

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

**CWP No.20873 of 2015 (O&M)
Decided on : 22.01.2016**

Subhash Mahajan

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.Chetan Mittal, Sr.Advocate
with Mr.Puneet Gupta, Advocate, for the petitioner.

Mr.A.P.S.Mann, Addl.A.G., Punjab.

Mr.R.S.Bains, Advocate, for respondents No.2 to 4.

Mr.J.S.Mannipur, Advocate, for respondent No.5.

G.S. Sandhawalia , J. (Oral)

Petitioner seeks quashing of the order dated 24.09.2015 (Annexure P10) whereby the work of the cadre post of Chief Engineer, Punjab Mandi Board, has been given to the ex-cadre junior of the petitioner, without considering the case of the petitioner. Further prayer has been made to promote the petitioner to the cadre post, against the vacant cadre post of Chief Engineer w.e.f. 01.09.2015 and grant all consequential benefits.

The petitioner's grouse is that he is the senior-most Superintending Engineer and he has been denied the right of consideration of promotion against the vacancy which arose on 31.08.2015, on the retirement of one Shri R.P.Bhatti, who retired

as Chief Engineer (North). It is the case of the petitioner that on account of the said retirement, he was entitled for consideration for promotion as Chief Engineer and the order has been passed on 24.09.2015, denying him the said right. It is submitted that his junior, respondent No.5, could not be given the said charge. Reliance is placed upon the Division Bench judgment of this Court in **Shingara Chand & others Vs. Punjab Water Supply & Sewerage Board & others 2000 (2) RSJ 317** and **CWP No.13638 of 2008** titled *Baldev Raj Vs. Punjab State Agricultural Marketing Board & another*, decided on 24.09.2008, to submit that even otherwise, the petitioner was entitled to be given the Current Duty Charge, being the senior-most.

The defence of the respondent-Board is, on one hand, that the petitioner could not be considered for the post of Chief Engineer, when his extension of service from 58 years to 60 years, is under cloud. It is not disputed that the petitioner was granted extension in service, from 58 years to 60 years, on account of his handicap, vide order dated 22/23.06.2015 (Annexure P5). The Board, in its reply, has also admitted that though a doubt had been raised regarding his disability certificate, but now, in view of the report of the PGIMER, the extension in service was sustained vide letter dated 10.12.2015.

It has further been admitted that the case of the petitioner for promotion to the post of Chief Engineer, is under

consideration. It is also admitted that the petitioner had made representation dated 04.08.2015 (Annexure P5), for promotion, prior to the retirement of Shri R.P.Bhatti. It has also been admitted that respondent No.5 has been promoted to the post of Chief Engineer from the post of Ex-Cadre Director (Quality Control), vide order dated 28.10.2011 (Annexure R5/2) and thus, there is no denial that respondent No.5 was working against an ex-cadre post and it is also admitted that he is junior to the petitioner. The relevant para reads as under:

“That the contents of the para no.13 are totally wrong and hence denied. Regarding the claim of the petitioner that respondent No.5 i.e. Harpreet Singh Brar is junior to him, it is made clear that respondent No.5 has been promoted to the post of Chief Engineer from the post of Ex-Cadre Director (Quality Control) vide order dated 28.10.2011 passed by the Agricultural Department, State of Punjab (Mandi Branch) Chandigarh. Therefore, respondent No.5 is working as Chief Engineer (Quality Control) from 28.10.2011. Further the case of the petitioner for the post of Chief Engineer now under consideration as the physical disability certificate issued by the PGIMER and if the petitioner is found competent the distribution of the work by the competent authority. True translated copy of the order-dated 28.10.2011 is placed on record as Annexure R-2/7/T.”

The petitioner has also placed on record the disability certificate, now issued by the PGIMER on 27.11.2015 (Annexure P19), wherein his disability has been shown as 55%.

Respondent No.5 has taken the plea that the post is a reserved post and therefore, the petitioner has no right being a General Category candidate to claim promotion and that more than 4 years have passed since he was upgraded to the post of Chief Engineer (Quality Control). It is, however, admitted that the petitioner is the senior-most Superintending Engineer and it has been pleaded that the Board is not prohibited from assigning the duty to the equivalent rank authority.

Counsel for the petitioner has further pointed out from the letter dated 22.06.2007 (Annexure P11) whereby one post of Director (Quality Control) was created, which was to be at par but junior to the present working Superintending Engineer in the Punjab Mandi Board.

Vide order dated 28.10.2011, respondent No.5 was upgraded from the post of Engineer to Chief Engineer (Quality Control) and now, of-course, has been allocated the charge of Chief Engineer (North). The same reads as under:

“Shri Harpreet Singh Brar, Engineer of the Punjab Mandi Board, Director (Quality Control) is upgraded as Chief Engineer (Quality Control) in the pay scale of Rs. 37400-67000 + 10,000/- Grade Pay.”

Thus, in view of the above settled position, it would be clear that the Board has itself admitted that the matter regarding the promotion of the petitioner is to be considered, since, now, there is no dispute regarding his disability, which was there earlier.

In such circumstances, a writ of mandamus is issued to the respondent-Board to initiate the issue of promotion as Chief Engineer against the vacant post, as per Rule 6 of the Punjab State Agricultural Marketing Board Class I Rules, 1988. Respondent Board shall take necessary steps to send the proposal to respondent No.1 for complying with the directions passed by this Court and to complete the formalities regarding promotion. The said exercise be conducted within a period of 2 months.

The second issue which, now, arises for consideration is whether respondent No.5 is entitled for continuation, as per Annexure P10, for the distribution of the work of Chief Engineer (North), on account of the vacancy having arisen. As noticed above, it is not disputed that the petitioner is the senior-most Superintending Engineer and in view of the settled law laid down by the Division Bench, as noticed above, he would be entitled for being allocated further the responsibility of the said post, on the Current Duty Charge, till the decision is not taken by the State Government. The Division Bench has deprecated giving of the Current Duty Charge to the juniors as being violative of the doctrine of equality, as enshrined in Article 14 & 16 of the Constitution of India. Relevant observations read as under:

“7. We have heard learned counsel for the parties. It is not in dispute that the petitioners are senior to

respondents No.3 to 5 in the cadre of Junior Engineers. It is also not in dispute that at the time of giving current-duty charge of the posts of Sub Divisional Engineers to respondents No.3 to 5, the petitioners were not considered despite the fact that they are senior, in the lower cadre. Notwithstanding this, the official respondents have made a feeble attempt to justify their action by stating that the giving of current-duty charge to junior persons cannot be equated with promotion and, therefore, the petitioners cannot seek invalidation of the impugned orders by invoking the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India. However, we have not felt persuaded to accept their stand that the giving of current-duty charge of the higher post to junior persons is inconsequential. A person, who is given current-duty charge of the higher post, not only enjoys the higher status but also exercises greater powers. Therefore, it cannot be said that the orders passed by the official respondents to give current-duty charge to respondents No.3 to 5 ignoring the prior claims of the petitioners do not affect them. One may not take serious exception to the giving of current-duty charge to a junior person for a few days or weeks in order to tide over the crisis situation, but, the practice of giving current-duty charge of the higher post to the juniors for months and years together cannot be legally justified or approved. We are further of the opinion that giving of current-duty charge for a long period cannot be justified by treating it as something like giving additional charge of the higher post and in the garb of giving current-duty charge, a senior person cannot be denied his legitimate right to hold the higher post.

8. In the present case, the current-duty charge of the post of Sub Divisional Engineers was given to non-official respondents vide orders dated 16.10.1998 and 22.10.1998 and even now, they are enjoying the status and are exercising powers as Sub Divisional Engineers. Therefore, we do not find any valid ground to sustain the action of the official respondents to deprive the petitioners of their legitimate right or at least legitimate expectation of holding the higher post of Sub Divisional Engineers.”

Similarly, in Baldev Raj (supra), the Current Duty Charge of the post of SDO (Electrical), with the respondent-Board had been given to the petitioner but had been sought to be withdrawn. The order withdrawing the Current Duty Charge was quashed and the Board was directed to restore the Current Duty Charge to the petitioner.

In such circumstances, the second prayer is allowed, regarding the prayer for quashing of the order dated 24.09.2015 (Annexure P10). Accordingly, a direction is issued to the respondent-Board to pass appropriate orders for giving the Current Duty Charge to the petitioner, as admittedly, there is no dispute regarding his seniority.

JANUARY 22, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE