

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

CWP No.13194 of 1995

Date of Decision:22.03.2017

M.K. Aggarwal

... Petitioner

Vs.

State of Haryana

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Puneet Jindal, Sr. Advocate with
Ms. Sakshi, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioner has questioned the validity of order dated 6.4.1995 (Annexure P-10) to the extent that the petitioner's name has been shown at serial No.22 whereas it should have been over and above one Shri D.R. Gambhir whose name is reflected at serial No.14 and further sought for direction to re-assign the deem date of promotion in the cadre of Superintendent, Chief Engineer and Engineer-in-Chief and further sought for grant of arrears of salary etc. alongwith interest.

The petitioner is stated to have been directly recruited as Assistant Executive Engineer on 10.11.1961 under Punjab Service of Engineers Class-I, P.W.D. (B&R Branch) Rules 1960. He had joined the duty on 11.1.1962. While he was working as such, he was promoted to the post of Executive Engineer on 6.10.1966. With effect from 1.11.1966, the State of Haryana was constituted. Consequently, the petitioner was allotted to State of Haryana. Thus, he is working in the PWD (B &R) in the State of Haryana. Petitioner earned promotion to the post of Superintending Engineer, Chief Engineer and Engineer-in-Chief on 15.5.1973,12.3.1986 and 1.4.1990 respectively. Whereas one Shri R.A. Goel who is stated to be

junior to the petitioner has been promoted to the post of Superintendent Engineer, Chief Engineer and Engineer-in-Chief w.e.f. 30.5.1972, 21.9.1983 and 1.9.1986 respectively.

Inter-se seniority dispute of the petitioner's colleague like R.R. Sheoran, A.K. Sehgal etc. was subject matter before this Court and Supreme Court. Arising out of their decision, the official respondents passed an order dated 6.4.1995 (Annexure P-10) wherein it is stated that the petitioner is entitled ranking in the cadre of Executive Engineer at serial No.22 whereas Shri R.A. Goel has been assigned ranking at serial No.23 and Shri R.R. Sheoran at serial No.25. In view of three developments on 6.4.1995, the present petition is filed.

Learned counsel for the petitioner has challenged the validity of Annexure P-10 on the ground that the petitioner is entitled for seniority over and above one Shri D.R. Gambhir who is at serial No.14. He further submitted that the petitioner's name was overlooked for promotion to the post of Superintending Engineer, Chief Engineer and Engineer-in-Chief on par with Shri D.R. Gambhir and Shri R.A. Goel in Annexure P-10. Therefore, the petitioner is entitled for promotion to the post of Superintending Engineer, Chief Engineer and Engineer-in-Chief w.e.f. 30.5.1972, 21.9.1983 and 1.9.1986 respectively with all consequential benefits including arrears of salary etc.

Per contra, learned counsel for the respondents resisted the claim of the petitioner but could not assist in the matter by placing relevant seniority list to contend that Sh. R.A. Goel has been promoted to the posts of Superintending Engineer, Chief Engineer and Engineer-in-Chief w.e.f. 30.5.1972, 21.9.1983 and 1.9.1986 respectively with reference to particular

list. Thus, there is no assistance in respect of granting benefit of promotion to the petitioner to the cadre of Superintending Engineer, Chief Engineer and Engineer-in-Chief. Rightly or wrongly, petitioner ranking has been improved under Annexure P-10 dated 6.4.1995. Therefore, the petitioner is not entitled for notional benefits as contended by the learned counsel for the respondents.

Heard learned counsel for the parties.

In the present case, there are two issues; one is whether the petitioner is entitled for seniority over and above Shri D.R. Gambhir whose name is at serial No.14 vide Annexure 'A' (Annexure P-3) or not? Secondly whether the petitioner is entitled for monetary benefits on par with R.A. Goel who has been treated as junior to the petitioner in the cadre of Superintending Engineer, Chief Engineer and Engineer-in-Chief and consequently if the petitioner is promoted to the cadre of Superintending Engineer, Chief Engineer and Engineer-in-Chief w.e.f. 30.5.1972, 21.9.1983 and 1.9.1986 respectively on par with R.A. Goel or not?

