

Review Application No.2 of 2017 (O&M) in CM No.4808-LPA of 2016

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

**Review Application No.2 of 2017 (O&M)
in CM No.4808-LPA of 2016 in
LPA No.977 of 2014
Date of decision : 08.12.2017.**

**Haryana State Electricity Board now Haryana Power Generation
Corporation Limited**

.....Appellant

Versus

Anil Kumar and others

..... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE ARUN PALLI**

**Present : Mr. Vivek Sharma, Advocate
for applicant-respondent No.1.**

**Mr. G.S.Wasu, Addl. A.G. Haryana
for non-applicant/appellant.**

The applicant/respondent No.1 seeks review of the order, dated 16.12.2016, vide which, we had disposed of the application moved by the Board/HPGCL, seeking clarification of our order dated 19.08.2014, whereby we had dismissed its appeal.

A brief narration of facts that have led the parties to the current position shall be expedient.

The applicant/respondent No.1 was appointed as Junior Engineer, pursuant to an order dated 15.11.1990, in the erstwhile Haryana State Electricity Board (now Haryana Power Generation Corporation Ltd.),

on acquiring Bachelors degree in Engineering. Whereas, the private respondents No.2 to 4 in the writ petition as also in the LPA were appointed on 7.12.1990 and 22.08.1991, respectively. The applicant/respondent No.1 was posted in Thermal/Generation Project, whereas respondents No. 2 to 4 were assigned the field/general cadre. The next promotion from Junior Engineer was/is to the post of Assistant Engineer. The claim of the applicant/respondent No.1 as also the private respondents No.2 to 4, was to be considered under 12.5% quota for Junior Engineers, possessing a degree in BE/AMIE. And, vide orders dated 1.1.1993 and 3.3.1992, respondents No.2 to 4 were promoted as Assistant Engineer by the Board/HPGCL. The applicant/respondent No.1 assailed their promotion, vide CWP No.7803 of 1993 (**Anil Kumar Vs. The Haryana State Electricity Board and others**), for his grievance was, since he was placed higher in merit in the select list for appointment to the post of Junior Engineers, was senior in service, and had qualified the BE/AMIE earlier to respondents No.2 to 4, he ought to be promoted first. For, another petition i.e. CWP No.6557 of 1993 (**Rajender Singh Redhu and others Vs. Haryana State Electricity Board and others**), involving an identical issue was already pending, the petition filed by the applicant/respondent No.1 was ordered to be heard therewith. The common stand set out by the Board in both the petitions was that as the applicant/respondent No.1 was a member of generation cadre, and no vacancy of Assistant Engineer, in the quota of AMIE/BE, existed therein, he could not be considered for promotion. Whereas, on the contrary, vacancies of Assistant Engineers were available in the field cadre (general cadre), and thus, respondents No.2 to 4, who were working in the said cadre,

were promoted. However, vide order and judgment, dated 29.07.1997, this Court allowed the petition filed by Rajender Singh Redhu and others (supra) and set aside the orders of promotion assailed therein. It was concluded that generation projects or general/field cadre were not two distinct or separate cadres. The cadre of Junior Engineers was one. Which is why, a Junior Engineer posted in the Thermal/Generation Project could be transferred to general cadre or vice versa. The decision rendered by the learned Single Judge in Rajender Singh Redhu and others (supra) was assailed by the Board/HPGCL vide *Intra-Court* appeal i.e. LPA No.657 of 1997. However, vide order and judgment dated 17.12.2004 that too was dismissed by the LPA Bench.

Significantly, another petition, involving an identical issue, i.e. **CWP No.9270 of 1994 (Ish Kumar Vs. Haryana State Electricity Board and others)** was also disposed of by a learned Single Judge of this Court, vide order and judgment, dated 5.7.2010, in terms of the decision in Rajender Singh Redhu and others (supra). The appeal preferred by the Board/HPGCL even against the said decision i.e. LPA No.1806 of 2011 (Haryana State Electricity Board and another Vs. Ish Kumar) was dismissed by the LPA Bench vide order and judgment dated 19.12.2012. Even the Special Leave to Appeal (C) (CC No.11959 of 2013) against the decision of this Court was dismissed by the Supreme Court on 10.07.2013.

