

*CWP No.982 of 2013 (O&M) &
CWP No.18118 of 2013*

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(1.)

CWP No.982 of 2013 (O&M)
Date of Decision:-28.02.2017.

Pokhar Mal Gupta

.....Petitioner

Versus

Haryana Vidyut Parsaran Nigam Limited and others

.....Respondents

(2.)

CWP No.18118 of 2013
Date of Decision:-28.02.2017.

R.K. Khurana

.....Petitioner

Versus

Haryana Vidyut Parsaran Nigam Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. J.K. Goel, Advocate for the petitioner in
CWP No.982 of 2013.

Mr. Gaurav Mohunta, Advocate for the petitioner in
CWP No.18118 of 2013.

Mr. P.S. Poonia, Advocate for the respondents.

P.B. BAJANTHRI, J. (Oral)

1.) This order shall dispose of CWP Nos.982 and 18118 of 2013 as
the point in issue involved in both the writ petitions is similar. For brevity,
facts are being extracted from CWP No.982 of 2013.

2.) Petitioner has questioned the condition imposed in the order of promotion to the post of Assistant Executive Engineer to the extent *“the AE/Civil at Sr. No.1, 2, 4, 8 and 9 on promotion as AEE/Civil on regular basis will remain on probation for a period of one year from the date of assumption of charge as AEE/Civil on regular basis.”*

3.) The petitioner was in the cadre of Assistant Engineer. He has passed prescribed departmental examination for the purpose of promotion to the cadre of Assistant Executive Engineer in the year 2009. The respondents proceeded to fill up the post of Assistant Executive Engineer on provisional basis on 1.2.2010 vide Annexure P-2. Thereafter, on 30.11.2012 vide Annexure P-3, regular promotion order has been issued by imposing the condition that the petitioner is on probation for a period of one year from the date of assumption of charge as Assistant Executive Engineer/Civil on regular basis.

3.) Learned counsel for the petitioner submitted that there is no provision for promoting an Assistant Engineer to that of Assistant Executive Engineer on provisional basis. Further it was contended that as on 1.2.2010 the vacancies of Assistant Executive Engineer filled by the respondents are clear vacancies for promotion. Merely some of the seniors to the petitioner who have not passed the prescribed departmental examination and the policy permits them to appear for departmental examination for 4 times and if they have not passed prescribed examination on 1.2.2010 the respondents cannot provisionally promote petitioner who is eligible for the post of Assistant Executive Engineer and further promotion on regular basis on 30.11.2012. Therefore, imposing the condition that the petitioner is on probation for a period of one year from the date of assumption of charge as

Assistant Executive Engineers/Civil on regular basis is highly arbitrary and illegal and such condition imposed in the absence of any statutory rule for provisional promotion and seniors passing of departmental exam within 4 times till then juniors are not to be promoted.

4.) Per contra learned counsel for the respondents submitted that seniors to the petitioner is entitled for 4 chances to pass departmental examination. Therefore, 4 chances were yet to be completed as on 1.2.2010. Consequently, *ad hoc*/provisional promotion has been granted to such of those eligible Assistant Engineers like the petitioner who was promoted on 1.2.2010. Thereafter, on regular basis he was promoted on 30.11.2012. Therefore, there is no infirmity in imposing the condition that the petitioner is on probation for a period of one year from the date of assumption of charge as Assistant Executive Engineer/Civil on regular basis.

5.) Heard learned counsel for the parties.

6.) Admittedly, there is no provision under the statutory rules promoting Assistant Engineer/Civil to Assistant Executive Engineer on provisional basis and till 4 chances to pass departmental exam by seniors. As on 1.2.2010 there were vacancies of Assistant Executive Engineers and the official respondents proceeded to fill up those promotional vacancies. Petitioner is promoted to the post of Assistant Executive Engineer/Civil on 1.2.2010 on provisional basis. Thereafter, on 30.11.2012, the petitioner was regularly promoted with a condition that he is on probation for a period of one year. The contention of the respondents that provisional promotion was given to the Assistant Engineers on 1.2.2010 for the reasons that seniors to the petitioner and others whose names are reflected in Annexure P-2 have

pass the same within 4 chances and within a period of 2 years. Merely because the seniors have not passed the departmental examination that does not prevent the official respondents to fill up the post of Assistant Executive Engineers which were available as on 1.2.2010 as is evident from the provisional promotion order dated 1.2.2010. Therefore, the petitioner's promotion on 1.2.2010 cannot be treated as provisional. In other words rules do not provide for provisional promotion and regular promotion and it provides only promotion. Therefore, the condition imposed on 30.11.2012 that the petitioner is on probation period is set aside insofar as petitioner is concerned for the reasons that the petitioner who is already promoted to the post of Assistant Executive Engineer/Civil on 1.2.2010. Hence, the probation period of one year commences pursuant to the order dated 1.2.2010 w.e.f. the date of joining the post of Assistant Executive Engineer/Civil. Thus, the condition imposed in the order of promotion dated 30.11.2012 is set aside. The petitioner is entitled for all service benefits as if he has been regularly promoted to the post of Assistant Executive Engineer/Civil w.e.f. 1.2.2010.

7.) Petitions stand allowed.

(P.B. BAJANTHRI)
JUDGE

February 28, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.