

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

**C.W.P. No. 13460 of 2015
Date of Decision:- 30.09.2016**

Er. Darshan Singh Bhullar

...Petitioner

vs.

**The Punjab State Power Corporation
Limited through its Chairman-cum-Managing
Director and another**

...Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Abhishek Singla, Advocate,
for the petitioner.

Mr. Vinod S. Bhardwaj, Advocate,
for the respondents.

DAYA CHAUDHARY, J.

Petitioner has filed the present petition under Article 226 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing impugned order dated 5.2.2015 (Annexure P-17) whereby claim of the petitioner for promotion to the post of Chief Engineer w.e.f. 4.12.2013, after promoting Er. Arun Kumar as Engineer-in-Chief against Roster Point No.11, has been rejected. A further prayer has also been made for quashing of order dated 13.10.2014 whereby respondent No.2 has been promoted against Roster Point No. 471 whereas the said roster point was reserved for the handicapped category. It has also been prayed that a direction be issued to the respondents to maintain roster for the post of Engineer-in-

Chief and operate the same in terms of instructions applicable to the case of the petitioner.

Briefly the facts of the case, as made out in the present petition, are that the petitioner is handicapped having 60% permanent disability. Initially, he was appointed as Trainee Engineer by the Punjab State Electricity Board, which was predecessor of Punjab State Power Corporation Limited (hereinafter referred to as respondent-Corporation) vide letter dated 27.2.1986. Thereafter, he was promoted as Executive Engineer vide order dated 31.3.2005. The petitioner developed physical ailment due to multiple sclerosis and became permanently handicapped having 60% permanent disability as reflected in the handicapped certificate dated 13.6.2003 issued by the Competent Authority. Subsequently, the petitioner was promoted as Sr. Executive Engineer/Additional Superintending Engineer on 31.3.2005. He is aggrieved by the action of the respondents in not promoting him to the post of Chief Engineer in spite of the fact that he was senior-most handicapped employee in the cadre of Superintending Engineers. As per notification dated 23.9.2011 (Annexure P-5), the physically handicapped employees were given 3% reservation in service and roster points were kept reserved for promotional posts including the handicapped employees. Thereafter, another notification was issued on 14.12.2012 (Annexure P-6) which was applicable w.e.f. 6.3.2011. Respondent-Corporation adopted the said notification vide circular No. 12/2012 to the effect that reservation was to be provided for promotion in Groups A, B, C and D services to the handicapped employees. Petitioner made representation to respondent No.1 on 7.1.2013 to consider his case

for promotion to the post of Superintending Engineer in terms of circular No. 12/2012 dated 3.12.2012 and even sent another letter dated 26.7.2013 stating therein that no engineer belonging to the handicapped or blind/hearing impaired category was senior to him and requested for deemed date of promotion as Superintending Engineer. Meanwhile, respondents promoted Chaman Lal Verma, Chief Engineer to the post of Engineer-in-Chief vide order dated 4.12.2013. A tentative seniority list was also issued on 10.3.2014, according to which petitioner was at Serial No.1 in the cadre of Sr. Executive Engineer/Additional Superintending Engineer.

Petitioner has claimed his right of consideration for promotion to the post of Chief Engineer on the ground that the respondents have filled up 440th Roster Point which was meant to be filled up from amongst the handicapped category, by promoting a general category employee. The Roster Point 471 fell vacant on 13.10.2014 but it was filled up by general category candidate i.e. respondent No.2. The grouse of the petitioner is that said roster point should have been filled up by physically handicapped category candidate whereas it was filled up by the general category candidate. Petitioner also filed CWP No. 24735 of 2014 before this Court and said petition was disposed of with a direction to decide the representation of the petitioner within a period of two months from the date of receipt of certified copy of the order. Thereafter, the claim of the petitioner was rejected vide order dated 5.2.2015 on the ground that on 6.3.2011, the Roster point No.425 was filled up and Roster point No.411 had already been filled up by General category employee. It was also stated that promulgation of the policy running roster point was to be filled up

under handicapped category quota by giving promotion under Roster Point 440 from Superintending Engineer to Chief Engineer. Thereafter also, the petitioner made representation stating that impugned order had wrongly been passed whereas roster point No.411 was to be filled up from amongst handicapped employees and Roster point No. 440 was available for promotion against which Engineer Arun Kumar was adjusted whereas he was promoted by virtue of his seniority and not against Roster Point No. 471. The claim of the petitioner was partly accepted and he was granted deemed date of promotion as Superintending Engineer w.e.f. 3.11.2012 but his claim for promotion as Chief Engineer was declined vide order dated 17.3.2015.