Likewise, the petition filed by the applicant/respondent No.1 was also disposed of by the learned Single Judge, vide order and judgment, dated 22.10.2013, in terms of the decision in Rajender Singh Redhu and others (supra) as also in Ish Kumar (supra). And, the *Intra Court* appeal

preferred by the Board/HPGCL, against the order and judgment, dated 22.10.2013, was dismissed on 19.08.2014, for, the matter was concededly covered by the two decisions referred to above.

However, subsequently, an application i.e. CM No.4808-LPA-2016 was moved by the Board/HPGCL, seeking clarification of our order dated 19.08.2014; saying that in compliance to the decision of this Court in *Rajender Singh Redhu and others (supra)*, the *inter se* seniority of the direct recruits Junior Engineers and promotees was re-cast, and vide order dated 15.09.2005, the petitioners in those proceedings were even assigned seniority by awarding deemed dates of promotion. But, the order dated 15.09.2005, was assailed by the directly recruited Assistant Engineers, vide **CWP No.16330 of 2005 (Parveen Arora and others Vs. Haryana Power Generation Corporation Limited and others)** and other connected matters, for, their grievance was that the promotee Assistant Engineers were granted promotions in excess of their quota. However, during the pendency of the said petitions, the Division Bench directed the Board/HPGCL to work out an amicable solution so that rights and entitlement of the parties were not harmed. Resultantly, a proposal dated 15.05.2012, was placed before the Division Bench, which envisaged that quota post of promotees be calculated as per availability of quota, and the promotees be re-assigned seniority from the date their quota posts were available. For, even otherwise, a direct recruit would get seniority from the date he is borne on the cadre, whereas a promotee from the date quota post was available. The Division Bench accepted the proposal/decision, dated 15.05.2012, and modified the directions issued by the Court in its decision in *Rajender Singh Redhu and*

others (supra). Accordingly, the Board/HPGCL was directed to re-draw a fresh seniority list at the level of Junior Engineer and Assistant Engineer in terms of the proposal/decision dated 15.05.2012. And, that being so, the appeal filed by the Board/HPGCL against the decision of the learned Single Judge in the present case ought to have been disposed of, in terms of the decision of the Division Bench in Parveen Arora and others (supra). Particularly, when a specific ground in this regard was raised in the grounds of appeal. The said application was disposed of by us with the observations recorded in para 7 of our order dated 16.12.2016 **“legal effect of that previous order dated 17.12.2004 has submerged into the final directions in Parveen Arora's case (supra), decided on 9.1.2014, no further action is required to be taken by the authorities in deference to the order dated 22.10.2013 (Annexure A-2) of the learned Single Judge or in terms of the order dated 19.08.2014 (Annexure A-1) passed in the instant appeal”**

The limited grievance that the applicant/respondent No.1 has is; for, the observations recorded by us, extracted here-in-above, were being mis-construed by the Board/HPGCL, to mean that post decision of the Division Bench in Parveen Arora and others (supra), the judgment in Rajender Singh Redhu and others (supra), was rendered otiose and lost it's effect, therefore, the decision of the learned single Judge even in favour of the applicant/respondent No.1, which too was based upon the said judgment, was rendered inoperative. And, thus could not be implemented. That is how, as indicated above, we are again seized of the matter.

We have heard learned counsel for the parties and perused the record.

Ex facie, the perception and understanding of the Board/HPGCL of the order, dated 9.1.2014, being set out hereinafter, passed by the Division Bench in Parveen Arora and others is flawed:

“Counsel for respondents No.3 to 17 states that in earlier round of litigation, some favourable judgments were passed in favour of the respondents, protecting their rights and those may be kept in mind when acting upon the proposal, so made. Those judgments have been placed on record as Annexures P7 & P8, respectively.

In view of above facts the above writ petitions are disposed of. The authorities are directed to act in terms of the decision taken on 15.5.2012 which was placed on record of this Court on 17.5.2012. In terms of that decision, let fresh exercise be done to settle right of the parties. When making that exercise, judgments, passed in favour of respondents No.3 to 17 and similarly situated other persons be kept in mind.

