

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

CWP No. 957 of 2013
Date of decision: 27.07.2017

Gian Chand

....Petitioner(s)

Versus

Municipal Corporation, Chandigarh and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Subhash Ahuja, Advocate, for the petitioner.

Mr. Bishan Kumar, Advocate,
for Mr. Sanjeev Ghai, Advocate,
for respondents no. 1 to 3 and 5.

Ms. Shruti Jain Goyal, AAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

The petitioner, in essence, seeks consideration and promotion to the post of Junior Engineer prior to the date respondent no. 4 was appointed on deputation vide order dated 26.03.2012 (Annexure P-14). Challenge has also been raised to the said order and for quashing the same.

However, keeping in view the fact that the respondents have not considered the first prayer for consideration, this Court deems fit at this point of time only to firstly direct the respondents to consider the case of the petitioner for promotion as per the relevant Rules i.e. Engineering Department (Group 'C') posts of Field Staff under Electricity Operation Circle, Chandigarh Cadre Recruitment Rules, 2004 (in short 'the Rules'). This direction is being issued on the ground that the consideration is being denied solely on the ground that the petitioner was accused in a FIR which

had been lodged by the CBI and he had been acquitted on 29.11.2011 but on account of the pendency of the appeal, he has been denied consideration.

It is the case of the petitioner that on 30.05.2008, the FIR was lodged under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 read with Section 120-B IPC against the petitioner and two others namely A.K. Dadwal and Ramesh Kumar. On account of his arrest on 03.06.2008, he was placed under suspension since he was at that point of time assigned the duties of the Junior Engineer Grade-II vide order dated 30.10.2000 (Annexure P-1) on current duty charge. On account of the acquittal having been recorded on 29.11.2011 by the Special Court/CBI Court, Chandigarh, he was reinstated a month later on 29.12.2011. Vide order dated 17.08.2012 (Annexure P-6), the period of suspension from the date of lodging of the FIR till his reinstatement was treated as duty period for all intents and purposes and he was also paid the arrears accordingly vide office order dated 25.04.2012 (Annexure P-7).

The petitioner accordingly filed representation dated 23.05.2012 (Annexure P-11) for promotion as Junior Engineer (Electricity Wing) from the diploma holders line. The same was followed up by a legal notice dated 21.08.2012 (Annexure P-12). It is the case of the petitioner that 7 posts of Junior Engineers were filled up on contract basis whereas, the private respondent was brought on deputation on 26.03.2012 even after his acquittal and even though the petitioner was fully eligible and qualified but his case was not considered. Resultantly, he approached this Court by filing the present writ petition.

The stand of the Corporation is that an appeal has been filed by the CBI which was admitted on 26.09.2012 and, therefore, on account of the

same, the petitioner's case was not being considered. It has further been averred that the petitioner has no vested right for promotion to the post of Junior Engineer and promotion is not a condition of service and there is no vested legal right with the petitioner.

The said submission, as such, is not liable to be accepted. Once the petitioner has a right of promotion as per the Rules which provide that the post of Junior Engineer (Electrical) is to be filled up by promotion to the tune of 55%, the petitioner has a right of consideration against the same. The respondents have been wrongly denying it on the ground that an appeal is pending against the acquittal order. Once acquittal had been recorded by the criminal Court and on the same circumstances, no departmental proceedings as such were initiated for any misconduct, the petitioner is entitled to be considered for promotion immediately from the date of his acquittal. Once he was reinstated in service and his suspension period has also been treated as period spent on duty, the sole material which would be ground for the respondents as such for denying promotions no longer stood and only on account of the pendency of the appeal, the respondents cannot as such keep the matter hanging fire. The Apex Court in ***Union of India and another vs. Hemraj Singh Chauhan and others, 2010 (2) RSJ 728*** has held that the employees right to be considered for promotion is virtually a part of fundamental right guaranteed in the matters of promotion under Articles 14 and 16 of the Constitution of India and, therefore, the stand taken by the respondents is not justified. The relevant para of *Hemraj Singh Chauhan's case (supra)* reads thus:-

“38. It is an accepted legal position that the right of eligible employees to be considered for promotion is

virtually a part of their fundamental right guaranteed under [Article 16](#) of the Constitution. The guarantee of a fair consideration in matters of promotion under [Article 16](#) virtually flows from guarantee of equality under [Article 14](#) of the Constitution.”

Accordingly, the present writ petition is allowed and a writ of mandamus is issued directing respondent no. 2 to consider the legal notice of the petitioner dated 21.08.2012 (Annexure P-12) and take a decision thereon within a period of two months from the date of receipt of the certified copy of the order. Needless to say that in case the benefit of promotion is to be given, it would flow from the date the petitioner became eligible after the date of his acquittal with all consequential benefits.

27.07.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No