

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

CWP No. 6182 of 2015

Date of decision: 09.05.2017

Tejinder Singh

...Petitioner

Versus

Punjab State Power Corporation Ltd. and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Aalok Jagga, Advocate,
for the petitioner.

Mr. Gursimranjit Singh, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. Petitioner herein is seeking to challenge impugned order dated 2.2.2015 (Annexure P-10), by which the claim of the petitioner for appointment on the post of Assistant Engineer in the ex-serviceman dependant category has been declined on the ground that he had already availed of the benefit of reservation for selection to the post of Junior Engineer and could not avail the benefit again while seeking appointment on the post of Assistant Engineer.

2. In brief, the facts are that two advertisements were issued for filling up posts under Assistant Engineers and Junior Engineers by the Punjab State Electricity Board. Advertisement No. CRA263/2008 pertained to filling up 80 posts of Assistant Engineers whereas Advertisement No. CRA264/2008 pertained to filling up 225 posts of Junior Engineer (Electrical). The petitioner being eligible for both, applied under both the

advertisements in the ex-servicemen dependent category. By letter dated 01.07.2010, the petitioner was appointed as Junior Engineer (Electrical) under Advertisement CRA264/2008. Under orders of the High Court, the number of vacancies for the posts of Assistant Engineers was increased from 81 to 94 and roster point at 87 fell into the share of the ex-servicemen category. Three persons were called for interview who had participated in the selection process that was initiated under advertisement CRA264/2008 pertaining to ex-serviceman category. The petitioner too was called for interview, however, his case was rejected on the ground that he had already availed of the benefit of being a Ward of an ex-servicemen while availing offer of appointment to the post of Junior Engineer.

3. Mr. Alok Jagga, learned counsel appearing on behalf of the petitioner contends that the petitioner would be entitled to appointment to the post of Assistant Engineer since an additional post had been added to the vacancy. It is contended that once he had applied under both the advertisements, that is for the post of Assistant Engineer and Junior Engineer, he opted for the post of Junior Engineer as the posts of Assistant Engineer were filled up, and now when there is a vacancy, he could not be deprived of appointment on the ground that he had availed of his chance while accepting the post of Junior Engineer. It is argued that if correct vacancies had been calculated at the very first instance, he would have come into the zone of consideration and he would have opted for joining as Assistant Engineer. It is argued that he had obtained a Lineal Dependant Certificate in consonance with the requirement under the advertisement for both the posts and if the vacancy had been there in 2010, he would have

used the said Lineal Dependant Certificate while opting for the post of Assistant Engineer.

4. Per contra, learned counsel appearing on behalf of the respondents submits that as per rules pertaining to Punjab Recruitment of Ex-Servicemen Rules 1982, Rule 4 (iii) clearly states that this benefit will be available only once in a life. Therefore the petitioner who had availed of the benefit of reservation of being a Ward of an Ex-serviceman while accepting the job of a Junior engineer would not be entitled to the benefit of reservation yet again. It is contended that the petitioner was called for document verification after one post was declared vacant at roster point 87. The petitioner at that point in time was asked to produce his Lineal Dependent Certificate and when he was unable to furnish one, it came to the knowledge of the respondents that the petitioner by availing the benefit of reservation had already joined service as Junior Engineer. It is argued that a candidate, similarly situated merit who was higher in merit at serial No. 9, was also rejected on the ground he had accepted the post of Junior Engineer when he could not make the cut for the post of Assistant Engineer.

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

6. The petitioner herein had participated in the selection process pursuant to an advertisement issued for filling up vacancies for post of Assistant Engineers and Junior Engineers. The petitioner did not have the necessary marks, at that point in time, to be appointed on the post of Assistant Engineer, however, was within the select list for appointment on the post of Junior Engineer in the Ex-servicemen dependent category.

Appointment letter was issued on 01.07.2010 and the petitioner joined service on 16.07.2010. Thereafter, as certain persons having higher merit were shifted to general category making available one vacancy to be filled up of Assistant Engineer in the Ex-servicemen category. This vacancy was made available in the year 2014 and to fill up the said vacancy three persons were called. The petitioner was the third person in order of merit. The first candidate was rejected on the ground that he had already availed of the benefit of reserved category being a Ward of an ex-servicemen while accepting appointment on the post of Junior Engineer. The second person did not come for the interview whereas the petitioner herein appeared for the interview but came to be rejected on the same ground as the first candidate, that is , once having availed of the benefit of reservation under the Punjab Services Ex-Servicemen Rules he could not claim of benefit second time .

7. The Rule 4 of The Punjab Recruitment of Ex Servicemen Rules 1982 pertains to reservation and are reproduced as under:-

"4. Reservation of Vacancies. (1) Subject to the provision of rule 3, 13% of vacancies to be filled in by direct appointment in all the State Civil Services and posts connected with the affairs of the State of Punjab shall be reserved for being filled in by recruitment of Ex-servicemen;

(Note: As per Pb. Govt. Letter No.15/25/2001- 4DW/1591 dated 21.05.2002, an Ex-Serviceman is allowed the benefit of Reservation for the second time and even thereafter in subsequent recruitment in accordance with the provisions of these Rules.)

Provided that where an Ex-serviceman is not available for recruitment against a reserved vacancy, such a vacancy shall

be reserved to be filled in by recruitment of the wife or one dependent child of an Ex-serviceman, who has neither been recruited against a reserved vacancy under these rules;

Provided further that the wife or the dependent child of the ex-serviceman shall be recruited against the reserved vacancy subject to the conditions that:-

- (i) he or she possesses the prescribed qualifications and is within the prescribed age limits;*
- (ii) he or she is not already in service;*
- (iii) he or she will be eligible to avail the benefit only once in life.”*

Provided further that one grand Child of the Gallantry Award Winner shall be recruited against the reserved vacancy, in case the benefit or reservation has not been availed of by any of the children or dependents such winner or by the winner himself subject to the conditions specified in the second proviso;

Explanation : For the purpose of this proviso, Gallantry Award Winner includes the winner of the Paramvir Chakra, the Mahavir Chakra, The Vir Chakra, the Sena or Nao Sena or Vayu Sena Medal and Mention-in-Despatches.

Provided further that the total number of reserved vacancies including those reserved for the candidates belonging to the SCs, STs and BCs shall not exceed fifty of the posts to be filled in a particular year.

(2) Where a reserved vacancy remains unfilled for non availability of a (person eligible for recruitment under these rules) such vacancy may be filled in, temporarily from any other source in accordance with the rules.-

regulating the recruitment and the conditions of service of persons appointed to such posts as if the vacancy was not reserved;

Provided that the reserved vacancies filled in shall be carried forward for the subsequent occasions (arising during at least 2 years in each of which such occasion arises for recruitment) where after

the vacancy in question shall be treated as un-reserved.”

The rule clearly lays out that the person would not be able to avail of the benefit of reservation a second time.

8. The question that has to be decided is whether a candidate would be able to avail of reservation in the facts and circumstances of the instant case, having already availed of reservation while joining on the post of Junior Engineer?

9. Admittedly, the post of Assistant Engineers and Junior Engineers came to be filled up pursuant to the advertisement issued in the year 2009. A vacancy arose thereafter at roster point 87 in the same advertisement for filling up post of Assistant Engineer. There were certain candidates like the petitioner, who had applied for both the posts, i.e under advertisement CRA 263 and in advertisement CRA 264 and on not making the cut against a higher post, accepted the post of Junior Engineer. If the vacancy at roster point 87 any post of Assistant Engineer had been made available to such candidates, the same would have been accepted at the very outset. As per the rules, the benefit of reservation of being a Ward of ex-servicemen can be availed of only once in life. Acceptance on a lower post was only on account of the fact that the candidates did not have the merit to be selected against a higher post and would be in need of a job. It is on account of necessity that a person would accept a lower post, therefore, it is the opinion of this court that having availed of reservation while accepting the post of Junior Engineer, the respondents cannot deny appointment to a candidate who would otherwise have been in the zone of consideration for appointment to the post of Assistant Engineer, if such vacancy had been

made available at that particular time. Such candidates should not suffer for no fault of theirs, only on account of having accepted a lower post at that time. It has also to be kept in mind that the vacancy that arose in the year 2014 were pertaining to the same advertisement and not afresh vacancy that arose , therefore it would not amount to taking a double benefit.

10. The argument raised that the petitioner had not produced his Lineal Dependent Certificate in terms of the rules of 1982 would have no merit since at the time of applying for the post of Assistant Engineers/Junior Engineer, the District Sanik Welfare Board had given the certificate to the petitioner for applying in both the categories.

11. In this background, it remains to be seen whether the petitioner herein can claim a right to the post of Assistant Engineer. As per the reply, the petitioner was appointed on the post of Junior Engineer and in reply to the legal notice it is submitted that the petitioner has already left service. A candidate having a higher merit of 61 was called for document verification but his case was rejected also on the ground that he had availed the reservation while accepting the post of Junior Engineer, as in the instant case. If any person would have a right to be considered, it would be the candidate at serial No. 9 and not the petitioner who was at serial no 11, otherwise, it could create a situation where the person having lesser merit in the same selection is placed at a higher rank.

12. The petitioner did not have the requisite merit to be appointed on the post of Assistant Engineer in the initial stage and even when the vacancy arose, he was the third person who was called in the order of merit.

It is well settled law that a candidate does not have an indefeasible right to

appointment. The petitioner has not been discriminated by offering the vacancy to a person with lower merit. There is no infringement of his legal right by denying appointment in the light of more meritorious candidates available. The right of the petitioner would only arise in case the more meritorious candidate had rejected the offer of appointment which is not so in the instant case.

13. Therefore, in view of the discussion above, the writ petition is dismissed being devoid of merit.

09.05.2017

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.