

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P. No. 22064 of 2012

Date of Decision : April 27, 2016

Ramesh Mittal Petitioner
vs.
State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. K. K. Goel, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

Mr. Suvir Sehgal, Advocate
for respondent no. 2.

* * *

DEEPAK SIBAL, J. :

As per directions given by this Court on 21.04.2016, proceedings/minutes of the meeting of Administrative Committee, held on 09.07.2009, have been produced today in the Court and a copy of the same are ordered to be taken on record as **Mark-A**.

The only prayer pressed before me by learned counsel for the petitioner is to challenge the non-consideration of the petitioner's case for his promotion to the post of Executive Engineer by the respondent Haryana

State Agriculture Marketing Board, Panchkula (hereinafter referred to as – the respondent Board) in its meetings held on 12.05.2009 as also on 09.07.2009.

The relevant facts, which need to be noticed for adjudicating upon the issue raised are that on 05.02.1981, the petitioner was appointed as Junior Engineer (Civil) in the respondent Board. On 08.04.1992, he was given Current Duty charge as Sub Divisional Engineer and on 05.03.2001, was regularly promoted to that post. On 07.02.2008, the petitioner passed the departmental examination, on the passing of which, as per the Haryana State Agriculture Marketing Board Service Rules, 2008 (hereinafter referred to as – the 2008 Rules), he became eligible to be considered for further promotion to the post of Executive Engineer. The method of recruitment and qualifications for promotion to the post of Executive Engineer, as prescribed under the 2008 Rules, are as under :-

*“67% by promotion from amongst
Sub Divisional Engineer ; and*

*33% by transfer or deputation of an
officer already in the service of State Government/
or the Government of India, Board or
Corporation or statutory body.*

Experience : *Six years experience as Sub
Divisional Engineer.*

Qualification : *Bachelor of Engineering in Civil/
Electrical/Electronic & Communication/Bachelor
of Technology or its equivalent from a recognized
University in respective branch of engineering.*

Has passed the departmental

examination as prescribed by the Board.”

A perusal of the afore-quoted portion of the 2008 Rules shows that 67% of the posts of Executive Engineers are to be filled up from amongst the Sub Divisional Engineers, who have six years' experience as Sub Divisional Engineers and who have passed the departmental examination.

The petitioner, on the passing of the prescribed departmental examination on 07.02.2008, became eligible for consideration of his case for further promotion from the post of Sub Divisional Engineer to the post of Executive Engineer as on that date, he had over six years of experience to his credit. Resultantly, in the Agenda made in the year 2009 (hereinafter referred to as – the First Agenda) for the meeting on 12.05.2009 of the Committee competent to consider cases of promotion from the post of Sub Divisional Engineer to Executive Engineer (hereinafter referred to as – the Committee), the petitioner's name duly figured as one of the eligible candidates, but a perusal of the proceedings of the Committee, held on 12.05.2009, shows that only two persons namely M. S. Chandel and Ramesh Garg were cleared for promotion, whereas the petitioner's case was not even considered. The relevant agenda item is reproduced below :-

“Subject : Promotion case of Sub Divisional Engineer (Civil) to the post of Executive Engineer.

In this regard, it is submitted that as

per orders of the authorities on page 158/N ante, the agenda was allowed to be kept pending. Now it has been desired that the matter/agenda may be put-up for approval for placing the same in the next meeting.

In this connection, it is submitted that the above agenda was placed in the Board's meeting vide supplementary item No. 5 dated 20.3.2008 and subsequently in its meeting held on 17.6.2008 and 19.8.2008 but same was deferred on all occasions. (Annexure-A, B &C)

Now, the vacancies of the XEN's have increased a detail of which is given as under :-

<i>Sanctioned Posts</i>	<i>20 (Civil) + 1 PH = 21</i>
<i>In position</i>	<i>14 (Civil) + 2 PH 01 (Civil) on deputation + 3 (charge of XEN has been given in pay scale of SDO) Total = 20 & Sh. R. D. Pundir has been given charge of SE in his own pay scale</i>
<i>Vacant Post</i>	<i>04 (Three regular & one casual)</i>

As per old rules, the following requisite qualification was prescribed for promotion to the post of Executive Engineer.

<i>Qualification</i>	<i>Method of Recruitment</i>
<i>“Bachelor of Engineering or equivalent with six years experience in the Board as Sub Divisional Officer and has passed the departmental examination as prescribed by the Board; or 8 years experience in the Board as Sub Divisional Officer and has passed the departmental examination as prescribed by the Board.”</i>	<i>66-2/3% by promotion from Sub Divisional Officer; 33-1/3% and by transfer or deputation. Note :- The mode of promotion will be 50% for degree holders and 50% for others.</i>

Now the HSAM Board Service Rules, 1974 stands repealed and New Service Rules stands notified w.e.f. 15.1.2008 and following provisions has been made for promotion to the post of Executive Engineer :-

Qualification	Method of Recruitment
(iii) Six years experience as Sub Divisional Engineer.	67% by promotion from amongst S. D. E.
(iv) Bachelor of Engineering in Civil/Electrical/Electronic and Communication/ Bachelor of Technology or its equivalent from a recognized University in respective branch of engineering.	and (ii) 33% by transfer or deputation or of an officer already in the service of State Government/or the Government of India or Board or Corporation or Statutory Body.
(iii) Has passed the departmental examination as prescribed by the Board.	

