the vacant post as the writ petitioner was not a fresh candidate for selection for promotion. Drawing attention of this Court to the ground reality that the writ petitioner was selected, given training and promoted to the post of Junior Engineer Grade-II, he would submit that the case of the writ petitioner will have to be considered as a class by itself. As it is the admitted position that there had been vacancy as on 10.12.2008 when O.A. No.419-HR of 2006 was

disposed of with a direction to consider the writ petitioner for adjusting him against vacant post of Junior Engineer Grade-II, the writ petitioner can very well be accommodated against such a vacancy without adhering to the elaborate process of selection which would be applicable only for a fresh aspirant to the promotion post of Junior Engineer Grade-II.

8. On the contrary, learned senior counsel appearing for the official respondents contended that the writ petitioner was selected, given training and appointed to promotion post purely based on the seniority he had acquired in service. Learned Tribunal in O.A. No.419-HR of 2006 filed by Lukman Ali had rightly held that promotion should have been given based on merit as per the rule in vogue and not on the basis of common seniority as contended by Lukman Ali. Therefore, the writ petitioner has to apply afresh for the promotion post of Junior Engineer Grade-II and demonstrate his merit to qualify himself for selection against future vacancy. It is his further submission that question of enlargement of the panel against future vacancy would not arise as it would infringe upon the right of other eligible meritorious employees for the promotion post of Junior Engineer Grade-II.

9. There is no dispute to the fact that official respondents found the writ petitioner qualified for selection to the post of Junior Engineer Grade-II. He had undergone 18 months training for the said post on selection. He had also served for more than 1 year in the promotion post of Junior Engineer Grade-II after completion of successful training he had undergone. The writ petitioner had not committed any error in getting the

promotion post of Junior Engineer Grade-II. He was directed to give way for Lukman Ali who filed O.A. No.419-HR of 2006 as a wrong yardstick against the rules was applied by the official respondents while promoting the writ petitioner. In other words, without applying the merit as a basis the official respondents applied the common seniority as a basis for selection to the promotion post of Junior Engineer Grade-II.

10. The question that arises for consideration is whether the writ petitioner should suffer on account of such an administrative lapse committed by the official respondents. Learned Tribunal in O.A. No.419-HR of 2006 has rightly considered the peculiar case of the writ petitioner who had been selected, undergone training for 18 months and served on the promotion post for more than 1 year before directing the official respondents to consider the possibility of adjusting the writ petitioner against vacant post of Junior Engineer Grade-II, if available.

11. As rightly pointed out by learned senior counsel appearing for the writ petitioner, the peculiar case of the writ petitioner is a class by itself. The case of the writ petitioner cannot be equated with a fresh appointee to the promotion post. Such a fresh appointee will have to undergo the rigors of merit test. It would be unjust to ask the writ petitioner who had already qualified the selection, undergone training and served for more than 1 year to the satisfaction of the official respondents, to compete with the fresh aspirants for the promotion post. The above aspects had weighed in the mind of the learned Tribunal while directing the official respondents to consider the possibility of adjusting the writ petitioner against vacant post

while disposing of O.A. No.419-HR of 2006.

12. The above direction had been seriously considered by the Divisional Personnel Officer-I, Northern Railway, Ambala Cantonment. He recommended for promotion of the writ petitioner by enhancing the panel under Annexure P-2. But the General Manager vide Annexure P-3 had observed “*panel can't be enlarged. Court orders may be implemented without enlarging the panel*”.

13. The General Manager had rightly observed that question of enlargement of panel would not arise and therefore, the order passed by the learned Tribunal in O.A. No.419-HR of 2006 be implemented without enlarging the panel. In our considered view, enlargement of panel would arise only in a case where a candidate/employee who was left out from the process of selection had established his right to be considered for promotion by the Selection Committee. Such an enlargement would not arise in a classic case where an employee had already cleared the selection process, undergone lengthy training given to him and served in the promotion post for more than 1 long year. The Appointing Authority after receiving the directions from the General Manager under Annexure P-3 should have positively considered the direction issued by learned Tribunal in O.A. No.419-HR of 2006 and appointed the writ petitioner against the vacancy which had arisen as on 10.12.2008 without insisting upon merit clearance by the writ petitioner through normal process of selection to the promotion post.

14. The official respondents have unnecessarily complicated the

issue by resorting to the normal rules for promotion by enlarging panel when the order passed by learned Tribunal in O.A. No.419-HR of 2006 that official respondents shall consider the possibility of adjusting the writ petitioner against vacant post has reached finality. It is not out of place to mention that the Tribunal had not contemplated clearance of the candidature of the writ petitioner by enlarging the panel. It had only visualized the possibility of adjustment of the writ petitioner against vacant post in the special facts and circumstances of this case.

15. We are of the considered view that the learned Tribunal in the instant case has fallen in error in rejecting the claim of the writ petitioner for promotion in the light of the directions issued by learned Tribunal in O.A. No.419-HR of 2006 on the unjust pretext that there was no possibility of enlargement of panel as contended by the official respondents. It is made clear that the writ petitioner is entitled to promotion without passing the route through the enlargement panel or the regular panel for future vacancies. He has to be adjusted against future vacancy as a special case as directed by learned Tribunal in O.A. No.419-HR of 2006.

16. While exercising plenary power of judicial review, this Court does not give positive directions to appoint a candidate or promote an employee, which function exclusively falls under the domain of the Executive. But in the instant case, we find that there is a lot of unjust resistance put-up by the official respondents in not considering the promotion of the writ petitioner against vacant post in spite of the direction issued by the Tribunal in O.A. No.419-HR of 2006 and very many interim

orders passed by this Court indicating the merit in the claim of the writ petitioner and the obligation of the Executive to promote the writ petitioner against the vacant post, taking it as a classic case under special circumstances. Therefore, this Court has no other go except giving a positive direction to promote the writ petitioner against the vacant post.

17. At this juncture, learned senior counsel appearing for the writ petitioner on instructions submitted that the writ petitioner is prepared to accept the promotion to the post of Junior Engineer Grade-II without claiming arrears of pay and allowances.

18. In view of the above facts and circumstances, we direct the official respondents to promote the writ petitioner notionally w.e.f. the date when first General category vacancy against 25% Intermediate quota had arisen on or after 10.12.2008, with all consequential service benefits except arrears of pay and allowances which he is entitled to on his actual appointment to the promotion post. The above exercise shall be completed by the official respondents within one month from the date of this order.

19. Consequently, the order passed by learned Tribunal is set aside and the writ petition is allowed in the aforesaid terms.

(M. JEYAPPAUL)
JUDGE

October 29, 2015
Gulati

(DARSHAN SINGH)
JUDGE