

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

Civil Writ Petition No.8909-CAT of 2016

Reserved on : December 13, 2018

Date of decision: January 29, 2019

M.P.Singh Wasal

...Petitioner

Versus

Union of India and others

...Respondents

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

Present: Mr.K.S.Khehar, Advocate
for the petitioner.

Mr.Namit Kumar, Advocate
for respondent No.1.

Ms.Deepali Puri, Advocate
for respondents No.2 and 3.

Mr.Sanjeev Sharma, Senior Advocate with
Mr.Vikram Vir Sharda, Advocate
for respondent No.5.

HARINDER SINGH SIDHU, J.

This writ petition has been filed impugning the order dated 6.4.2016 of the Central Administrative Tribunal, Chandigarh Bench by which O.A. No.484/CH/2013 filed by the petitioner was dismissed. In the Original Application the petitioner had assailed the communication dated 21.3.2012 of the respondents declining his request for consideration for promotion to the post of Chief Engineer, Engineering Department, Chandigarh.

The petitioner, then a Diploma Holder, joined Central Public

Works Department on 9.2.1981 and served there till 1987. In 1985, he qualified both Part A and Part B of AMIE. He served as Inspector in Delhi Electricity Supply Undertaking from 1987 to 1991. On 30.9.1991, he was appointed as Assistant Engineer (Class-II) (Electricity) in Chandigarh after being selected by the Union Public Service Commission. He was promoted as Assistant Executive Engineer (Class-I) w.e.f. 5.8.1996 and further as Executive Engineer (Class-I) w.e.f. 27.12.2002. On completion of eight years of service as Executive Engineer he staked his claim for promotion to the post of Superintendent Engineer (Electricity) under the *Punjab State Electricity Board, Service of Engineers (Electrical) Regulations, 1965*, (for short 'PSEB Regulations 1965'), wherein vide PSEB letter dated 9.7.2003 the experience required for eligibility for promotion to the post of Superintending Engineer from Executive Engineer had been reduced from ten years to eight years. But his case was not considered by the respondents as according to them the promotion to the post of Superintending Engineer (Electricity) was governed by the *PSEB Service of Engineers (Electrical) (Chandigarh Amendment) 1985* (for short "Chandigarh Amendment 1985") where the experience required was ten years. Petitioner filed O.A. No.769/CH/2010 claiming that his service conditions were governed by the PSEB Regulations 1965 and not by the Chandigarh Amendment 1985. The latter having been framed by the Administrator was not valid as the Administrator had no power to frame Rules in respect of Class I employees. The Ld. Tribunal accepted his contention. It was held that as per the notification dated 1.11.1966 the Administrator Union Territory Chandigarh, had been delegated the power

and was authorized to make Rules in regard to the method of recruitment to Class II, Class III and Class IV posts only but not for Class I posts. The OA was allowed on 15.12.2010. It was held that the petitioner who had been promoted to the post of Executive Engineer w.e.f., 27.12.2002 was eligible for promotion to the post of Superintending Engineer (Electricity) which had been sanctioned for the first time on 24.3.1988 as per the PSEB Regulations 1965 where the experience required for promotion had been reduced from 10 years to eight years. The petitioner was promoted as Superintending Engineer (Electricity) on 29.9.2011. He later filed O.A. No.1094/CH/2012 claiming retrospective promotion w.e.f. 1.11.2010 i.e. the date when the vacancy to the post of Superintending Engineer (Electricity) had arisen. That was however dismissed.

The solitary post of Chief Engineer in the Engineering Department, Chandigarh Administration was due to become vacant. The petitioner submitted a representation dated 13.2.2012 that he be considered for the said post. He claimed that he was fully eligible for the post in terms of the PSEB Regulations 1965. The said representation was rejected vide letter dated 21.3.2012 stating that *“the request could not be acceded to as he did not fulfil the requisite criteria as laid down under the PSE Rules, 2005.”* Thereafter, the petitioner filed the Original Application, which has been dismissed vide the impugned order.

