

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

**Civil Writ Petition No. 13913 of 2011(O&M)
Date of Decision : 04.09.2019**

Surjit Singh

... Petitioner

versus

Punjab State Electricity Board & Ors.

... Respondents

CORAM:-HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. J.S. Brar, Advocate
for the petitioner.

Mr. Daman Dhir, Advocate
for respondent No.3.

ARUN MONGA, J(ORAL)

1. Grievance of the petitioner is that he has suffered a collateral damage owing to an innocuous order passed by this Court in CWP No. 12330 of 2007, which has been completely misunderstood and misinterpreted by the respondents-Punjab State Transmission Corporation Limited(for brevity, Corporation). The present writ petition is preceded with a cantankerous litigation background, as would be borne out from the succinct narrative of facts hereinafter.

2. There being an *inter se* dispute between the petitioner, a direct recruit and respondent No.3, a promotee, a writ petition bearing CWP No. 3324 of 2004 was filed by respondent No.3, impugning the tentative seniority list of Telephone Mechanic dated 02.11.1999, wherein petitioner was placed above him. Pursuant to the objections filed by respondent No.3, which were accepted, in the final seniority list, he was placed at Sr. No.224 i.e. above the petitioner, whose name was brought down to 227-A.

3. Backed with the final seniority list, respondent No.3 being senior to the petitioner, submitted a representation seeking promotion as Junior Engineer. While the said representation was pending, respondent No.3 filed another CWP No. 12330 of 2007 on the plea that since his junior (petitioner herein) had already been promoted and, therefore, he was entitled to the same benefit. The said writ petition was disposed of on 10.08.2007 *ex-parte* without issuing notice of motion by passing the following innocuous order based on condition of eligibility of respondent No.3:-

“Petitioner is working as Telephone Mechanic. He is seeking promotion to the post of Junior Engineer-II(Communication). His prayer to promote him from the date when his juniors were promoted is not being acceded to. During arguments, it transpires that representation of the petitioner(Annexure P-8) is pending.

In view of the facts of this case, writ petition is disposed of by issuing direction to respondent No.2 to take note and decide representation of the petitioner Annexure P-8 expeditiously, preferably within three months from the date of receipt of copy of this order and if there is no legal impediment, the petitioner be promoted to the post of Junior Engineer-II(Communication) forthwith.”

4. In the above background, petitioner was issued show cause notice dated 31.08.2008 as to why he should not be reverted being junior to respondent No.3, which led to the petitioner filing CWP No. 15732 of 2007 before this Court. However, during pendency of the said writ petition, reversion order dated 23.10.2007 was passed, which rendered the writ petition challenging the issuance of show cause notice as infructuous. Yet another writ petition was filed by the petitioner bearing CWP No. 8293 of 2011, impugning his reversion order dated 23.10.2007. The said writ petition was allowed by quashing the reversion order of the petitioner in the following terms:-

“5. For the reasons afore-stated, the final seniority list qua the petitioner and respondent No.3 as well as the consequential revision order dated 23.10.2007(Annexure P-1) are hereby quashed. The petitioner shall be entitled to all the consequential benefits also. However, it shall not preclude the Competent Authority from issuing a fresh show cause notice to the petitioner and thereafter finalize the seniority list. The reversion or retention of the petitioner on the promotional post shall depend upon the fate of the final seniority list.”

5. In terms of the aforesaid order of this Court, the seniority list qua the petitioner was also quashed with a direction to the competent authority to issue a fresh show cause notice to the petitioner and thereafter finalize the seniority list. In accordance thereof, a fresh show cause notice dated 18.03.2011(Annexure P-3) was issued to the petitioner, which was duly responded vide reply dated 10.04.2011(Annexure P-4). However, overlooking the objections/ reply filed by the petitioner to the said show cause notice, vide order dated 26.04.011, impugned herein, the petitioner's seniority list has been directed to be maintained at No. 227-A, below respondent No.3, without assigning any cogent reasons therein. Hence, the writ petition.

6. In the return filed by respondents No.1 and 2, the reversion of the petitioner has been justified. It is averred that both petitioner and respondent No.3 were appointed against the quota of direct recruits of Telephone Mechanic and their merit was determined by Selection Committee. Petitioner was earlier wrongly shown above respondent No.3, which led to filing of CWP No. 3324 of 2004 challenging the said seniority list. The said writ petition was disposed of on with a direction to the respondents to determine the seniority on the basis of merit in accordance with law. The seniority list of Telephone Mechanics was revised and petitioner was placed at Sr. No.227-A below respondent No.3. Consequently, petitioner was reverted. He challenged

the reversion order and pursuant to the directions dated 14.12.2010 issued by this Court while disposing of the writ petition filed by the petitioner, the matter was reconsidered and impugned order was passed, upholding the slotting of petitioner at Sr. No.227-A.

