

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

Date of decision: 06.04.2016

CWP No.11722 of 1995

Sarmukh Singh Parmar

...Petitioner

Vs.

The Punjab State Electricity Board, Patiala & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.S.Sihota, Senior Advocate, with
Mr. B.R.Rana, Advocate, for the petitioner.

Mr. Vishal Gupta, Advocate,
for respondents No.1 to 4.

1. *To be referred to the Reporters or not?*
2. *Whether the judgment should be reported in the Digest?*

RAJIV NARAIN RAINA, J. (ORAL)

Long ago while working as Line Superintendent, the petitioner was charge-sheeted for major misconduct. The charge was proven in the enquiry instituted. Procedure was followed and ultimately the disciplinary authority inflicted major punishment on 6th June, 1985 awarding penalty of withholding of two annual increments with future effect. In the meanwhile, persons junior to the petitioner were promoted as Junior Engineer-I in the year 1983 during the currency of the punishment, when the rights of the petitioner stood eclipsed by his own act and conduct pending disciplinary proceedings. The charge against the petitioner was that he remained willfully absent from duty without leave or sanction by the competent authority for the period 18th

May, 1982 to 18th April, 1986 representing cumulatively 1432 days which is rather extraordinary. On reinstatement, the Punjab State Electricity Board (for short 'the Board') passed an order dated 12th January, 1995 (Annex P-4/Pg.19) regularizing the period of absence by treating the same as one on non-duty. The period was also treated as leave without pay and it was ordered that the period will not be counted for his annual increments and other financial benefits.

From this order, Mr. Sihota, learned senior counsel, argues that the petitioner's right to accrued seniority was not taken away and therefore, the petitioner deserves to be promoted from the date when his juniors were promoted in the year 1983. This argument to say the least is fallacious. By regularizing the period of absence and treating the period as one without pay or leave of kind due or even extra-ordinary leave, does not condone the unauthorized absence in order to wipe out the punishment already imposed. These orders were passed only consequential to the imposition of punishment. In support of this legal proposition, learned counsel for the Board has placed reliance and quite rightly on the decision of the Supreme Court in State of Punjab Vs. Dr. P.L.Singla (2008) 8 SCC 469: 2008 (3) SCT 742 to contend that the petitioner would not be entitled to carry seniority conferring on him a right to promotion from a retro date when his rights were mired in controversy, his misconduct under examination.

The further contention of Mr. Gupta is that in case relief is to be given to the petitioner in the manner sought then it would amount to putting a premium on misconduct. In such a case, it would be proper for the competent authority not to confer the benefit of promotion during the period of continuation of proceedings leading to infliction of punishment. For this proposition, the Board relies on the decision in Union of India Vs.

K.V.Jankiraman, AIR 1991 SC 2010 and State of Tamil Nadu Vs. Thiru K.S.Murugesan (1995) 3 SCC 273.

I would, therefore, not find anything wrong in denying promotion to the petitioner from 1983 and till when he was actually promoted in the year 1992 to the post of Junior Engineer-I. Claim for retrospective promotion in the circumstances of the case had ceased to be an enforceable fundamental right with valuable third party rights settling in which are not open to be disturbed. It may be recorded en passant that the petitioner has superannuated from service.

Dismissed.

06.04.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE