

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

C.W.P. No.28066 of 2013 (O&M)

Date of Decision: 16.2.2015

V.S. Siwach

...Petitioner

Versus

State of Haryana

.....Respondents

CORAM: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. D.S. Rawat, Advocate for the petitioner.

Mr. Kuldeep Tiwari, Addl. Advocate General, Haryana.

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RAJESH BINDAL, J.

1. The petitioner, who retired as Chief Engineer, Panchayati Raj, has filed the present petition impugning the order dated 12.10.2012, vide which his case for promotion as Chief Engineer w.e.f. 17.3.2007, was rejected.

2. Learned counsel for the petitioner submitted that the petitioner, who was in the Development and Panchayat Department, was promoted on the post of Superintending Engineer (Panchayati Raj) on 17.3.2004. He was the senior most Superintending Engineer to be considered and promoted as Chief Engineer in the Department. One J.S. Dhanda, who was working as Executing Engineer in PWD (B&R), was promoted as Superintending Engineer vide order dated 3.8.2004, by relaxing the minimum qualification required for promotion as Superintending Engineer. Vide order dated 28.2.2007, again after giving relaxation of the experience required for promotion from Superintending Engineer to Chief Engineer, he was promoted as Chief Engineer and immediately on promotion, he was sent on deputation to the Panchayati Raj Department as Chief Engineer, where the petitioner was working as Superintending Engineer and was fully eligible to be considered for promotion as Chief Engineer. Aggrieved against the action of the respondents, the petitioner filed CWP No.1694 of 2009 and the same was allowed by this Court vide order dated 1.5.2009 directing the authorities to consider the claim of the petitioner for promotion as Chief

Engineer w.e.f. 16.3.2007 and, if found suitable, to post him by repatriating J.S. Dhanda. The needful was to be done within a period of three months. The order was not complied with. The petitioner filed COCP No.1532 of 2009 in this Court. In the meantime, the petitioner was conveyed adverse remarks recorded in his ACRs for the years 2007-2008 and 2008-2009 by J.S. Dhanda, where, in all the columns adverse comments had been made. In fact, J.S. Dhanda had access to corridors of powers, as a result of which, he was able to manipulate things. He was biased against the petitioner, hence recorded adverse comments in the ACRs, which was legitimately expunged. In the affidavit dated 5.10.2009 filed in the contempt petition by the respondent, it was stated that the case of the petitioner for promotion will be reviewed after finalization of the disciplinary and criminal proceedings against him. At the same time, when the adverse comments were recorded in the ACRs of the petitioner, he was also charge-sheeted for certain alleged irregularities with respect to work done way back in the years 1996-1998.

3. The State Vigilance Bureau, which had got the FIR registered, failed to file any challan for a period of about five years and ultimately filed a cancellation report, which was accepted on 28.4.2010. The charge-sheet against the petitioner was dropped vide order dated 14.5.2010. It was only thereafter that the petitioner was promoted as Chief Engineer vide order 25.11.2010 w.e.f. 29.4.2010, the date from which he was given additional charge of the post of Chief Engineer, Panchayati Raj. Thereafter, the petitioner filed a representation for ante-dating his date of promotion, but the same was rejected vide impugned order dated 12.10.2012.

4. Learned counsel for the petitioner further argued that the entire sequence of events clearly establish that the efforts of the Department were to deprive the petitioner of the benefit of promotion to the post of Chief Engineer and sole reason therefor was that J.S. Dhanda had been able to manipulate things. Despite being member of different cadre, he had been able to get promotion as Superintending Engineer with relaxation of rules and then as Chief Engineer in the same manner and got himself posted in Panchayati Raj Department depriving the petitioner of his legitimate due. The rights of the petitioner had crystalized, when the earlier writ petition filed by the petitioner was disposed of, wherein a direction was issued to

consider the claim of the petitioner for promotion w.e.f. 16.3.2007. The deputation of J.S. Dhanda was found to be illegal by this Court on the post of Chief Engineer, Panchayati Raj. Conduct of J.S. Dhanda is evident from the fact that he was able to spoil the ACRs of the petitioner and even got charge-sheet issued against him. In both, ultimately nothing came out as all the adverse remarks were expunged and charge-sheet was also dropped. Hence, the petitioner is entitled to be promoted on the post of Chief Engineer w.e.f. 16.3.2007 and to be granted all the benefits, as presently the petitioner has retired from service on attaining the age of superannuation.

