

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

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CWP No.14623 of 2017

Date of Decision: July 10, 2017

Atul Sharma

....Petitioner

vs.

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. R.K. Arora, Advocate for the petitioner

TEJINDER SINGH DHINDSA, J. (Oral)

Challenge in the instant petition is to the order dated 04.07.2017 (Annexure P-5) to the extent whereby the current duty charge for the post of Superintending Engineer vested in the petitioner, has been withdrawn.

Counsel would submit that the petitioner who was holding the substantive post of Trust Engineer under the Department of Local Government, State of Punjab, was granted current duty charge for the post of Superintending Engineer vide order dated 02.01.2017. At that stage, petitioner had been called upon to furnish an undertaking that if in future, there be any change in the seniority list and if a promotion is accorded to any senior officer, he would have no objection for withdrawal of the current duty charge. Furthermore, as per undertaking, if in future, the Departmental Promotion Committee finds the petitioner not eligible for promotion for the post of Superintending Engineer on the basis of seniority-cum-merit and his name is not recommended even on that basis also, the current duty charge was liable to be

withdrawn.

The first submission raised by counsel is that the eventualities carved out in the undertaking dated 02.01.2017 (Annexure P-4) that the petitioner had furnished, have not materialized and as such the impugned order of withdrawal of the current duty charge for the post of Superintending Engineer cannot sustain. The second submission raised by counsel is that the basis of passing the impugned order i.e. there not being much workload against the post of Superintending Engineer, is factually incorrect and such reasoning is perverse. Another limb of argument is that such reasoning would also work to the prejudice of the petitioner inasmuch as it would effect even his rights for consideration for promotion to the post of Superintending Engineer on regular basis.

Having heard counsel for the petitioner at length and having perused the pleadings on record, I am of the considered view that the writ petition is devoid of merit and deserves dismissal.

The reasoning adopted by the respondent-authorities at the stage of divesting the petitioner as also others of the current duty charge for the post of Superintending Engineer is the following terms:-

“There are 6 sanction posts of Superintending Engineers in the Town Improvement Trusts i.e. Amritsar, Jalandhar, Ludhiana, Patiala, Bathinda and in the Head Office. Out of these, 5 Superintending Engineers posted in the Town Improvement Trusts are supervising the Technical Works and one Superintending Engineer posted in the Head Office is working under the Chief Engineer(Trust Cadre). The Superintending Engineers were made as Head of the Technical Works being undertaking by the different Improvement Trusts fall under their concerned Region. However this practice was not implemented in appropriate manner. The Superintending engineers are supervising the

Technical Works with regard to their respective Improvement Trusts. Apart from this, the Improvement Trusts have not drawn new schemes for a long time. Hence, keeping aside 3 Main Trusts, there is not much work load in the remaining 2 Trusts.”

The basis as noticed hereinabove, cannot be stated to be irrelevant to the issue. There would be no occasion for this Court to conduct an enquiry into the matter as regards the work load available pertaining to a particular post.

The submission as regards the petitioner, being prejudiced as regards his consideration for promotion to the post of Superintending Engineer on regular basis is wholly misconceived.

The right of an employee is to a fair consideration at the stage of promotion. As and when, the Competent Authority takes a decision to fill up the vacant cadre post of Superintending Engineer and to conduct a DPC in such regard, all eligible employees in the Feeder Cadre, who fall within zone of consideration, would have a right of consideration. At that stage such right would obviously flow even if in favour of the petitioner, subject to his eligibility and other relevant conditions under the Statutory rules governing the service.

Even otherwise, no employee has a right to demand vesting of a current duty charge of the higher post or for that matter to continue serving such post on current duty charge basis. It is not the case of the petitioner that by virtue of the impugned order of divesting of current duty charge of the post of Superintending Engineer, he has been put to any financial loss or prejudice or that his service conditions have been adversely effected.

In declining to interfere in the impugned order, this Court would draw support from the observations made by the Hon'ble Supreme Court in ***State of Haryana vs. S.M. Sharma***

1993(3) SCT 396 and wherein it had been observed in the following terms:-

“11.Sharma was given the current duty charge of the post of Executive Engineer under the orders of the Chief Administrator and the said charge was also withdrawn by the same authority. We have already reproduced above Rule 4(2) of the General Rules and Rule 13 of the Service Rules. We are of the view that the Chief Administrator, in the facts and circumstances of this case, was within his powers to issue the two orders dated June 13, 1991 and January 6, 1992.

12.We are constrained to say that the High Court extended its extraordinary jurisdiction under Article 226 of the Constitution of India to a frivolity. No one has a right to ask for or stick to a current duty charge. The impugned order did not cause any financial loss or prejudice of any kind to Sharma. He had no cause of action whatsoever to invoke the writ jurisdiction of the High Court. It was a parent misuse of the process of the Court.

13. We, therefore, allow the appeal, set aside the impugned judgment of the High Court dated August 20, 1992 and dismiss the Writ petition filed Sharma before the High Court with costs. We quantify the costs as Rs.10,000/-.”

For the reasons recorded above, no basis for interference is made out.

Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

10.07.2017

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Whether speaking/reasoned : **Yes/No**
Whether reportable : **Yes/No**