Therefore, the vacancies arose after the notification of the New Service rules should be filled up as per new rules, 2008.

Thus, the exercise is for filling up of three vacancies i.e. one in old Rules and two in New Rules.

1. Sh. S. K. Sharma, SDE
- xx xx xx xx
2. Sh. Gaje Singh, SDE
- xx xx xx xx
3. Sh. M. S. Chandel, SDE
- xx xx xx xx
4. Sh. Ramesh Garg, SDE
- xx xx xx xx
5. Sh. Pardeep Khanna, SDE
- xx xx xx xx

6. **Sh. Ram Niwas, SDE**

xx xx xx xx

7 **Sh. Mam Chand, SDE**

xx xx xx xx

8. **Sh. Madan Pal, SDE**

xx xx xx xx

9. **Sh. Mohinder Singh, SDE**

xx xx xx xx

10. **Sh. Ramesh Mittal, SDE**

xx xx xx xx

11. **Sh. Raj Kumar Malik, SDE**

xx xx xx xx

12. **Sh. Ashok Bansal, SDE**

xx xx xx xx

Keeping in view the above explained position it is mentioned here that S/Sh. Gaje Singh, Ramesh Garg, M. S. Chandel, Pardeep Khanna, Madan Pal, Mam Chand, Mohinder Singh, Raj Kumar Malik & Ashok Bansal, SDEs are not eligible for consideration for the promotion to the post of Executive Engineer as they do not fulfill the requisite requirement for promotion at this stage.

Sh. Ramesh Garg, SDE (degree holder) is eligible for consideration of promotion. Sh. S. K. Sharma, SDE (diploma holder) is facing charge sheet under Rule-8. He has passed departmental test. Sh. Ramesh Mittal, SDE (degree holder) has passed the departmental test and no charge sheet is pending against him.

As desired agenda has been prepared

and placed below for approval for placing the same in the next meeting of the Board.

Submitted please.

[Emphasis supplied]

The decision of the Committee on the afore-quoted Agenda, showing complete non-consideration of the petitioner's name is reproduced below :-

“Item No.8 Promotion of Sub-Divisional Engineer to the post of Executive Engineer (Civil).

Approved. S/Shri Ramesh Garg and M. S. Chandel, Sub-Divisional Engineers (Civil) are promoted to the post of Executive Engineer with immediate effect. However, the case of Shri S. K. Sharma, Sub-Divisional Engineer (Civil) be sent to Ld. L. R. for advice and the same be put up before the Administrative Committee. The cases of S/Shri Satish Aggarwal and Ram Phal, Sub-Divisional Engineer were considered, but not found eligible because there are no provisions in the Service Rules, 2008 to promote the diploma holders. The case of Shri Gaje Singh, Degree holder considered, but he is not found eligible because he has not passed the required departmental test.”

From the above, it is abundantly clear that in spite of the petitioner being eligible for promotion from the post of Sub Divisional

Engineer to the post of Executive Engineer, he was totally ignored at the hands of the Committee.

The step-motherly treatment to the petitioner continued even in the next meeting, which was held on 09.07.2009. The agenda for this meeting was prepared on 29.06.2009 (hereinafter referred to as – the Second Agenda), wherein the petitioner was again not only shown to be eligible but also was recommended for promotion. This time, the meeting was held for considering cases for promotion to six posts of Executive Engineers. The relevant portion of the Second Agenda is reproduced below for reference :-

“Subject : Promotion case of Sub Divisional Engineer (Civil) to the post of Executive Engineer.

<i>Sanctioned Posts</i>	<i>20 (Civil) + 1 PH = 21 + 4 civil newly created post.</i>
<i>In position</i>	<i>15 (Civil) + 01 (Civil) on deputation + 1 PH</i>
<i>Vacant Post</i>	<i>04 and 2 resultant.</i>

Note :- One post was kept reserved for Sh. S. K. Sharma, SDE diploma holder and one post was kept for deputationist.

Rest of two posts are to be filled up by promotion S/Sh. Pardeep Khanna & Madan Pal are to be considered for promotion to the post of Executive Engineer.

Now the Govt. has again amended service rule on 23.6.2009 the qualification and experience for promotion to the post of Executive Engineer (Civil/Quality Control) is as under :-

<i>(i) Six years experience as Sub Divisional Engineer (Civil/Quality Control);</i>	<i>(i) Sixty-seven percent by promotion from amongst Sub-Divisional Engineers (Civil/Quality Control); and</i>
<i>(ii) Bachelor of Engineering in Civil/Bachelor of Technology or its equivalent from a recognized university; and</i>	<i>(ii) Thirty three percent by promotion or deputation of an officer already in the service of State Government/or the Government of India or Board or Corporation or Statutory body.</i>
<i>(iii) has passed the departmental examination as prescribed by the Board</i>	<i>Note :- The newly created posts shall be filled up by deputation as these posts are subject to review after two years as per sanction of the Government.</i>

Therefore, the vacancies arose after the notification of the New Service Rules should be filled up as per new rules, 2008.

