

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25695 of 2014

Date of Decision: 11.05.2016

Ram Singh and others

... Petitioners

Versus

Punjab State Power Corporation Limited
and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Dharmender Singh Rawat, Advocate,
for the petitioners.

Mr. Ashu Kaushik, Advocate,
for respondents No.1 to 3.

Respondents No.4, 5 & 7 already proceeded ex parte.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. It is common ground that the petitioners who are members of the scheduled castes were promoted to Level II from the Level I post of Sub Station Attendant (SSA) to the higher post of Junior Engineer (Sub Station) before the private respondents (who are general category candidates) were directly recruited to the post of Junior Engineer (Electrical) and Junior Engineer (Sub Station). After the promotion of the petitioners on reserve roster points in 1996, 1997, 1998, 1999 and 2002 respectively the direct recruits came in 1999, 2001 and 2002. It is not disputed that a joint seniority list is maintained for JE/Electrical and JE/Sub Station. The promotional post from JE/E and JE/SS is to the post of Additional Assistant Engineer

(Electrical). PSEB Technical Services Grade-III Regulations, 1996 (for short “1996 Regulations”) makes the post of Additional Assistant Engineer a promotional post from JE (E) and JE (SS) from amongst the officials possessing minimum experience of 5 years in the feeder cadre.

2. The petitioners have come forward in this petition feeling aggrieved by the action of the respondent-PSPCL of excluding their names from the joint seniority list. They had made a representation before approaching court to the respondent-PSPCL to include their names in the seniority list. By excluding their names from the common seniority list they would lose their valuable right to consideration for promotion to the next higher post of Additional Assistant Engineer. This request led to their names being included in the joint seniority list but their names were placed en bloc below the directly recruited general category candidates and on the basis of re-drawn seniority list, the respondents were promoted to the higher post of Additional Assistant Engineer vide orders dated October 31, 2013 and January 22, 2014 and May 29, 2014 respectively. This action is impugned as illegal, arbitrary and unconstitutional.

3. The petitioners suitably reacted on being ignored from promotion by serving a legal notice dated June 01, 2014 on PSPCL praying that their names be shown in the joint seniority list above the names of the directly recruited respondents since they were promoted substantively before the direct recruits came to service and became members of the cadre of JE/Electrical and JE/Sub Station. When no action was taken to remedy the grouse, they approached this Court by filing CWP No.18150 of 2014 titled *Ram Singh and others v. PSPCL and others*. The petition was

disposed of by order dated September 18, 2014 without notice to PSPCL with the direction that the legal notice be decided and necessary orders passed thereon within a period of three months as was directed. The Court observed that in case the petitioners were found entitled to the relief sought, the same be granted to them within a period of one month thereafter. In case, relief is to be denied to the petitioners, a speaking order was directed to be passed and communicated within the time fixed.

4. The implementation of the order has resulted in rejection of the claim of the petitioners for inclusion of their names in the joint seniority list. The representationists argued that PSPCL was not right in putting a condition in the footnote that they will not be treated as part and parcel of the seniority list. They urged that the catch up rule in Ajit Singh Janjua and others v. State of Punjab and others, (1999) (4) SCC 211 [nicknamed Janjua-II] had been misconstrued and misapplied in their case because their opponents were directly recruited candidates after the petitioners secured promotions as Junior Engineers and were, therefore, entitled to be treated senior to the direct recruits. It was clarified that petitioner Jharman Singh has a claim against directly recruited Junior Engineers who came in 2002 and, therefore, he was entitled to be treated senior to the direct recruit batch of 2002 since his promotion was earlier than the joining of the general category candidates in the recruitment process-2002.

