

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

CWP No. 9488 of 2000 (O&M)
Date of decision: March 3, 2017

Balwant Singh

...Petitioner

Versus

Punjab State Electricity Board and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. JS Manipur, Advocate,
for the petitioner.

Mr. P.S. Thiara, Advocate,
for respondents No. 1 to 3.

None for respondents No. 4 and 5.

JAISHREE THAKUR, J.

1. The petitioner herein impugns letter dated 26.04.2000 (Annexure P/7) by which the claim of the petitioner for promotion to the post of Sub Station Officer (SSO) has been declined with the further prayer for quashing the promotion order of respondent No. 5.

2. The petitioner joined the respondent—Board as Oil and Cleaner in the year 1979 and was further promoted on the post of Sub Station Attendant. On 25.08.1989, the petitioner got permission for further study for doing a 4 year diploma. The next channel of promotion from the post of Sub Station Attendant is to the post of Sub Station Officer. The petitioner had acquired 4 years Diploma in Electrical Engineering from Government Polytechnic, Amritsar was placed on seniority list at serial No.

2629, however, was not considered for promotion whereas respondent No. 5, who was lower in seniority at serial No. 2833, was promoted vide order dated 13.11.1997. A legal notice was served but the claim of the petitioner was rejected by the impugned letter dated 26.04.2000 stating that since respondent No. 5 had passed diploma earlier to the petitioner, he had rightly been promoted to the post of Sub Station Officer.

3. Mr. J.S. Manipur, learned counsel appearing on behalf of the petitioner, contends that the petitioner being senior to respondent No. 5 in the seniority list maintained by the Department should have been promoted against the post of Sub Station Officer since he had the requisite qualification. It is contended that the qualification has to be seen at the time of filling up the vacancy and not as to who had acquired educational qualification prior in time.

4. Per contra, Mr. P.S. Thiara, learned counsel appearing on behalf of the respondents, contends that the petitioner herein though senior was not considered for promotion because he had acquired the qualification of a diploma holder later in time than respondent No. 5. It is argued that posts of SSOs are to be filled allocating 33% posts to direct recruits and 67% of the posts to be filled up by way of promotion. Since 33% posts of SSOs (JEE) which were to be filled up by way of direct recruitment were lying vacant, the Board decided to fill up these posts from SSA of the Board, who are diploma holders. It was decided that in order of their acquiring prescribed qualification of diploma in engineering, those linemen who cleared the final examination earlier batch, and completed minimum of 3 years service will be placed above those fulfilling the two conditions subsequently. It was on

this account that respondent No. 5 was considered for appointment on the post of SSO over and above the petitioner herein.

5. I have heard the learned counsel for the parties and have also produced the record of the case.

6. By office Memo dated 29.08.1996, a panel was to be prepared for promotion of diploma holders Sub Station Attendants (SSA) as Sub Station Officers and in this regard service details of diploma holders SSA working in the office whose name were entered in the seniority list and who had completed 3 years service was to be sent for consideration for promotion. Admittedly, the petitioner herein was at serial No. 2629 in the seniority list maintained and had passed diploma in June 1996, whereas respondent No. 5 was at serial No. 2833 in the seniority list having completed his diploma in the year 1986. On the day the vacancy occurred and the posts were to be filled up, the petitioner had the necessary qualification to be considered for promotion. The rules for promotion to the post of SSO only require that a person should have a diploma and three years experience on the post of SSA. The rules do not mention that within the seniority a person having acquired the qualification earlier will be considered over others.

7. Even a reading of the office Memo dated 29.08.1996 (Annexure P/3), by which names were called for to prepare a panel for promotion of Diploma Holders SSA as SSO, the memo does not stipulate that the seniority will be maintained as per the date they got their diploma. No such criteria was mentioned therein. In fact, a decision had been taken by the board on 07.08.1996 to fill up posts by direct recruitment/promotion of JE-

II Electrical in the ratio of 40:20:40 from direct recruitment/promotion from amongst under employed Diploma Engineers by promotion on seniority come merit basis and JE-II/Sub Station Officer (SSO) 33% were to be filled in by promotion from amongst employed SSA diploma engineers (from the share of direct recruitment temporarily) and 67% by promotion on seniority come merit basis. There is nothing mentioned in Annexure R/1 to justify the argument raised that persons, who have obtained a diploma prior in time, though junior in the seniority list, would be given preference over their seniors who had obtained their diploma later in time. There is nothing on the record to even establish the fact that the criteria as adopted had the sanction of the Board.

8. Therefore in view of the well-settled proposition that the vacancies or posts have to be filled up by taking into consideration the educational qualifications of a person as on the date the posts are to be filled, the action of the respondents in promoting a person junior to the petitioner is not sustainable. The petitioner admittedly senior to respondent No. 5 had the necessary qualification to be considered for promotion to the post of SSO and denying him that promotion is against the canons of law.

9. Resultantly, the above noted writ petition is allowed and the respondents are directed to promote the petitioner to the post of Sub Station Officer from the date his junior was promoted with notional benefits.

March 3, 2017

prem

(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No