Learned counsel for the petitioner submits that Engineer Arun Kumar was promoted as Chief Engineer not against the vacancy meant for handicapped category but on the basis of seniority. He also submits that said Arun Kumar did not take any benefit of handicapped category, which has wrongly been mentioned in the impugned order of rejection of his claim that roster point No.440 has wrongly been shown to be consumed by giving deemed date of promotion as Chief Engineer against the handicapped quota. Learned counsel also submits that there are as many as six posts of Engineer-in-Chief available in respondent-Corporation and out of total six, five posts have been filled up from amongst general category candidates and one post has been filled up from Scheduled Caste category candidate. It has also been submitted by learned counsel for the petitioner that four persons have retired as Engineer-in-Chief from general category and four persons were promoted from general category. Learned counsel also submits that

respondent-Corporation is not maintaining the proper Roster by giving representation to physically handicapped employees. It is also the argument of learned counsel for the petitioner that post of Engineer-in-Chief has been filled up from the post of Chief Engineer and respondent-Corporation should have filled 11th roster point from the handicapped category but Engineer Arun Kumar has wrongly been treated as being appointed against roster point of physically handicapped whereas he was promoted as per his own seniority number. Said Arun Kumar was given deemed date of promotion w.e.f. 29.6.2012 against Roster point No. 440 as Chief Engineer whereas he was to be promoted as Engineer-in-Chief on 4.12.2013 and the post held by him would have fallen vacant. Learned counsel also submits that Engineer Iqbal Singh was at Sr. No. 2 in the seniority of handicapped persons and was entitled to be promoted against roster point No. 440, which fell vacant on promotion of Chief Engineer Arun Kumar. At the end, learned counsel for the petitioner submits that respondent-Corporation has illegally promoted a general category candidate vide order dated 13.10.2014 (Annexure P-15) and said impugned order deserves to be set aside. The petitioner is claiming consideration for the post of Chief Engineer from 13.10.2014 i.e the date one Engineer, namely, S.K. Bagga has been promoted.

Learned counsel appearing for respondent-Corporation has raised a preliminary objection that petitioner has not impleaded the necessary persons as party, who were appointed against the post the petitioner is claiming his right. Even he has not challenged the order of promotion of general category candidates. Learned counsel also submits

that in compliance of order of this Court passed in CWP No. 24735 of 2014, instructions were issued that as per working roster register of Chief Engineer, the running roster point was filled up upto 425 and roster point No.411 had already been filled up by General category candidate before coming into force of the policy of allowing reservation to handicapped persons issued vide letter dated 23.9.2011. It was adopted by respondent-Corporation vide circular No.12/2012. The policy for allowing reservation in promotion to physically handicapped persons came into force w.e.f. 6.3.2011. Learned counsel also submits that after the said policy, the running roster point to be filled up under handicapped category quota by giving promotion from Superintending Engineer to Engineer-in-Chief is 440. Only one post was to be given as only 3% was reserved out of total posts of Chief Engineers. Engineer Arun Kumar was at Sr. No.1 in the list of handicapped category and, therefore, he was promoted as Chief Engineer on 31.1.2014 in the common seniority as a general category candidate. Said Arun Kumar became entitled for deemed date promotion as Chief Engineer at roster point no. 440 w.e.f. 29.6.2012 against the reserved seat meant for physically handicapped category. Thereafter, the next eligible candidate for promotion to the post of Chief Engineer could only be considered on having vacancy of roster point which was allotted to Engineer Arun Kumar. Petitioner was at Sr. No. 3 in the list of handicapped persons and he could not be promoted to the post of Chief Engineer under handicapped quota as claimed in the petition.

I have heard learned counsel for the parties and perused the documents available on the file.

Admittedly, the cadre strength of Chief Engineer in respondent-Corporation is 32 and only one post of Chief Engineer is to be filled under 3% quota of handicapped category. Only one post was available against which Engineer Arun Kumar was promoted as he was at Sr. No.1 of the seniority list of handicapped category. Although, at the time of initial appointment, he was not considered against roster point meant for handicapped category but subsequently a decision was taken on the request of said Arun Kumar by granting him deemed date of promotion as Chief Engineer under reserved quota of physically handicapped at roster point No.440 w.e.f. 29.6.2012 vide order dated 25.2.2015. He was also granted consequential benefits of retrospective promotion and said order has not been challenged so far. Similarly, Engineer Iqbal Singh was also granted deemed date of promotion as Superintending Engineer under the reserved quota meant for handicapped category at Roster point no. 940 w.e.f. 8.6.2011 vide order dated 17.03.2015. Petitioner was also granted deemed date of promotion as Superintending Engineer under reserved quota for physically handicapped persons at Roster Point No. 971 w.e.f. 30.11.2012 vide order dated 17.3.2015. The promotions from the post of Chief Engineer to the post of Engineer-in-Chief are to be made as per criteria circulated vide order dated 18.5.2000. The total cadre strength of Chief Engineers is 32, out of which six posts are designated as Engineer-in-Chief, which are to be filled by 5 Chief Engineers are of general category on seniority basis and one post is to be filled up from Scheduled Caste category as per 14% reservation quota from Scheduled Caste category.

Both Arun Kumar and Iqbal Singh were promoted being the senior and

claim of the petitioner has been rejected by respondent-Corporation by passing a detailed speaking order.

Learned counsel for the petitioner has not been able to show anything as to whether there is a separate cadre of Engineer-in-Chief, as only the Chief Engineers are designated as Engineer-in-Chief. Moreover, there is no reservation for physically handicapped category for the post of Engineer-in-Chief as the reservation is only for the cadre of Chief Engineer, which is 3% for physically handicapped. As per 3% reservation, one post has been occupied by Engineer Arun Kumar and he has been granted benefit of deemed date promotion against the post of physically handicapped category.

There is no merit in the argument raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

September 30, 2016
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes