

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

**CWP-12219-2012 (O&M)
Date of decision : 02.04.2019**

Harpal Singh Bains

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.D. Bawa, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN, J.

By way of filing the instant petition under Articles 226/227 of the Constitution of India, the petitioner has sought issuance of a direction to the respondent to promote him to the post of Sub Divisional Engineer, from the date such vacancy became available i.e. 31.08.2008, the date when Manjit Singh, Sub Divisional Officer (Ad hoc), retired from service.

Heard.

On 12.08.2014, this Court noticed as under:-

“The short grievance of the petitioner is that he was entitled to be promoted as Sub Divisional Engineer in accordance with rules.

In fact the eligibility of the petitioner is not even in dispute. If the reply of the respondent is to be seen they have admitted that the petitioner was due for promotion to the post of Sub Divisional Engineer on 31.8.2008 but could not be promoted for the reason that Departmental

Promotion Committee could not meet on account of administrative constraints. The meeting was held on August, 2010 but by that time petitioner had superannuated on 31.5.2010. The petitioner's claim is therefore that he should have been promoted with effect from the date when concededly he became due for promotion and his legitimate expectation cannot be defeated on account of the inaction on the part of the respondents to hold a Departmental Promotion Committee and that too when he was given the additional charge of post of Sub Divisional Engineer on 5.6.2009.

The respondents contended that promotion is not a matter of right and therefore, if the Departmental Promotion Committee was not held the petitioner cannot make any grievance of it.

I am not in agreement with the stand of the respondents as lot of mischief can be attributed to it. Respondents in the eventuality of being disinclined to offer a promotion to a person may simply tide over the situation by not holding Departmental Promotion Committee. The only legitimate stand that the respondents can take in this kind of situation is that work and conduct of the employee being unsatisfactory to disentitle him for promotion. There being no such material, the grievance of the petitioner apparently seems to be justified but before passing any orders in this regard, the respondents would place on record the career record of the petitioner as existing on 2008.

Let needful be done positively before the next date of hearing.

List again on 9.9.2014."

On 30.11.2015, the following order was passed by this Court:-

“Although no one can claim promotion as a right but when vacancies are available in the promotional cadre, then the department would have to explain why DPC is not being held which postpones the right to promotion. In this case, for 3 years, the State has not clarified the position even when in the year 2009, the officiating charge of the post of Sub Divisional Engineer was given to the petitioner in the rank of Assistant Engineer [Civil] and he continued to officiate on that post till his superannuation. This confirms the belief of the Court that the petitioner has been wronged over a long period of time and his substantive right of promotion has been denied to him. The wrong has to be remedied.

Mr.Vaibhav Sharma will call upon the Secretary, Department of B & R, Punjab to take a final decision on the rights of the petitioner to antedated promotion with effect from the date he held the current duty charge/officiating charge of the higher post and will produce the final order before this Court within a fortnight. In making the order, the officer will keep in view the interim order passed by this Court on 12.8.2014.

List again on 22.12.2015.

To be shown in the urgent list.

*Order **dasti.**”*

In compliance of order dated 30.11.2015, additional affidavit dated 06/07.10.2016, was filed on behalf of the respondent, relevant portion whereof, reads thus:-

“That in compliance with the order dated

*30.11.2015 passed by this Hon'ble Court, the petitioner has been notionally promoted as SDE w.e.f. 31.08.2008 and further has been granted notional benefits. The copy of the order dated 15.01.2016 is attached herewith as **Annexure R-1.**"*

Learned counsel contends that the petitioner was given current duty charge of the post of Sub Divisional Engineer w.e.f. 05.06.2009 (Annexure P-5), whereas, he retired from service on superannuation on 31.05.2010. Therefore, he ought to have been granted benefits of promotion on actual basis w.e.f. 05.06.2009.

After carefully perusing the case file, this Court finds force in the contention raised by learned counsel for the petitioner. It is admitted fact that the petitioner was given current duty charge for the post in question w.e.f. 05.06.2009. As he has been given notional promotion w.e.f. 31.08.2008 and he assumed the current duty charge later in time, i.e. on 05.06.2009, this Court does not find any ground to deprive the petitioner of the benefits which may have accrued to him upon his timely promotion from the date of his assuming the current duty charge i.e. the date from which he actually worked against the post in question.

In view of the above, the petitioner is held entitled to pay and allowances as attached to the post of Sub Divisional Engineer w.e.f. 05.06.2009. His pay be refixed accordingly. The pension of the petitioner be also recalculated in the same terms. The necessary exercise be completed within a period of six weeks from the date receipt of a certified copy of this judgment. The arrears thereof be paid to the petitioner within a

period of six weeks thereafter.

Allowed in the above terms.

02.04.2019
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(JITENDRA CHAUHAN)
JUDGE

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