First claim of the petitioner that his name should have been over and above one Shri D.R. Gambhir is concerned, the petitioner has not made out a case for the reasons that the petitioner failed to implead Shri D.R. Gambhir as a party to the proceedings and so also names reflected at serial Nos.15 to 21 Annexure-A (Annexure P-3). In the absence of impleading them as party to the proceedings, the petitioner is not entitled for the first relief for ranking over and above Shri D.R. Gambhir. Accordingly, first claim is rejected.

Insofar as second claim whether the petitioner is entitled for retrospective promotion to the cadre of Superintending Engineer, Chief

Engineer and Engineer-in-Chief w.e.f. 30.5.1972, 21.9.1983 and 1.9.1986 respectively on par with Shri R.A. Goel is concerned, having regard to the decision taken by the Government on 6.4.1995, the petitioner is entitled for alteration of date of entry into the cadre of Superintending Engineer, Chief Engineer and Engineer-in-Chief on par with Shri R.A. Goel. However, the petitioner is not entitled for arrears of salary. He is only entitled for notional benefits in the cadre of Superintending Engineer, Chief Engineer and Engineer-in-Chief for the reasons that the petitioner has not questioned the validity of promotions granted to Shri R.A. Goel to the posts of Superintending Engineer, Chief Engineer and Engineer-in-Chief. He has failed to challenge the ranking assigned at the relevant point of time as and when Shri R.A. Goel was promoted to the post of Superintending Engineer, Chief Engineer and Engineer-in-Chief. Therefore, the petitioner is not entitled for monetary benefits.

Learned counsel for the petitioner cited decisions of the Supreme Court as well as this Court insofar as extending the benefit of monetary benefits. He cites Suresh Kumar v. State of Punjab and another; 2013 (2) SLR 731; Gian Singh v. State of Punjab and others; 2011 (2) SLR 362.

Having regard to the facts of the case that the petitioner has failed to question the validity of promotions and seniority of Shri R.A. Goel. The petitioner is not entitled for arrears of salary. Cited decisions are relating to whether an employee's promotion was overlooked for some reasons like pendency of disciplinary or criminal proceedings or without assigning reasons and in the absence of delay and laches, in such circumstances, if the retrospective promotion is granted to such employees.

They are entitled for monetary benefits. Therefore, the cited decision are distinguishable to the present case.

Admittedly, in the present case, the petitioner has failed to take necessary action to question the validity of promotion and seniority of Shri R.A. Goel which were granted on 30.5.1972, 21.9.1983 and 1.9.1986.

Supreme Court in the case of P. Sada Shiva Swami v. State of Tamil Nadu; 1975 SCC (1) 152 held that for the purpose of promotion, employee must approach within a reasonable period i.e. six months to one year.

In fact, in the present case the petitioner must be happy that the State Government while implementing a decision rendered in the case of one Shri R.R. Sheoran, petitioner ranking has been stated to be impugned in the seniority list of Executive Engineer. By virtue of such action of the official respondents, the petitioner is entitled for retrospective promotion to the cadre of Superintending Engineer, Chief Engineer and Engineer-in-Chief on par with Shri R.A. Goel who has been promoted to the posts of Superintending Engineer, Chief Engineer and Engineer-in-Chief w.e.f. 30.5.1972, 21.9.1983 and 1.9.1986 respectively.

Accordingly, the respondents are directed to alter the date of entry into service of the petitioner to the post of Superintending Engineer, Chief Engineer and Engineer-in-Chief w.e.f. 30.5.1972, 21.9.1983 and 1.9.1986 respectively instead of w.e.f. 15.5.1973, 12.3.1986 and 1.4.1990 respectively. In this regard, official respondents are directed to pass an order promoting the petitioner notionally from the above dates. The respondents are directed to re-fix pay and pension. The petitioner is entitled to only difference of pension. Such action shall be completed by the official

respondents within a period of four months from today.

Petition stands disposed of.

22.03.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No