

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

(204)

CWP-9579-2006 (O&M)

Date of Decision: July 04, 2019

Bhim Singh

.. Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd.

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jagbir Malik, Advocate, for the petitioner.

Mr. Gaurav Mohunta, Advocate, for the respondent.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the petitioner is seeking a direction to promote him to the post of Assistant Engineer w.e.f. 18.08.2004 when the case of the similarly situated employees as well as juniors to the petitioner was considered and they were promoted, with all consequential benefits.

In the present writ petition, the petitioner has averred that he was appointed as a Line Superintendent on 16.01.1969 and thereafter, he was promoted as Junior Engineer on 24.03.1995. While working as Junior Engineer, a charge-sheet was served upon the petitioner on 27.02.2003 under Rule 7 of the Punishment and Appeal Rules, 1962.

Learned counsel for the petitioner argues that though the petitioner submitted the reply within the stipulated time on 26.05.2003, thereafter no action was taken by the respondents on the said charge-sheet. In August, 2004, the case of the eligible employees were considered on the basis of the seniority for promotion to the post of Assistant Engineer. At the time of consideration, the case of the petitioner for promotion was deferred due to the pendency of the charge-sheet, which was issued to the petitioner

in the year 2003 and petitioner was not extended the benefit of promotion as Assistant Engineer though, persons junior to the petitioner were promoted as Assistant Engineer in August, 2004.

Petitioner retired from service on 31.01.2005 and on the date of retirement, the charge-sheet which was issued to the petitioner on 27.02.2003 was pending. Ultimately, the said charge-sheet was decided by the respondents on 12.09.2005 and a punishment of stoppage of two increments without future effect was imposed.

Learned counsel for the petitioner argues that as only a minor punishment was imposed upon the petitioner in respect of the charge-sheet dated 27.02.2003, the same cannot be an impediment in respect of the promotion of the petitioner from the rank of Junior Engineer to Assistant Engineer especially in view of the fact that the persons junior to him were promoted in August 2004.

Learned counsel for the respondents has submitted that a punishment was imposed upon the petitioner after his retirement in September, 2005 as the petitioner was held guilty of the allegations which were alleged against him in the charge-sheet issued in the year 2003, hence petitioner is not entitled for promotion w.e.f. the date persons junior to him were promoted.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

As per the settled principle of law settled by Hon'ble Supreme Court of India in **Civil Appeal No.6150 of 2013 titled as D.H.B.V.N.L Vidyut Nagar, Hisar and others vs. Yashvir Singh Gulia, decided on 30.07.2013**, wherein following direction was given:-

“13. We are of the view that the procedure referred to hereinbefore has been followed by the Board. The delinquent officer was given an opportunity to submit his reply to the show-cause-notice which was considered and the Board took a conscious decision to impose only a minor penalty, i.e. barring one increment without cumulative effect, for which no full-fledged departmental inquiry is contemplated. Learned District Judge as well as the High Court, in our view, has committed a grave error in interfering with the punishment imposed by the Board which, in our view, is perfectly legal, going by the regulations referred to hereinbefore.

14. Consequently, the appeal is allowed and the judgment of the learned District Judge as well as that of the High Court is set aside.

15. Learned counsel for the respondent submits that, by virtue of the punishment imposed, he has not been given his due promotion. We are of the view that if imposition of a minor penalty is not a bar in granting promotion to the respondent, due promotion be granted to him in accordance with the Rules and Regulations applicable to him.”

Learned counsel for the respondents very fairly admits that no order has been passed by the respondents so far wherein, a consideration has taken place with regard to the claim of the petitioner for promotion w.e.f. the date his juniors were promoted and he very fairly states that the case of the petitioner will be considered for promotion in accordance with law for promotion to the post of Assistant Engineer w.e.f. the date his juniors were promoted and an appropriate speaking order will be passed in this regard. He further assures that in case after the consideration, the petitioner is found entitled for promotion, all the consequential benefits for which the

petitioner will be found entitled, will also be released. He seeks two months time to consider the case and pass appropriate orders. Respondents are directed to execute their undertaking as recorded above.

Learned counsel for the petitioner further argues that in pursuance to the order of punishment dated 12.09.2005 (Annexure P-12), wherein two annual increments were ordered to be recovered from the pensionary benefits of the petitioner and recovery of Rs.31,545/- was done from the retiral benefits of the petitioner, which action was stayed by this Court while issuing notice of motion.

The order of punishment has been passed by the Administrative Officer on behalf of the Chief Engineer.

Learned counsel for the respondents states that the said order is appealable and the petitioner can avail his remedy by filing an appeal against the said order before the higher authorities.

Faced with this situation, learned counsel for the petitioner states that he be allowed to file an appeal against the said order dated 12.09.2005 (Annexure P-12) before the higher authorities within a period of one month from today and a direction be issued to the respondents to decide the same in a time bound manner and till then, the recovery in pursuance to the said order dated 12.09.2005 be not effected.

Respondents are directed to decide the appeal within a period of two months from the date of receipt of the appeal in case the same is preferred by the petitioner against the impugned order dated 12.09.2005 (Annexure P-12).

Respondents are directed not to recover the amount till the decision of the appeal in pursuance to the order dated 12.09.2005. However,

the respondents will be within their jurisdiction to act accordingly keeping in view the result of the appeal, which the petitioner, will file as undertaken by the counsel as recorded above.

The writ petition stands disposed of in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

July 04, 2019
harsha

Whether speaking/reasoned: Yes
Whether reportable: Yes