

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

**CWP No. 11568 of 2009 (O&M)
DATE OF DECISION :- February 18, 2016**

Vijay Aggarwal and another

...Petitioners

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. D.S. Patwalia, Senior Advocate
with Mr. Kanan Malik, Advocate for the petitioners.

Mr. A.P. Setia, Advocate for U.T. Chandigarh.

Mr. Ajay Kumar Gupta, Advocate for Union of India.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

C.M. No. 799-CWP-2016

Affidavit of Superintending Engineer, Electricity Operation
Circle, Union Territory, Chandigarh is permitted to be placed on record
and the application is allowed accordingly.

CWP No. 11568 of 2009

1. The Writ Petitioners who figured as applicants 1 and 4 before the learned Central Administrative Tribunal aggrieved by the dismissal of their plea to give promotion from the date when it became due to them in accordance with 20% quota meant for them as per Chandigarh Administration Engineering Department, Electricity Circle (Group C), Junior Engineer (Grade-II) Recruitment Rules, 1988 (for short Recruitment Rules, 1988) have come forward with the present petition.

2. The Writ Petitioners have contended that they were appointed as Linemen in the year 1997. As per the Recruitment Rules, 1988, out of 55% earmarked for promotion quota, 20% posts of Junior Engineer-II are required to be made from Linemen with diploma in Electrical with three years experience and remaining 35% are to be bifurcated in different categories who are working as Linemen and Sub Station Attendants but are not in possession of diploma qualifications. The respondents have passed the impugned order dated 10.8.2004 declining to grant the relief to the Writ Petitioners. The applicants being diploma holders who have rendered three years' experience are entitled to be promoted against the specified 20% quota in terms of the recruitment Rules 1988. The respondents intentionally made promotion of five candidates who belong to different category against the quota of the Writ Petitioners by wrongly interpreting the Rules under the impugned order. Infringement of quota prescribed under the Rules is violative of Articles 14 and 16 of the Constitution of India. Therefore, the Writ Petitioners have pleaded that the promotion of the private

respondents is liable to be quashed.

3. The respondents have pleaded in their written statement that the Writ Petitioners are down below in the seniority of Linemen at Sr. No. 240 and 242. Persons who are senior to the Writ Petitioners up to Sr. No. 208 have been promoted as Junior Engineer-II. The employees at Sr. No. 199, 201 and 303 who have acquired higher qualification of diploma in Electrical Engineering are also to be promoted. The private respondents who were earlier Meter Readers were promoted as Linemen against the vacancies which arose before the year 1989 in terms of PSEB Class-III Employees Regulations 1972 as per the order passed by the learned Administrative Tribunal in O.A. No. 296-CH-1990 titled Swaroop Singh and others versus Union of India etc. The private respondents were promoted as Linemen with effect from 10.12.1986 on notional basis, whereas the Writ Petitioners were appointed only in the year 1997. They cannot lay any claim over the vacancies that existed prior to 1997. Therefore, it was contended in the written statement that by no stretch of imagination, the Writ Petitioners could claim their promotions against the vacancies filled by the private respondents on promotion. Further, it was submitted that there are other employees who are much senior to the Writ Petitioners, waiting for promotion against their quota.

4. The learned Tribunal held that the private respondents are senior to the Writ Petitioners, inasmuch as the private respondents were appointed Linemen in the year 1986, whereas the Writ Petitioners who possessed diploma were appointed as Linemen only in the year 1997. It was held by the learned Tribunal that the Writ Petitioners

cannot lay any claim to the vacancies that had arisen prior to their appointment in 1997 as Linemen.

5. The learned Senior Counsel appearing for the Writ Petitioners vehemently contended referring to the Recruitment Rules 1988 that the private respondents who were Linemen with a certificate entitled to only 10% quota should not have been promoted against 20% quota earmarked for Linemen with diploma. Referring to the written statement filed by the official respondents, the learned Senior Counsel appearing for the petitioners further submitted that though Linemen with diploma were entitled to be promoted to the cadre of Junior Engineer Grade-II against their 20% quota out of five vacancies for the post of Junior Engineer Grade-II, three posts have been given to Linemen with a certificate. In other words, Linemen with a certificate have been promoted to the post of Junior Engineer Grade-II against the 20% quota meant for Linemen with diploma. It is his vehement contention that despite the fact that the private respondents were senior to the Writ Petitioners, they cannot march ahead of the Writ Petitioners who were entitled to promotion against five vacancies which fell within the 20% quota earmarked for Linemen with diploma. It was further contended by the learned Senior Counsel for the Writ Petitioners that the official respondents had simply filled up three posts of Junior Engineer Grade-II from Linemen ITI category only in compliance of the orders passed by the learned Administrative Tribunal, whereas there was no positive direction to fill up three vacancies in the post of Junior Engineer Grade-II from Linemen ITI category. Therefore, it is submitted that the promotion of the private respondents be quashed and the Writ

Petitioners be promoted against their 20% quota.