Thus, the exercise is for filling up of three vacancies i.e. one in old Rules and two in New Rules.

1. **Sh. S. K. Sharma, SDE**
- xx xx xx xx
2. **Sh. Gaje Singh, SDE**
- xx xx xx xx
3. **Sh. Ramesh Garg, SDE**
- xx xx xx xx
4. **Sh. M. S. Chandel, SDE**
- xx xx xx xx
5. **Sh. Pardeep Khanna, SDE**
- xx xx xx xx
6. **Sh. Ram Niwas, SDE**
- xx xx xx xx
- 7 **Sh. Mam Chand, SDE**
- xx xx xx xx

8. **Sh. Madan Pal, SDE**

xx xx xx xx

9. **Sh. Mohinder Singh, SDE**

xx xx xx xx

10. **Sh. Ramesh Mittal, SDE**

xx xx xx xx

11. **Sh. Raj Kumar Malik, SDE**

xx xx xx xx

12. **Sh. Ashok Bansal, SDE**

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Keeping in view of the above explained position it is mentioned here that S/Sh. Pardeep Khanna, Madan Pal & Ramesh Mittal, Sub Divisional Engineers (against resultant vacancy), who are holding charge of Executive Engineer may be considered for promotion to the post of Executive Engineer (Civil) on adhoc basis in the pay scale of Rs. PB-3 15600-39100+6000 with immediate effect without prejudice to the claim of their seniors if any.

The matter may be placed before the Administrative Committee for consideration and appropriate decision.

The agenda item is also placed below for kind approval. [Emphasis supplied]"

The Second Agenda was taken up in the meeting of the Committee held on 09.07.2009, but the decision taken for granting approval for making promotions to the posts of Executive Engineers shows that recommendations were made only in favour of one Pardeep Khanna. The petitioner's name does not even find mention in the decision.

Item No. 4 from the proceedings of the Committee dated 09.07.2009, which is relevant, is reproduced below :-

“Item No.4 Promotion case of Sub-Divisional Engineer (Civil) to the post of Executive Engineer.

The matter was considered. Shri Pardeep Khanna has passed the departmental test and his 70% ACRs are of good to very good category. He has passed the departmental test and he also fulfills the requisite eligibility criteria as per Board's Service Rules for the promotion to the post of Executive Engineer. Hence, he is promoted to the post of Executive Engineer with immediate effect subject to the claim of his senior, if any. His services as SDE (Civil) is also regularized w.e.f. 4.7.2000.”

The Second Agenda was to fill up the six posts of Executive Engineers. The petitioner was eligible and that his name had also been recommended for promotion, but as to why only one recommendation was made by the Committee and the petitioner was not even considered is a mystery till date as no reason thereof came either from the record or from the arguments raised by the learned counsel appearing on behalf of the respondent Board.

A perusal of the First Agenda shows that at the time of holding of the first meeting on 12.05.2009, the petitioner was fully eligible for being

promoted to the post of Executive Engineer. However, the minutes of the Committee, as quoted above, clearly show that the petitioner's case was not even considered. There were four posts of Executive Engineers, which were required to be filled up by way of promotion and the Agenda had been prepared for all these posts but the reason, why only two promotions were made and the petitioner being eligible, was not even considered against the remaining two posts, is not borne out from the record or did forth come from the arguments raised by learned counsel appearing on behalf of the respondent Board.

Non-consideration of the petitioner's case for promotion to the post of Executive Engineer in spite of being eligible and having been recommended, continued even in the meeting held by the Committee on 09.07.2009. This time, there were six posts of Executive Engineers, which were available to be filled up by promotion. In the agenda, the petitioner was again stated to be eligible and duly recommended for promotion, but only one person namely Pardeep Khanna was recommended for promotion. The case of the petitioner was again ignored, for which no explanation is forthcoming.

The reasons so as to why the respondent Board adopted a pick and choose policy remains unexplained.

In view of the above, the petitioner, being eligible, had a right to be considered for promotion against available vacancies. The fact, that no junior of the petitioner has been promoted, would not further the case of the respondent Board. If there were available vacancies and the petitioner

was eligible, he had at least a right to be considered. Since there was no such consideration, the present petition is allowed with a direction to the respondent Board to consider the case of the petitioner for promotion to the post of Executive Engineer with effect from the date when M. S. Chandel and Ramesh Garg were ordered to be promoted, in accordance with law and in case, the petitioner is ordered to be promoted, he would be entitled to all consequential benefits.

(DEEPAK SIBAL)
JUDGE

April 27, 2016
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