

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

Civil Writ Petition No.16062 of 2017

Reserved on : December 13, 2018

Date of decision: January 16, 2019

Union territory, Chandigarh and others

...Petitioners

Versus

Central Administrative Tribunal, Chandigarh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Ms.Deepali Puri, Advocate and
Mr.Akshay Sethi, Advocate for the petitioners.

Mr.Aman Chaudhary, Advocate for
respondent No.2.

HARINDER SINGH SIDHU, J.

The Union Territory, Chandigarh has filed the present writ petition laying challenge to the order dated 24.4.2017 of the Central Administrative Tribunal, Chandigarh Bench, whereby, the Original Application filed by respondent No.2 seeking directions to consider his case for promotion to the post of Executive Engineer (Public Health) taking into account the period from 4.8.2008 to 26.12.2011 when he was holding additional charge as Sub Divisional Engineer, has been allowed.

Respondent No.2 initially joined as Junior Engineer (Public Health) on 16.3.1982. During his employment, he qualified both Sections 'A' and 'B' of AMIE by December, 1982. On 19.5.1996, he was transferred to Municipal Corporation, Chandigarh and designated as Sub Divisional Engineer in his own pay scale being the senior most AMIE vide letter dated

17.4.2000. On 15.2.2002 he was designated as Assistant Engineer on completion of 16 years of service. The next channel of promotion from the post of Assistant Engineer is to the post of Sub Divisional Engineer. As regular promotions by convening DPC would take a long time, the UT Administration gave additional charge of Sub Divisional Engineer to respondent No.2 being the senior most on 4.8.2008. Subsequently, on convening of DPC, he was granted regular promotion as SDE w.e.f. 27.12.2011. He continued working as such till 15.1.2016 when he was given additional charge of the post of Executive Engineer as per his seniority on 15.1.2016 as the senior most Sub Divisional Engineer was facing disciplinary proceedings at that time.

The next channel of promotion from the post of Sub Divisional Engineer is to the post of Executive Engineer. This promotion is governed by the Punjab Water Supply and Sanitation (Engineering Wing) Group-A Service Rules, 2007, which prescribe the following requirement for promotion to the post of Executive Engineer:-

“From amongst the Sub Divisional Engineers, who have an experience of working as such for a minimum period of eight years.”

Respondent No.2 represented to the Authorities on 14.7.2016 to consider and promote him to the post of Executive Engineer (Public Health) by including and considering as experience the period from 4.8.2008 to 26.12.2011 when he held the additional charge of the post of Sub Divisional Engineer. The said representation having been rejected on 15.9.2016, he filed the Original Application.

The sole question before the Tribunal was, whether the period

when respondent No.2 held additional charge of the post of Sub Divisional Engineer from 4.8.2008 to 26.12.2011 could be considered as experience of working as Sub Divisional Engineer for the purpose of promotion to the post of Executive Engineer.

The learned Tribunal noted that the additional charge was given to respondent No.2 on account of his seniority and efficiency. It was not the case of the Administration that while discharging the additional responsibility of Sub Divisional Engineer, his functioning as such was curtailed in any manner in terms of authority and powers of Sub Divisional Engineer. In other words, his working on the additional charge was as good as regular charge. The Tribunal further noted that the applicable Rule does not rule out an interpretation that an additional charge or current duty charge could not be taken as experience for promotion. Reliance was placed on **D.P.Mehta (Dr.) vs. PGI and its Governing Body** RSJ 1997(1) 503, wherein, this Court directed that the experience gained by the petitioner therein who was given additional charge of Deputy Medical Superintendent be taken into consideration for promotion to the post of Joint Medical Superintendent. It was held that where the rule does not specifically postulate the requirement of experience of having worked on regular basis consideration could not be denied only on the ground that the incumbent only had additional charge of the post. Accordingly, the Original Application was allowed.

Apart from the decision referred to by the Tribunal, learned counsel for respondent No.2 has referred to various other decisions i.e. **Chandigarh Administration vs. Vipin Gupta and another** 2011(2) SCT

560 and **Chief Engineer, Union Territory Chandigarh vs. Ram Sarup Walia and others** 2012(3) SCT 157, etc. wherein it has been held that in the absence of a specific rule limiting the experience to that gained while holding appointment on regular basis, the experience gained by working on the post whether on adhoc / current duty charge basis would necessarily have to be included. It has been emphasised that it is the performance of duties and discharging of functions assigned to the post, which is relevant and not the capacity in which the post is held.

Accordingly, there is no merit in this petition and the same is dismissed.

(RAJIV SHARMA)

JUDGE

(HARINDER SINGH SIDHU)

JUDGE

January 16, 2019

gian/Atul

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No