

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

**CWP No. 13534 of 2014 (O & M)
Date of decision : 16.11.2016**

Sanjeev Mehta and others

.....Petitioners

v.

Uttar Haryana Bijli Vitran Nigam Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present : Mr. Ashwani Talwar, Advocate, for petitioner No. 4

Mr. P.S. Poonia, Advocate, for the respondents

Anupinder Singh Grewal, J. (Oral) :

The petitioners have impugned order dated 19.6.2014 (Annexure P-9), whereby answer sheets of the Departmental Accounts Examination were re-checked and the petitioners were declared failed.

The petition qua petitioners No. 1 to 3 was dismissed as having been rendered infructuous by a coordinate Bench of this Court vide order dated 15.10.2015. The petition survives only qua petitioner No.4, who is being referred to hereinafter as the petitioner.

The petitioner - Andrews Dass was working as an Assistant Engineer in Uttar Haryana Bijli Vitran Nigam Limited (hereinafter referred to as the "UHBVNL"), had appeared in the departmental examination for promotion to the post of Assistant Executive Engineer. Every Assistant Engineer can avail four chances to pass the Departmental Examination in order to be considered for the post of Assistant Executive Engineer. The petitioner is stated to have

appeared in the examination conducted on 22.12.2010, wherein he had qualified in Paper I and II. He appeared in the examination conducted in the December 2011 for paper III and IV and passed the same. As petitioner No.4 had cleared all the four papers, he was promoted as Assistant Executive Engineer vide order dated 16.1.2013. However, the respondents are stated to have received complaints about irregularities committed in the examination held in December 2011 and consequently, re-checking of the answer sheets was conducted wherein the petitioner failed in paper III and IV.

Learned counsel for the petitioner has contended that although the petitioner had duly qualified in the departmental examination, the respondents have erroneously declared him to have failed in Paper III and IV vide order dated 19.6.2014 (Annexure P-9), without affording him any opportunity of hearing. He has further contended that no departmental examination was conducted from September 2014 till 31.8.2015, whereas the petitioner had superannuated from services even though, it is the requirement under the rules that the respondents would conduct the examination twice a year preferably in May and November. Learned counsel has further contended that in the alternative, the petitioner would be eligible for exemption from passing the departmental examination in terms of Punjab State Electricity Board Services of Engineers (Electrical) Recruitment Regulations, 1965 (hereinafter referred to as “Regulations of 1965”), which provides that Assistant Engineers, over the age of 50 years, would be eligible to be considered for exemption from passing the departmental examination provided their services are satisfactory.

Per contra, learned counsel for the respondents has contended that the petitioner had been given adequate opportunity to participate in the

examination and after having availed the same, he had failed to qualify. Thus, he would not be entitled for the relief as prayed for.

I have heard learned counsel for the parties and with their assistance perused the writ petition.

It would be apposite to refer to the Regulations of 1965 (as applicable to UHBVNL), which have been framed while exercising powers conferred by Clause (c) of Section 79 of the Electricity (Supply) Act, 1948.

Regulations 1 and 2 pertaining to Department Accounts Examination are reproduced hereunder :-

“(1) The member of the service, shall be required to pass the Departmental Accounts Examination prescribed for the Engineer Officers/Engineering Subordinates, notified vide order No.26/Reg-35 dated 3.10.88 as amended from time to time.

(2) An Assistant Engineer, will be allowed four chances to clear the Departmental Accounts Examination which can be extended upto six chances by the competent authority which will be granted only in rare and exceptional cases.

Note : (a) An Assistant Engineer, who has crossed the age of 50 years, may be considered for exemption from passing the Departmental Accounts Examination provided he has satisfactory record of service. This power, shall be exercised by the Board on the recommendations of WTM.

(b) When Departmental Accounts Examination is held, an Assistant Engineer, shall be considered to have availed himself of the chance even though, he may not appear in it. However, an examination held within 6 months of the date of recruitment or promotion, as the case may be, shall not be included in the 4 chances referred to in the *ibid* Regulation.”

It is manifest from perusal of Regulation 2 that an Assistant Engineer is permitted four chances which may be extended to six chances by the

competent authority in rare and exceptional cases, to clear the Departmental Accounts Examination.

The petitioner had cleared Paper I and II in the year 2010 and Paper III and IV in the year 2011. Irregularities have been brought to the notice of the respondents regarding the examination held in December 2011 and the respondents had directed the re-checking of the answer sheets. The answer sheets of the petitioner were re-checked and he was declared failed in Paper III and IV vide order dated 19.6.2014, wherein the result of the re-checking of answer sheets is mentioned. It has been stipulated in the order dated 19.6.2014 that candidates, who have failed in the examination after re-checking of the answer sheets, shall be eligible to participate in the examination in September 2014 and in case, they clear the examination conducted in September 2014, the benefits, which they have already availed, would not be withdrawn from them. The petitioner duly appeared in the examination held in September 2014, but he could not qualify the same.

It is, thus, patent that the petitioner had been given adequate opportunity by the respondents to appear in the departmental examination and after having availed of the same, had failed to pass. In such circumstances, it was not necessary to serve a show cause notice to the petitioner before withdrawing the benefit of promotion to the post of Assistant Executive Engineer.

Insofar as the contention of learned counsel for the petitioner that no examination was conducted from September 2014 to August 2015 is concerned, the petitioner cannot derive any benefit therefrom. Although the respondents are required to conduct the examination twice a year but they have

afforded adequate opportunity to the petitioner to participate in the examination conducted in September 2014. It is not the case of the petitioner that he has, in any manner, being discriminated especially, when petitioners No. 1, 2 and 3 had taken the examination in September 2014 and qualified the same.

Therefore, I do not find any infirmity in the impugned order dated 19.6.2014 (Annexure P-9) whereby the petitioner has been declared as failed in Paper III and IV of the departmental examination.

However, I find merit in the contention of learned counsel for the petitioner that the case of the petitioner could be considered by the respondents for granting him exemption in view of Regulation 2 Note (a) as the petitioner has admittedly crossed the age of 50 years and had, in fact, superannuated on 31.8.2015. He is stated to be drawing the pay of Assistant Executive Engineer on the date of his superannuation but his pension has been calculated on the post of Assistant Engineer.

In the case of **R.K. Nirmal v. UHBVNL, CWP No. 4881 of 2013** decided on 2.7.2015, a coordinate Bench of this Court had disposed of the petition with a direction to the respondents to consider the claim of the petitioner therein for exemption in terms of the afore noted regulation.

Similarly, the case of the petitioner too deserves to be considered for exemption. The petitioner would be at liberty to prefer a representation to the respondents for exemption under Note 2 (a). In case the representation is filed, the respondents would consider and decide the same, in accordance with law, within a period of two months from the date of its receipt.

In case the petitioner is found entitled to the exemption, the benefit would enure to him from the date of his original promotion.

The petition stands disposed of accordingly.

(ANUPINDER SINGH GREWAL)
JUDGE

16.11.2016
Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No