5. The claim of the petitioners has been rejected vide order dated October 22, 2014 for two reasons. Firstly, because scheduled caste candidates cannot be given seniority over and above the general category candidate until the SC category candidate is promoted to next higher post

before the general category candidate. The second reason for declining the claim for being shown senior to the direct recruits as contained in the impugned order in its last paragraph is based on the premise that they were promoted earlier to their counterparts belonging to the general category who were already in service as against reservation quota and their counterparts were promoted only after 2002 after being passed over by virtue of rule of reservation in promotions on reserve roster points. Meaning thereby, the counterparts of counterparts will take preferential seniority over the petitioners because the petitioners got accelerated promotions prior to their erstwhile seniors at Level-1. This reasoning to say the least is convoluted, illegal and absurd. It is against the grain of the rule of reservation as adumbrated by the Supreme Court in *Ajit Singh Janjua-I and II cases* [Ajit Singh Janjua v. State of Punjab & Ors., (1996) 2 SCC 715 : AIR 1996 SC 1189 and Ajit Singh Janjua v. State of Punjab & Ors., (1999) 7 SCC 209: AIR 1999 SC 3479].

6. The private respondents in this case were not members of the service when the petitioners were promoted on reserve roster points to Level-II. The erstwhile general category candidates who were members of the service prior to the petitioners but senior to the petitioners at Level-I would catch up and regain seniority but this is not the case with the private respondents who were recruited directly to Level-II after the promotion of the petitioners. Therefore, the impugned order is not sustainable in the eyes of law for any of the two reasons applied in the impugned order to deny the just and genuine claim of the petitioners to a declaration that they are senior to the private respondents at Level-II and will always be. It is evident that

the General Manager, Administration of respondent-PSPCL has devised wrongful ways and means to decline benefit of accrued seniority to the petitioners at Level-1 even before the private respondents were born in service.

7. In the written statement filed by PSPCL the 3rd facet has been introduced clumsily citing para.51 of *Ajit Singh-II* by misreading the law laid down by the Supreme Court and then concluding from there that the petitioners have to be treated as junior to directly recruited JE/Electrical and JE/Sub Station. Since a general category candidate, namely, Harjinder Singh who is at seniority position 2494 earned promotion in the year 2006, i.e., much before his junior reserved category employee Baljit Singh petitioner No.2 whose seniority as SSA was 2495 and thus under no circumstances, the petitioners can be considered as senior to the directly recruited candidates. There is a 4th facet employed to justify the impugned order and that is by citing Regulation 13 (c) of 1996 Regulations that a direct recruit will be senior to a promotee officer.

8. Paragraph 51 of *Ajit Singh-II* relied upon by PSPCL is not in their favour. On the other hand it promotes the case of the petitioners when the Supreme Court held as follows:-

“Para 51: Learned senior counsel Sh. K. Parasaran and Shri Raju Ramchandran then adverted to a situation which according to them might create serious problems if a senior general candidate is to be treated as senior at the promotional level if he reaches that level before the roster promotee goes further up. The example given (sic) to cases where after the roster point promotee reserved candidate) reaches the promotional level, there (sic) direct recruitment or recruitment by transfer at that promotional level. Counsel submit that, if a senior general candidate is

thereafter promoted and placed above the reserved candidate, can he become senior to the direct recruit and transferee? We do not find any anomaly. The direct recruit or transferee who has no grievance against the reserved candidate who was already there can have no grievance against a senior general candidate who has a superior claim, in law, against the reserved candidate”.

9. The marked departure from catch up rule lies in the words “who was already there”. It follows sequitur that person who was not already a member of service can have no grievance against roster point promotees promoted to the higher level before the direct recruit joined. In fact the legal position is so rudimentary in character it need no special mention that a subsequent recruit can have no lis with the prior promoted candidate who belongs either to the general category or to the reserved category. This is axiomatic in service jurisprudence and admits no exception unless the reserved category candidates were sitting on promoted post in excess of the prescribed percentage of reservation and beyond roster points earmarked in the 100 point roster.