A bare analysis of the order, referred to above, does not even remotely show that the judgment rendered in Rajender Singh Redhu, by the learned Single Judge as also the LPA Bench was modified, diluted or was rendered inoperative. Rather, being cognizant of the judgments in Rajender Singh Redhu and others, which were placed on record of those proceedings as Annexures P7 and P8 respectively, the Division Bench instead required the Board/HPGCL to factor in the said decision while framing a fresh seniority list, in terms of the decisions/proposal dated 15.05.2012. In other words, the decision/proposal, dated 15.05.2012, was to be implemented not

in isolation but in conjunction with the decision in the case of Rajender Singh Redhu and others. Significantly, this position is rather fortified by the decision, dated 15.05.2012, proposed by none other than the Board/HPGCL itself **“the above will settle grouse of direct recruits who were otherwise appointed in the year 1993 i.e. much after date of promotions/deemed dates given in 1991 to Rajinder Singh Redu and others”**. Further, the decision of the learned Single Judge in the case of applicant/respondent No.1 was rendered on 22.10.2013 i.e. much before the order dated 9.1.2014, passed in Parveen Arora's case, and that is where the observations recorded by the Division Bench **“.....When making that exercise, judgments, passed in favour of respondents No.3 to 17 *and similarly situated other persons be kept in mind.*”**, assumes significance. Thus, the assertions set out in para 5 of the application i.e. CM No.4808-LPA of 2016 in LPA No.977 of 2014, moved by the Board/HPGCL **“this Hon'ble High Court further modified the directions passed earlier in CWP No.6557 of 1993 and subsequent LPA No.657 of 1997 dismissed vide order dated 17.12.2004**, are factually incorrect and a result of misconstruction of the order passed by the Division Bench. Likewise, the argument being advanced by the learned counsel for the Board/HPGCL is indeed strange, for, one wonders as to how in a separate proceedings, in the case of Parveen Arora and others, the Division Bench could modify or dilute the affect of the decision rendered by the LPA Bench in the case of Rajender Singh Redhu and others and in Ish Kumar (supra) that was upheld right up to the Supreme Court. We are also reminded to point out at this juncture that it has never been the case of the

Board/HPGCL that the matter in issue was not squarely covered by the decision of this Court in matters referred to above. In fact, while issuing notice of motion, the Division Bench vide its order, dated 5.7.1993, had ordered the petition preferred by the applicant/respondent No.1 to be heard with CWP No.6557 of 1993 i.e. Rajender Singh Redhu and others, which has even been implemented.

Now adverting to our order dated 16.12.2016, suffice it to say that all what we meant and intended, while recording our observations in para 7 of the order **“the legal effect of that previous order dated 17.12.2004 has submerged into the final directions in Parveen Arora's case (supra), decided on 9.1.2014 no further action is required** was that since the Division Bench itself blended or co-ordinated the decision in Rajender Singh Redhu with the proposal/decision dated 15.05.2012, and required the Board/HPGCL to cast a fresh seniority list in deference to both, the effect of the decision in Rajender Singh Redhu and others (supra), had submerged into the final directions issued by the Division Bench. Now this could never be construed to mean that the judgment rendered by the learned Single Judge in favour of the applicant and affirmed in appeal, was rendered nugatory or was not to be given effect to. Further, the illusions, if any, are put to rest once the observations recorded by us in para 7 are read in continuity with what we observed in para 4 of our order dated 16.12.2016;

**“The Division Bench specifically took notice of
the earlier decision of the Letters Patent Bench dated
17.12.2004 (Annexure A-4), rendered in the case of**

Rajender Singh Redhu and others (supra) and thereafter only the administrative decision dated 15.05.2012 was approved with a direction to the authorities to carry out fresh exercise to settle rights of the parties subject to the condition that “... *When making that exercise, judgments, passed in favour of respondent Nos. 3 to 17 and similarly situated other persons be kept in mind*”.

For, we have sufficiently clarified our order dated 16.12.2016, the application at hands is accordingly disposed of in the above terms.

**(SURYA KANT)
JUDGE**

**(ARUN PALLI)
JUDGE**

08.12.2017

Manoj Bhutani

Whether Speaking/Reasoned:
Whether Reportable:

YES / NO
YES / NO