

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

**234**

**CWP-22498-2015 (O&M)  
Date of decision: 14.03.2017**

Ram Dhan Pandhir

....Petitioner

Versus

Haryana State Agricultural Marketing Board and others

.... Respondents

**CORAM: Hon'ble Mr. Justice P.B. Bajanthri**

Present: Mr.R.K.Malik, Sr. Advocate with  
Mr. Kuldeep Sheoran, Advocate for the petitioner.

Mr. Padamkant Dwivedi, Advocate for the respondents.

**P.B. Bajanthri, J. (Oral)**

In the instant writ petition, the petitioner has questioned the validity of condition imposed in Annexure P12 to the extent that he was entrusted current duty charge of Engineer-in-Chief in his own pay scale without any extra remuneration, he has questioned the decision of the Administrative Committee dated 26.03.2015 (Annexure P-9) by which his name has been overlooked for the promotion to the post of Chief Engineer and sought for quashing of order dated 26.03.2015 vide Annexure P18 denial of arrears of pay for the post of Superintending Engineer.

2. Petitioner's name was overlooked for promotion to the post of

Superintending Engineer on 23.07.2003 due to pendency of disciplinary proceedings. It is learnt that in the disciplinary proceedings petitioner has been exonerated. Consequently, he was promoted to the post of Superintending Engineer w.e.f. 23.07.2003 from the date one Sh. D.K.Garg, Executive Engineer who was promoted to the post of Superintending Engineer. In view of the retrospective promotion to the post of Superintending Engineer w.e.f. 23.07.2003, the petitioner is entitled for fixation of pay w.e.f. 23.07.2003. Even though respondents have fixed the petitioner's pay however, condition has been imposed stating that fixation of pay is notional and no arrear is payable.

3. The petitioner's another grievance is relating to promotion to the post of Chief Engineer that he is entitled for promotion from 2010 the date on which the respondents have resorted to depute one Mr. J.S. Suhag. Even though the petitioner was eligible he was not promoted and he was promoted only w.e.f. 03.06.2013 vide order dated 06.12.2013. The petitioner was appointed to the post of Engineer-in-Chief on 26.06.2014 in his own pay scale. Even though he was eligible for the post of Engineer-in-Chief, consequently he is entitled for pay attached to the post of Engineer-in-Chief during the intervening period i.e. 26.06.2014 to 31.05.2015 i.e., up to the date of attaining age of superannuation and retired from service.

4. In this background the petitioner is entitled for notional pay fixation or arrears of pay for the post of Superintending Engineer or not. Undisputedly, petitioner was facing disciplinary proceedings. However his junior Mr. D.K.Garg, was promoted to the post of Superintending Engineer

on 23.07.2003. After completion of disciplinary proceedings, the petitioner was promoted to the post of Superintending Engineer w.e.f. 23.07.2003. However, denial of arrears of pay and fixation of notional pay in the cadre of Superintending Engineer is highly arbitrary for the reasons that whenever an employee who is facing disciplinary proceedings if his name came for consideration for promotion is over looked, in that event his name would be kept in sealed cover and it will be given effect as and when disciplinary proceedings were completed. In the present case petitioner had been exonerated. Consequently, he has been promoted w.e.f. 23.07.2003. Therefore, he is entitled for arrears of pay during the period from 23.7.2003 to 31.05.2009 the date on which he was promoted to the post of Superintending Engineer. The respondents are directed to calculate difference of pay from 23.07.2003 to 31.05.2009 in the cadre of Superintending Engineer and disburse the same within a period of 3 months from today.

5. Petitioner's second grievance is relating to promotion to the post of Chief Engineer is concerned, it is to be noticed that the respondents have resorted to deputation method instead of promotion. The petitioner has failed to question the operation of deputation method so as to contend that he was eligible as on the date of deputing one Sh. Suhag in the year 2010. Therefore, the petitioner has not made out a case so as to seek promotion to the post of Chief Engineer in the year 2010. Hence same is rejected.

6. Third grievance of the petitioner is that he is entitled for pay scale attached to the post of Engineer-in-Chief from 26.06.2014 the date on

which he was appointed on his own pay scale. It is to be noted that unless and until his name is to be considered for the post of Engineer-in-Chief he is not entitled pay attached to the post since the method of recruitment to the post of Engineer-in-Chief is by rules. Unless and until rule is operated for the purpose of promotion to the post of Engineer-in-Chief he is not entitled for pay attached to the post. Having regard to the fact that he has discharged the duties of the post of Engineer-in-Chief from 26.06.2014 to 31.05.2015, the concerned respondents are directed to consider his name for promotion as on 26.06.2014 the date on which his name was considered for posting him as Engineer-in-Chief whether he was eligible for promotion to the post of Engineer-in-Chief or not. Such exercise shall be done by concerned respondents within a period of 3 months and take a decision and decision shall be communicated to the petitioner. If the petitioner's grievance is redressed by the respondents to the extent that petitioner is eligible for promotion to the post of Engineer-in-Chief w.e.f. 26.06.2014 in that event the petitioner is entitled for difference of pay during the period from 26.06.2014 to 31.05.2015.

**( P.B.BAJANTHRI )**  
**JUDGE**

**14.03.2017**

pooja saini

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No