10. The situation presented in this case is similar to the one considered by this Court in Vinod Matto v. State of Punjab and another, 2014 (1) SLR 393. The learned Single Judge applied the law in *Ajit Singh Janjua-II* in a case where direct recruits came on promotional posts after the roster point promotees and held that reserved category candidates promoted earlier cannot be brought down in seniority below direct recruits who joined subsequently. The learned Single Judge held in paragraph 3 as follows:-

“3. This contention of the counsel for the petitioner cannot be accepted as the principle as laid down by the Supreme Court in the case of Ajit Singh Janjua II (supra), applies to a situation where the employees of the reserved

category and general category belong to the same feeder cadre and where a reserved category employee has been promoted on the roster point irrespective of his seniority vis-a-vis the general category employee. The position of petitioner in the present case is different. Raghbir Chand, Bant Singh, G.K.Sultana and Karnail Singh are Scheduled Caste candidates and, therefore, fall in the reserved category. They were working as Junior Engineers and on the basis of roster point, they were promoted to the posts of Sub-Divisional Officers in the year 1993 and 1994 respectively. Karnail Singh, who is the junior most among the Scheduled Caste Sub-Divisional Officers, was promoted on 27.6.1994. Petitioner Vinod Matto, who also belongs to the Schedules Caste category, was appointed as a direct Sub-Divisional Officer on 19.8.1994. On the date when the petitioner came into service and joined as a Sub-Divisional Officer, all these four officers were already holding the post of Sub-Divisional Officers and, therefore, cannot be termed as juniors to the petitioner merely because Rajinder Pal Singh, who belongs to general category and was senior to Raghbir Chand, Bant Singh, G.K.Sultana and Karnail Singh as a Junior Engineer, stands promoted to the post of Sub-Divisional Officer on 10.7.1997 which is subsequent to the date of appointment of the petitioner as a Sub-Divisional Officer. As per the judgment of the Supreme Court and the policy instructions dated 22.10.1999, Rajinder Pal Singh would rank senior to Raghbir Chand, Bant Singh, G.K.Sultana and Karnail Singh but it will not have converse effect of bringing down these four reserved category candidates below Vinod Matto-petitioner. Seniority between the Scheduled Caste candidates and that too who have their source of reaching the cadre different cannot be equated in the light of these instructions. The claim as made by the petitioner in the present writ petition has been rightly considered and decided by the respondents vide impugned order dated 20.6.2011 (Annexure P-9)."

11. The petitioners have placed implicit reliance on the above

judgment in their address to the court. The decision is certainly in their favour when it opines that direct recruits of a post had to be treated junior to the reserve category candidates promoted against roster points before the appointment of the direct recruits. The rule laid down in *Ajit Singh Janjua-II*, applies towards restoration of seniority of general category candidates who were promoted from feeder service after the accelerated promotion of reserve category candidates promoted on reserve roster points, then there would be catching up. That comparison is odious to the facts of the present case since the private respondents were directly recruited to Level-II and were not members of the feeder service.

12. When looked at from all angles available in law, the impugned order is not maintainable on facts and deserves to be set aside because the decision is based on irrelevant considerations granting undue benefit to the private respondents by treating them senior to the petitioners without warrant of law.

13. For the foregoing reasons, the impugned order dated October 22, 2014 (Annex P-5) is held to be illegal and arbitrary and is therefore set aside on a certiorari issued. As a corollary, a mandamus is issued to the respondents to re-draw the joint seniority list of Junior Engineers (Electrical)/Junior Engineers (Sub Station) by placing the names of the petitioners above the respective private respondents.

14. As a result of the above discussion, the cases of the petitioners have to be considered for promotion to the next higher post of Additional Assistant Engineer (Electrical/Mechanical/Sub Station) from the dates their junior private respondents were promoted in the year 2014 from the

respective dates with all consequential benefits flowing therefrom both pecuniary and non-pecuniary.

15. The writ petition is allowed in the above terms and the consequential directions as are issued hereinabove be given full effect to within six weeks from the date of supply of this order in certified copy by passing appropriate office orders including granting retrospective promotions to the petitioners from the dates their presently declared juniors were promoted as Additional Assistant Engineer (Electrical/Mechanical/Sub Station) flagrantly bypassing the valuable rights of the petitioners for the wrong reasons.

(RAJIV NARAIN RAINA)
JUDGE

11.05.2016
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