

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

CWP-12874-2014

Date of decision: - 13.02.2019

Ranbir Singh Dahiya

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Dinesh Kumar, Advocate,
for the petitioner.

Mr. Charanjit Singh Bakhshi, Addl. A.G., Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which has been raised by the petitioner is that he has been denied promotion to the post of Executive Engineer on the ground that no junior to him was promoted as Executive Engineer up to the date of his retirement i.e. 31.10.2010.

As per the factual statement made in the writ petition, petitioner joined the respondent(s)/department on 06.05.1972. While in service, the petitioner passed a AMIE degree in the year 1987. After the said degree, he was promoted as a Sub-Divisional Engineer on 27.11.1998. As per the averments made in para No.4 of the writ petition,

there were four charge-sheets which were pending against the petitioner starting from the year 2009 onwards. As the charge-sheets were pending against the petitioner, one of his junior, namely, Sh. Ramesh Kumar Kapoor was promoted as Executive Engineer w.e.f. 20.07.2010. A copy of the said order has been appended as Annexure P-12 with the present writ petition. In order to prove that the petitioner was senior to Sh. Ramesh Kumar Kapoor, the petitioner has attached the seniority list dated 12.06.2007 (Annexure P-10) issued by the respondents in the cadre of SDO. In the said seniority list, the seniority number of the petitioner is 271 whereas the seniority position of Sh. Ramesh Kumar Kapoor is 280.

As per the averments made in the writ petition, the petitioner was not promoted when Sh. Ramesh Kumar Kapoor was promoted on the ground that there were four charge-sheets pending against him and therefore, during the pendency of the said charge-sheets, the petitioner could not have been promoted.

Petitioner retired on attaining the age of superannuation on 31.10.2010. At the said point of time also, all the charge-sheets were pending against him and therefore, he was not given promotion.

After the retirement of the petitioner, all the four charge-sheets were concluded and in three charge-sheets, the petitioner was given punishment of warning and in respect of one charge-sheet, the punishment of deduction of Rs.1 from the pension of the petitioner was imposed and further it was ordered that the petitioner will not be paid any allowances, except the suspension allowance already paid. The relevant chart showing the date of charge-sheets alongwith decision on the charge-

sheets is as under: -

Sr. No.	Charge sheet	Decision on the charge sheet
1	8/78/2008-3 B&R(E) dated 3.8.2009	Punishment of “Warning to be more careful” has been awarded vide Govt. order No.8/78/08-3 B&R(E) dated 3.12.2012
2	8/35/2009-3 B&R(E)	Punishment of “Deduction of Rupee one from his pension and further the subsistence allowance paid during the period of suspension i.e. 18 May, 2009 to 23 June, 2009 be treated as requisite remuneration and there would be no need to pay any additional emoluments for that period and the period under suspension be treated as the leave of kind due has been awarded vide Govt. order No.8/35/09-3 B&R(E) dated 21.5.2014
3	8/97/2008-3 B&R(E)	Punishment of “Warned to be careful in future” has been awarded vide Govt. order No.8/97/2008-3 B&R(E) dated 24.5.2013
4	8/78/2009-3 B&R(E)	Punishment of “Warned” has been awarded vide Govt. order No.8/78/2009-3 B&R(E) dated 7.11.2012

In the meantime, in pursuance of the direction given by this Court in various writ petitions filed by the employees of the respondent department, consideration of the officers for promotion as Executive Engineer was undertaken. An order was passed on 21.01.2014 after considering the case of all eligible as to whether they are entitled for promotion as Executive Engineers and if yes, with effect from what date. In the said consideration, the case of the petitioner was also considered and it was found that he is not eligible for promotion on the ground that none of his junior was promoted as Executive Engineer prior to 31.10.2010 i.e. when petitioner retired from service and therefore, there is no question of granting him the said benefit of promotion.

Counsel for the petitioner contends that this reason was factually incorrect as Sh. Ramesh Kumar Kapoor, who was junior to the

petitioner, had already been granted promotion initially on 20.07.2010, but later on from 21.08.2009 and on these dates, the petitioner was very much in service. Therefore, the order declining the benefit of promotion to the petitioner on the ground that none of his junior was promoted up to the date he superannuated, is factually incorrect.

Upon notice of motion, the respondents have filed the reply.

In the reply, it has been stated that keeping in view the disciplinary proceedings pending against the petitioner and their outcome, wherein a warning was administered to the petitioner as well as a recovery of Rs.1 from his pension, upon being held guilty in those disciplinary proceedings, he was not entitled for the grant of promotion with effect from the date a person junior to him was promoted.