7. In the separate return filed by respondent No.3, it is averred that answering respondent scored more marks in the interview than petitioner and was,thus, rightly shown above the petitioner in the final seniority list and warrants no interference by this Court.

8. Having heard the rival contentions and having perused the record, I am of the view that impugned order dated 26.04.2011(Annexure P-5) is not sustainable and is liable to be quashed for the reasons recorded hereinafter.

9. Impugned order dated 26.04.2011 reads thus:-

“In compliance of order dated 14.12.2010 issued by Punjab and Haryana High Court Chandigarh in CWP 8293 of 2008, Sh. Surjit Singh Vs. Electricity Board, a show cause notice vide memo No. 938/P-690 dated 24.03.2011 was issued to Sh. Surjit Singh telephone mechanic who is posted under CO and C Division Ludhiana to retain his seniority at 227A as telephone mechanic. In this regard, after perusal of reply dated 10.04.2011 of the official, comments of Additional Superintending Engineer CO and C Division Ludhiana memo No. 854 dated 21.04.2011 and comments of Deputy Chief Engineer Communication Circle Jalandhar vide memo No. 1495 dated 25.04.2011 and of official record it is found that the reply filed by the employee is not based on facts.

Keeping in view the above said by disposing the show cause notice dated 24.03.2011 issued to the official by this office, it is ordered as per under:-

It is found that seniority of the official is correctly fixed at 227A, which is being retained.”

10. A perusal of the impugned order shows that the same is non-speaking and cryptic one. No reasons have been assigned while rejecting the representation of the petitioner against reaffirming of his slotting at Sr. No.227A in the final seniority list. Nothing has been mentioned therein as to what weighed in the mind of the competent authority while rejecting the reply/objection to the seniority list, filed by the petitioner.

11. It would be educative to reproduce from a judgment rendered by this Court in case titled as "**Dr. P.K. Mittal Vs. State of Punjab and others**", reported as 1982 (3) SLR 222 as below:-

"The only contention raised by Mr. J.L. Gupta, learned counsel for the petitioner, in support of the petition is that order Annexure P-16 is not a speaking order and that no reasons have been assigned as to why the reply of the petitioner has been rejected. According to him, the order is cryptic and sketchy and could well have been passed without the application of any mind. Reliance has been placed by him on Ram Dass Chaudhary Vs. State of Punjab and another, 1968 S.L.R.792, wherein P.C.Jain, J. in somewhat similar circumstances, relying on the decision of the Supreme Court in Bhagat Raja Vs. Union of India and others, AIR 1967 Supreme Court 1606, took the view that it was incumbent on a punishing authority to give reasons while arriving at a decision against a delinquent officer as the power of punishing was quasi judicial in nature.

12. Even otherwise, I am of the *prima facie* view that petitioner and respondent No.3 came from different sources while petitioner came as a direct recruit whereas, respondent No.3 was promoted as Telephone Mechanic from Telephone Attendant. There has never been *inter se* comparison of merits amongst them. In this view of the matter a direct recruit gets precedence over promotees as per service rules governing the parties, even though appointed on

the same day. Petitioner joined service before respondent No.3 and is entitled to preference. Petitioner was interviewed on 09.02.1987 and on the same day was selected in the category of direct recruit and joined service on 13.03.1987. Academic qualification of respondent No.3 is only matric with diploma in electrical and his number in the provisional list of Seniority was at Sr. No.234, whereas number of petitioner was at 222.

13. All these aspects are conspicuously missing and not considered by the competent authorities while deciding the objections/ reply of the petitioner.

14. In the premise, order dated 26.04.2011 being cryptic and non-speaking, is not sustainable in law. The same is accordingly set aside. Respondent No.3 is directed to pass a speaking order by giving detailed reasons while deciding the objections/ reply filed by the petitioner to the show cause notice, after granting an opportunity of personal hearing to the petitioner as well as other stake holder/ Junior Engineers who may be adversely affected.

15. Disposed of in above terms.

06.09.2019

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1. Whether speaking/ reasoned:

2. Whether reportable:

(ARUN MONGA)
JUDGE

Yes/ No

Yes/ No