5. On the other hand, learned counsel for the State submitted that one FIR No.34 dated 28.10.2005 was registered against the petitioner. As he was facing prosecution, his case for promotion could not be considered. Thereafter, charge-sheet for major penalty was issued to the petitioner and during the pendency thereof, the case of the petitioner could not be considered. He was promoted as Chief Engineer immediately after the departmental as well as criminal proceedings were over. The petitioner cannot claim promotion as a matter of right. No person junior to him was promoted. The petitioner cannot compare his seniority with J.S. Dhanda, as both were members of different cadre. Under these circumstances, the petitioner cannot claim that his date of promotion as Chief Engineer deserves to be ante-dated, especially when he has already retired from service and this is not the case, where any further promotion would be due to the petitioner.

6. Heard learned counsel for the parties and perused the paper book.

7. Some of facts, which are not in dispute, are that the petitioner, who was working in Panchayati Raj Department, was promoted as Superintending Engineer vide order dated 17.3.2004. As per the rules applicable for promotion to the post of Chief Engineer, Panchayati Raj, three years' experience as Superintending Engineer was required. The petitioner was due for consideration for promotion as Chief Engineer on completion of three years of service as Superintending Engineer, i.e. on 17.3.2007. The petitioner was senior most in the Department of Panchayati Raj.

8. J.S. Dhanda, who was working in PWD (B&R) as Executive Engineer, was promoted as Superintending Engineer vide order dated 3.8.2004 after relaxation of rules. Before even he could be eligible for consideration for promotion to the post of Chief Engineer as three years' experience was required on the post of Superintending Engineer, vide order dated 28.2.2007, J.S. Dhanda was promoted as Chief Engineer again after relaxation of rules and was posted on deputation as Chief Engineer, Panchayati Raj.

9. Aggrieved against the action of the authorities, the petitioner impugned the order dated 28.2.2007, vide which J.S.Dhanda was brought on deputation as Chief Engineer, Panchayati Raj, as the petitioner, who was fully eligible to be promoted as Chief Engineer, Panchayati Raj, was available. The writ petition was disposed of on 1.5.2009, directing the State to consider the case of the petitioner for promotion as Chief Engineer w.e.f 16.3.2007 and, if found suitable, to post him thereby repatriating J.S. Dhanda. Needful was to be done within a period of three months. As the order was not complied with, the petitioner filed COCP No.1532 of 2009.

10. As J.S. Dhanda had been discharging the duties of Chief Engineer, Panchayati Raj and the petitioner being Superintending Engineer was working under him, to settle the score as the petitioner had challenged his deputation as Chief Engineer, Panchayati Raj, he recorded adverse remarks in the ACRs of the petitioner for the years 2007-2008 and 2008-2009. Over all assessment was "Average" besides a charge-sheet for major penalty was issued to the petitioner at the same time on 18.9.2009 pertaining to some alleged lapses in the years 1996-1998. Vide order dated 29.9.2009, while referring to the criminal case registered against the petitioner and also the charge-sheet issued against him, it was directed that his case for promotion shall be reviewed after finalization of departmental as well as the criminal proceedings. Affidavit to this effect was filed in the contempt petition.

11. The ACRs of the petitioner from the years 1997-1998 till 2006-2007 had been either "Very Good" or "Outstanding". He has always been graded as an honest officer, as is evident from the order Annexure P-7..

12. For challenging the adverse remarks recorded in the ACRs of

the petitioner for the years 2007-2008 and 2008-2009, the petitioner filed CWP No.18477 of 2009. However, during the pendency thereof, the adverse remarks were expunged by the authorities themselves.

13. In the FIR No.34 of 2005, State vs. Unknown, the State Vigilance Bureau did not file any challan in the court and finally a cancellation report was filed, which was accepted by the learned Magistrate on 28.4.2010. Immediately thereafter, vide order dated 14.5.2010, charge-sheet issued against the petitioner was dropped. Thereafter, vide order dated 25.11.2010, the petitioner was promoted as Chief Engineer, Panchayati Raj w.e.f. 29.4.2010, the date on which he was given additional charge of the post of Chief Engineer. The representation filed by the petitioner for claiming promotion from 17.3.2007 was rejected.