6. The learned counsel appearing for the official respondents vehemently submitted that there are many senior Linemen with diploma waiting for promotion. The Writ Petitioners being junior to them cannot lawfully claim promotion when their seniors have not been promoted. It was further submitted that the private respondents were promoted as Linemen on notional basis with effect from 10.12.1986 whereas the Writ Petitioners were appointed only in the year 1997. Therefore, the Writ Petitioners cannot lay any claim over the vacancies that existed prior to 1997. It is further submitted that the private respondents were appointed only against their quota, inasmuch four posts of Junior Engineer Grade-II had to be filled up from Linemen with certificate. He also brought to the notice of this Court that subsequent to the filing of the Original Application by the Writ Petitioners, they have also been promoted to the cadre of Junior Engineer Grade-II and as such their 20% quota has been completely filled up.

7. As per the Recruitment Rules, 1988, the posts of Junior Engineers Grade-II are to be filled up in different proportions. 40% are to be filled up by direct recruitment failing which by deputation and 55% by promotion out of which 20% is for Linemen with diploma, 10% for Linemen with certificate of ITI and 10% for Linemen with matriculation certificate and remaining 15% for SSA category. The official respondents have come out with particulars of vacancy position of the post of Junior Engineer Grade-II from June 1988 to 20th December, 2004. As per the above particulars, it is found that 32 vacancies of Junior Engineer Grade-II were filled up by the official respondents. 12

vacancies out of the above fell to the quota of 20% meant for Linemen with diploma, out of which only six Linemen with diploma were promoted. But Linemen with certificate from the ITI were entitled to 6 posts of Junior Engineer Grade-II against their 10% quota. But only two Linemen with a certificate were promoted to the Junior Engineer Grade-II post. In other words 6 vacancies for Linemen with diploma and 4 vacancies for Linemen with certificate had to be filled up to complete their respective quota.

8. The fact remains that the private respondents were appointed on promotion to the cadre of Linemen on notional basis with effect from 10.12.1986, whereas the Writ Petitioners were appointed as Linemen only in the year 1997. As rightly pointed out by the learned Tribunal, the Writ Petitioners cannot claim promotion against the vacancies which had arisen prior to their appointment in 1997. Further, the official respondents having considered the fact that the private respondents were far senior to the Writ Petitioners, having put in service as Linemen right from 10.12.1986, chose to promote the private respondents against their 10% quota which was yet to be filled up. It is absolutely wrong to say that the private respondents have been promoted against 20% quota meant for the Writ Petitioners who were Linemen with diploma. The quota of the Linemen with diploma was filled up later and the Writ Petitioners also were promoted against their 20% quota.

9. Of course, as contended by the learned Senior Counsel for the Writ Petitioners, the seniority of various categories of Linemen cannot be taken note of while giving promotion against their respective

quota. But in our considered view, the action of the official respondents giving promotion to the private respondents against their quota which was lying vacant, considering their long length of service compared to the Writ Petitioners, is quite justifiable.

10. The combined seniority list produced by the official respondents discloses that there were many Linemen with diploma far senior to the Writ Petitioners who were not given promotion in terms of the impugned order passed by the official respondents. The Writ Petitioners cannot lawfully claim promotion against 20% quota when their seniors were not promoted against quota.

11. We carefully went through the pleadings of the official respondents. They have specifically stated that out of 12 posts of Junior Engineer Grade-II meant for Linemen with diploma only 6 posts have been filled up and out of 6 posts of Junior Engineer Grade-II meant for Linemen with certificate only 2 posts have been filled up, though 6 posts meant for Linemen with diploma and 4 posts meant for Linemen with certificate were to be filled up. Out of 5 vacancies 2 of the above promotion posts were given to Linemen with diploma against their 20% quota and 3 posts of Junior Engineer Grade-II were given to Linemen with a certificate against their 10% quota. In our considered view, the official respondents have not come out with any incongruous stand from that of the plea set up by them in their written statement before the Tribunal.

12. On a perusal of the entire records, in the background of the pleadings and the submissions made by the counsel appearing on either side, we find that the official respondents have not strictly

followed the principles of quota stipulated in the Recruitment Rules of 1988. In our considered view, the settled position will be completely unsettled if we direct the official respondents to re-work on the promotion and the consequential seniority strictly in accordance with Recruitment Rules of 1988 at this distance of time more especially when the 20% quota earmarked for Linemen with diploma and 10% quota earmarked for Lineman with certificate were completely filled up during the pendency of the proceedings before the Court. At any rate, we direct the official respondents to strictly adhere to the Recruitment Rules of 1988 in future and promote the Linemen of various categories against their quota.

13. In the above facts and circumstances, we find that there is no merit in the Writ Petition and, therefore, the Writ Petition stands dismissed.

**(M. JEYAPPAUL)
JUDGE**

**(RAJ MOHAN SINGH)
JUDGE**

February 18, 2016

p.singh