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

It is a matter of fact that since August, 2009, when the petitioner was working as SDE, there were charge-sheets pending against him. Those charge-sheets remained pending against the petitioner till he superannuated on 31.10.2010 and therefore, there was no occasion with the respondents to consider his case for promotion to the post of Executive Engineer. It is further a matter of fact that Sh.Ramesh Kumar Kapoor, who was junior to the petitioner, was promoted as Executive Engineer initially on 20.07.2010, but thereafter was granted retrospective promotion to the said post w.e.f. 21.08.2009. Therefore, a person junior to the petitioner was promoted as Executive Engineer prior to the date when he superannuated on 31.10.2010. Hence, the reason which has been given

by the respondents to deny the petitioner the promotion to the post of Executive Engineer vide impugned order dated 21.01.2014 is factually incorrect. The relevant reason given in the impugned order is as under: -

Sr. No.	Name of petitioner S/Shri	Date from which eligible/suitable for notional promotion as Executive Engineer (Civil)	Date from which eligible/ suitable for notional promotion as Superintending	Date of retirement
22.	Ramesh Kumar Kapoor SDE (Retd.)	Not eligible Because he had already been promoted to the post of Executive Engineer w.e.f. 21.08.2009 on his turn	Not eligible (Because no junior to him has been promoted upon the date of his retirement i.e. 31.07.2011)	31.07.2011
23.	Ranbir Singh SDE (Retd.)	Not eligible Because no junior to him had been promoted to the post of Executive Engineer upon his date of retirement.	Not eligible (Because no junior to him has been promoted upon the date of his retirement i.e. 31.10.2010)	31.10.2010

Now, the next question which arises is as to whether the petitioner would be entitled for promotion keeping in view the facts which have been recorded hereinbefore.

Counsel for the petitioner states that keeping in view outcome of the disciplinary proceedings wherein only a warning was administered, the petitioner became entitled for promotion keeping in view the instructions which have been issued by the respondents on 13.02.1962, as amended from time to time. As per the said instructions, in case an employee is exonerated of the charges without any imposition of a penalty or is only administered warning, then he/she should, if otherwise found fit, will be entitled for promotion with effect from the date a person junior to him/her was promoted. The relevant instructions, sought to be

pressed by the counsel for the petitioner, are as under:-

“If he is ultimately exonerated of all the charges without the imposition of any penalty or is only administered a warning (whether with a copy on the personal file or not) then he should, if otherwise fit for promotion in every respect, be promoted with retrospective effect i.e. from the date on which he was due for promotion and an official junior to him was promoted. In case no vacancy was available for the period in question a temporary post should be created in consultation with the Finance Department and the junior most promoted official should be reverted, if necessary.”

Counsel for the respondents is unable to rebut the factual aspect that in the impugned order the denial of the promotion to the petitioner is only on the ground that no one junior to him was promoted prior to the date of his retirement and the said ground/reason is factually incorrect.

In respect of the second plea, which has been raised by the petitioner that he is entitled to be considered at least by the competent authority after the charge-sheets, which were pending against him, were finally adjudicated, w.e.f. the date person junior to the petitioner was promoted, no consideration has taken place so far.

In view of the above position, the petitioner becomes entitled for consideration of his case for promotion to the post of Executive Engineer after the culmination of the departmental proceedings which were pending against him at the time when his junior was promoted as Executive Engineer. This Court is not expressing any opinion in respect of as to whether the petitioner is entitled for or not entitled for promotion as Executive Engineer with from the date when Sh. Ramesh Kumar

Kapoor was promoted as the same is within the domain of the departmental promotion committee to assess the record and then adjudicate and pass final order in respect of entitlement of the petitioner for the said relief.

In view of the above, the order dated 21.01.2014 insofar as rejects the case of the petitioner for grant of promotion to the post of Executive Engineer on the ground that no junior to him was promoted, is set aside and a direction is given to the respondents to reconsider his case for the grant of promotion as Executive Engineer from the date when Sh.Ramesh Kumar Kapoor i.e. junior to the petitioner, has been promoted as Executive Engineer.

Let the said consideration take place within a period of three months from the date of receipt of certified copy of this order.

In case after the consideration it is found that the petitioner is entitled for the promotion when the person junior to him was promoted, the necessary order granting the relief to the petitioner shall also be granted within a period of next two months.

Present writ petition stands disposed of in the above terms.

February 13, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes