

227

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-22185-2015

Date of decision-14.09.2018

Balbir Singh

...Petitioner

Vs.

Punjab State Power Corporation Ltd.and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Subhash Kumar, Advocate for
Mr. Vikram Singh, Advocate for the petitioner.

Mr. H.S.Ghumman, Advocate for respondent No.1.

Mr. Vinod Kumar, Advocate for respondent No.2.

Respondent Nos.3 to 6 proceeded against *ex parte*
vide order dated 09.09.2016.

JITENDRA CHAUHAN, J.

Prayer in the instant petition filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari *inter alia* for quashing impugned order dated 12.08.2015 (Annexure P-33) and seniority list dated 31.12.2013 (Annexure P-1).

It is the case of the petitioner that he was appointed as Trainee Engineer on 20.11.1985 and was subsequently promoted as Assistant Engineer on 20.11.1986; Assistant Executive Engineer on 13.12.1990; Senior Executive Engineer on 27.01.1998; and Superintending Engineer on 08.10.2012. Whereas, private respondent No.5, Harmesh Kumar was

appointed as Trainee Engineer on 22.11.1985; Assistant Engineer on 22.11.1986; and Assistant Executive Engineer on 06.06.1994. The promotion of Harmesh Kumar as Assistant Executive Engineer got delayed on account of his below-average ACRs and unsatisfactory service record. Similar is the case with private-respondent No.3, whereas, respondent No.4 could not be promoted as Assistant Executive Engineer as he had not cleared the Departmental Accounts Examination as well as punishment of stoppage of two annual grade increments with cumulative effect. Similarly, respondent No.6 was not promoted because he had been awarded punishment of stoppage of one annual grade increment without cumulative effect vide order dated 14.10.1991. In this way, the petitioner by virtue of promotion to the post of Assistant Executive Engineer prior to private respondent Nos.3 to 6 became senior to the latter. Learned counsel refers to the tentative seniority list dated 21.07.2003 (Annexure P-11) qua Senior Executive Engineers for the period 01.01.2000 to 30.06.2002, wherein, the petitioner was shown senior to the private respondents. The respondents issued another tentative Seniority List of Senior Executive Engineers dated 01.07.2005 (Annexure P-12), wherein the petitioner was again shown as senior to the private respondents. Thereafter, the respondents issued Revised Seniority List dated 16.02.2006 (Annexure P-6) of Assistant Executive Engineers in violation of their own Regulations (Annexure P-5) wherein, the petitioner was shown junior to the private respondents. Said seniority list was never circulated, therefore, objections thereto could not be

filed. Thereafter, the respondents by taking the base of Seniority List of Assistant Executive Engineers (Annexure P-6), again issued tentative Seniority List of Additional Superintendent Engineer and Senior Executive Engineer dated 27.07.2010 (Annexure P-2) and as the petitioner was promoted prior in time, he was shown senior to the private respondents in the said seniority list. After issuing the tentative Seniority List (Annexure P-2), the department invited objections from all the employees. The private respondents did not file any objections and accordingly, the said seniority list was finalized on 31.12.2010 (Annexure P-3).

On 17.09.2012, respondent Dalbara Singh was promoted as Superintendent Engineer after ignoring the claim of the petitioner despite being senior. When the petitioner highlighted this issue, the promotion order of Dalbara Singh was withdrawn on 18.09.2012. Thereafter, the petitioner along with Dalbara Singh was promoted as Superintendent Engineer vide order dated 01.10.2012 (Annexure P-15). However, the seniority of the petitioner was again disturbed by impugned seniority list dated 31.12.2013 (Annexure P-1). Feeling aggrieved, the petitioner moved one representation on 27.03.2014 and thereafter, a legal notice was served upon the respondents on 17.06.2014 (Annexure P-29), but to no avail. Ultimately, the petitioner approached this Court in CWP-9826-2015, which was disposed of vide order dated 27.04.2015 (Annexure P-30), whereby, the respondents were directed to decide the legal notice within three months. In pursuance thereto, the respondents, vide impugned order dated 12.08.2015

(Annexure P-33), rejected the claim of the petitioner qua seniority.

It is contended that the respondents, after wrongly interpreting the Rules and law on the subject, have disturbed the seniority to the disadvantage of the petitioner. Once the petitioner was promoted as Assistant Executive Engineer on 13.12.1990, prior to the private respondents, he became senior to the latter for all intents and purposes.

On the other hand, learned counsel for respondent No.1-Corporation submits that tentative seniority list of AEE upto 31.12.1999 was circulated vide memo dated 13.08.2002 and 20.09.2002. The same was finalized vide memo dated 13.11.2002. This seniority list was challenged by way of CWP Nos.13609 of 2003 and 19008 of 2004. This Court, vide order dated 14.11.2005 remanded back the matter to the competent authority with a direction to re-frame the seniority list of Assistant Executive Engineer as on 31.12.1999 after taking into consideration all the objections raised by all the officers and by passing a reasoned and speaking order after giving an opportunity of hearing to the objection officers. Accordingly, a High Level Committee was formed vide officer order No.907 dated 27.12.2005. The committee, after giving opportunity of personal hearing to all the concerned, re-framed the seniority list vide office order No.113 dated 16.02.2006, wherein, the petitioner was placed below the private respondents in the seniority list. As far as the final seniority list of Senior Executive Engineers w.e.f. 01.01.2000 to 30.06.2002 issued vide memo dated 21.07.2003 (Annexure P-11), is concerned, it is stated that the petitioner was among the

list of Scheduled Caste category officers who were promoted as Senior Executive Engineers & were placed in foot note in the said list but were not assigned inter se seniority since their counterparts in general category who were senior to them but were not yet promoted as Senior Executive Engineers. It was clearly mentioned in the said list that those SC category officers will be assigned inter se seniority as per instructions of the department. Thus, the petitioner's placement in foot note cannot be considered as his final seniority.

It is further submitted that the petitioner was promoted from the post of Assistant Executive Engineer to Senior Executive Engineer prior to the private respondents due to various administrative reasons, however, following the law laid down in *Ajit Singh Januja Vs. State of Punjab, 1996 AIR (SC) 1189* seniority of the candidates in the lower cadre has been maintained in the higher cadre despite prior promotions of junior.

Heard.

Before proceeding further, it would be apposite to notice the dates of promotions of the petitioner and the private respondents, as per the following table:-

S. No.	Name of the officer	Date of joining as Trainee Engineer	Date of joining as Assistant Engineer	Date of joining as Assistant Executive Engineer	Date of joining as Executive Engineer	Date of joining as Supdt. Engineer
1.	Er. Balbir Singh - Petitioner	20.11.1985	20.11.1986	13.12.1990	27.01.1998	08.10.2012

2.	Er. Dalbara Singh - Respondent No.3	01.06.1983	01.06.1984	14.02.1992	14.02.1998	15.10.2013 (Deemed date of promotion)
3.	Er. Hans Raj Mudh - Respondent No.4	02.06.1983	02.06.1984	10.05.1994	05.07.2000	14.09.2012 (Deemed date of promotion)
4.	Er. Harmesh Kumar - Respondent No.5	22.11.1985	22.11.1986	06.06.1994	25.08.2004	08.10.2012 (Deemed date of promotion)
5.	Er. Sudagar Singh - Respondent No.6	20.11.1985	20.11.1986	08.06.1994	28.03.2001	08.10.2012 (Deemed date of promotion)

A perusal of the above shows that the petitioner was promoted as Assistant Executive Engineer on 13.12.1990, much prior to the private respondents. The petitioner, who was junior to the private respondents, became senior by virtue of this promotion. However, his seniority has again been upset by the respondents on the ground that a committee constituted to deal with the representations of some officers, which decided as under:-

“That in all such cases where junior reserved category officer has been promoted on roster point ahead of his senior reserved category officer, he does not have any right to get seniority ahead of the senior reserved category officer. Therefore, senior officer's inter-se seniority shall be kept in view while allocating seniority in the higher rank as well as at the time of considering the case for next promotion.”

The stand of the petitioner that he was promoted as Senior Executive Engineer on roster point earlier than the private respondents and

There is no dispute with regard to the law laid down in Ajit Singh Januja's case (supra), however, the same is not applicable to the facts of the instant case inasmuch as the petitioner as well as the private respondents belong to the Scheduled Caste category, whereas, in the cited case, the dispute was with regard to seniority of members of the Scheduled and Backward Classes through accelerated promotions viz-a-viz members of the General Category. The above findings of the committee are in contravention of Regulations (Annexure P-5), relevant extract whereof reads thus:-

XXXXXX XXXXXXXX XXXXXXXXXXXX

(b) *In the case of members of the service appointed as Assistant Engineers and above by promotion according to their relative seniority in the lower class from which they were promoted unless a member of a lower class is promoted earlier than another member of the lower class*

who is senior to him and the latter has been passed over on the score of unsuitability or in-eligibility (other than passing the DAE) for promotion in which case the member of the lower class first promoted shall take rank in the higher class above such other members of the lower class, if and when the latter is promoted as Asstt. Engineer and or”

XXXXXX XXXXXXXX XXXXXXXXXXXX

Provided fifthly, that if a member of the service is promoted temporarily to a post earlier than his senior, for reason other than the inefficiency of the senior person or his ineligibility for promotion they will rank interse according to their relative seniority in the class from which they were promoted.”

As noticed earlier, the petitioner was promoted to the post of Assistant Executive Engineer on 13.12.1990 i.e. prior to the private respondents. The private respondents, though senior to the petitioner, were promoted as such later in time on the ground of unsatisfactory service record or deficiency in ACRs or non-clearance of departmental accounts examination, etc. The promotion of the petitioner was neither temporary, nor conditional. As per Clause 16(b) of the Regulations (Annexure P-5), once a member of a lower class is promoted earlier than another member of the lower class who is senior to him and the latter has been passed over on the score of unsuitability or in-eligibility (other than passing the DAE) for promotion, the member promoted earlier shall hold the rank senior to the member promoted subsequently. Thus, when the petitioner marched ahead

of the private respondents at the time of promotion as Assistant Executive Engineer, he became senior to the private respondents for all intents and purposes.

The above discussion leads this Court to the irresistible conclusion that impugned order (Annexure P-33) and impugned seniority list dated 31.12.2013 (Annexure P-1) are bad in law and is accordingly, set aside. The inter se seniority of the petitioner and private respondents be fixed in accordance with the dates of their respective promotions to the post of Assistant Executive Engineer.

Allowed.

(JITENDRA CHAUHAN)
JUDGE

14.09.2018
atulsethi

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No