14. No doubt the petitioner was promoted as Chief Engineer vide order dated 25.11.2010 w.e.f. 29.4.2010, but his claim is that he deserves to be promoted so on completion of three years' experience as Superintending Engineer.

15. No doubt, the petitioner has now retired as Chief Engineer, but still has approached this Court seeking a relief that his promotion as Chief Engineer deserves to be ante-dated to 17.3.2007 instead of 29.4.2010, as the petitioner was fully eligible for the post on that day and the post was filled up by bringing a person on deputation from other cadre. The reason assigned by the authorities for declining relief to the petitioner is that the petitioner cannot claim parity with J.S. Dhanda claiming himself to be senior, as both were in different cadres. However, the facts as emerged in the present case are that the petitioner was promoted as Superintending Engineer on 17.3.2004. J.S. Dhanda, who though was working in different cadre, was promoted as Superintending Engineer on 3.8.2004 after giving relaxation in rules as he was not eligible to be promoted on that date. Further despite being not eligible for promotion as Chief Engineer, J.S. Dhanda was again promoted as Chief Engineer after relaxation of rules on 28.2.2007 and was posted on deputation as Chief Engineer, Panchayati Raj depriving the petitioner of his legitimate due, as he was fully eligible for promotion as Chief Engineer. It is not in dispute that the petitioner was senior most Superintending Engineer working in the Panchayati Raj

Department. The stand taken by the State is that the case of the petitioner was considered at the time he became eligible for promotion as Chief Engineer, but was not found fit for good reasons. Rather the subsequent events clearly establish that the entire effort was to favour J.S. Dhanda and deprive the petitioner of his legitimate due by creating hurdles. First was recording of adverse comments in the ACRs of the petitioner for the years 2007-2008 and 2008-2009 which, when challenged could not be defended by the State and had to be expunged. Second was issuance of charge-sheet for certain alleged lapses pertaining to the years 1996-1998, vide order dated 18.9.2009, which was also dropped on 14.5.2010. In the FIR No.34 of 2005, State v. Unknown pertaining to some incident of the years 1996-1998, no challan was ever presented by the State Vigilance Bureau and finally a cancellation report was submitted, which was accepted by the Court on 28.4.2010. The ACRs of the petitioner for all the years 1997-1998 till 2006-2007 as have been referred to in the order (Annexure P-7), were either "Very Good" or "Outstanding". The petitioner was always opined to be an honest officer.

16. In my opinion, the aforesaid facts clearly establish that the entire exercise was done to deprive the petitioner of promotion on the post of Chief Engineer, on the date when it became due. All the hurdles raised had fallen flat. No doubt, later on the petitioner was promoted as Chief Engineer vide order dated 25.11.2010 w.e.f. 29.4.2010. The only question is about his promotion w.e.f. 17.3.2007, after he had completed three years of service as Superintending Engineer and was eligible. Now the petitioner has already retired from service. Only benefit, which he will get is some small increase in the retiral benefits and vindication of his stand and that having served in the Department with full dedication, he has been granted whatever was due to him.

17. The reason assigned in the order declining promotion to the petitioner from the date it was due is not tenable in law. It is not question of comparing seniority of the petitioner vis-a-vis J.S. Dhanda, who was admittedly member of different cadre, but the fact remains that once, the petitioner was available for consideration for promotion to the post of Chief Engineer, instead of granting him his due, a person on deputation was

brought, which was deprecated by this Court in the writ petition filed by the petitioner. The stand in the order that the case of the petitioner was considered from the date, the post fell vacant is a problem, which has been created by the authorities themselves just with a view to shower undue benefit to a favourite. The petitioner cannot be deprived of the benefit due to him on that account as he had been wronged.

18. For the reasons mentioned above, the petition is allowed. The impugned order dated 12.10.2012 (Annexure P-12) declining the promotion to the petitioner as Chief Engineer w.e.f. 17.3.2007, is set aside. The petitioner is held entitled to all benefits from that date.

(Rajesh Bindal)
Judge

16.2.2015
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(Refer to Reporter)