It was the case of the petitioner that the post of Chief Engineer, Engineering Department, U.T. Chandigarh was a single post. All the Superintending Engineers working in the Engineering Department of the Chandigarh Administration have a right for consideration for promotion to

that post. There was no specification that the post of Chief Engineer is to be filled from either the Civil Wing or Electrical Wing or Public Health Wing. Electricity Wing was also a wing of the Engineering Department. The petitioner being the senior most Superintending Engineer was eligible for promotion to the post of Chief Engineer. Reliance was placed on the decision of Hon'ble Supreme Court in **Chandigarh Admn. vs. K. K. Jerath, 1994 Supp (3) SCC 582**. It was also pleaded that at least on one occasion a Superintending Engineer from Electricity Wing had been promoted as Chief Engineer and the petitioner was being discriminated against.

The case of the respondents was that the Electricity Wing was not a part of the Engineering Wing. The petitioner was governed by the PSEB Regulations 1965 which were applicable to the employees of the Electricity Wing of UT Chandigarh and he had got his earlier promotions under the said Rules. The Electricity (Operation Wing) to which the petitioner belongs has its own set up and is regulated by the Joint Electricity Regulatory Commission under the Electricity Act, 2003. The Joint Electricity Regulatory Commission had already sent a proposal for creating the post of Chief Engineer under the PSEB Regulations 1965. Only persons governed by those Regulations would be eligible for that post and not those working in the other Wings of the Engineering Department.

The respondents further pleaded that promotion to the post of Chief Engineer was earlier governed by the *Punjab Service of Engineers, Class-I, P.W.D. (Building and Roads Branch) Rules, 1960* (for short “1960 Rules”), which contemplated the Civil Wing, Electrical Wing and Public

Health Wing. The said Rules have since been repealed by *Punjab Service of Engineers (Electrical Wing) Department of Public Works Rules, 2005*, *Punjab Water Supply & Sanitation (Engineering Wing) Group-A Service Rules, 2007* and *Punjab Service of Engineers (Civil Wing) Department of Public Works) (B&R) Branch, Group-A Service Rules, 2005*, which are ipso facto applicable to U.T. Chandigarh in terms of the 'Union Territory of Chandigarh Employees Rules, 1992', as per which the conditions of service of persons appointed to Central Civil Services and posts in Groups - A, B, C and D under the administrative control of the Administrator of the Union Territory of Chandigarh shall, subject to any other provision made by the President in this behalf, be the same as the conditions of service of persons appointed to corresponding posts in Punjab Civil Services and shall be governed by the same rules and orders as are for the time being applicable to them. Decision of **Hon'ble Supreme Court in UT Chandigarh vs. Rajesh Kumar Basandhi, 2004(1) SCT 680** was relied on. The post of Superintending Engineer (Electricity) Operations, which the petitioner was holding was not a feeder cadre for the post of Chief Engineer under the aforesaid Rules. Reliance was also placed on the Draft Recruitment Rules framed by the U.T. Administrator for the post of Chief Engineer which had been forwarded to the Government of India, Ministry of Urban Development, New Delhi on 3.5.2011 which were on the same pattern as the Punjab Rules. As per these draft Rules the post of Chief Engineer is to be filled up from Superintending Engineers (Civil/Public Health/Electrical) in the B & R Wing with two years regular service in the grade and possessing degree in respective Engineering disciplines from a recognized

University/ Institute. These Rules are pending consideration with the Central Government.

The Learned Tribunal held that the pleadings made it clear that the petitioner was selected and appointed as Assistant Engineer (Electricity) in Chandigarh Engineering Department and thereafter promoted as Assistant Executive Engineer, Executive Engineer and Superintending Engineer (Electricity) in terms of the provisions contained in PSEB Regulations, 1965, as amended from time to time. He, thus, belongs to the Electricity Wing and has no concern with the B&R Wing.

Admittedly, the post of Chief Engineer, UT, Chandigarh was governed by the *Punjab Service of Engineers (Class-I) PWD (Building and Roads Branch) Rules, 1960*. Thereafter, *Punjab Service of Engineers (Civil Wing), Department of Public Works (B and R Branch) Group 'A' Service Rules, 2005* were framed and the *Punjab service of Engineers Class-I, PWD(B&R) Rules, 1960* and the *Punjab Service of Engineers Class-II, PWD (B&R) Rules 1965* insofar as applicable to the members of service had been repealed. In these Rules, the “Chief Engineer” means the Chief Engineer (Civil) of the Department of Public Works (B & R Branch). The appointment is to be made from amongst the Superintending Engineers, who have an experience of working as such for a minimum period of two years. Later the *Punjab Water Supply and Sanitation (Engineering Wing) Group 'A' Service Rules, 2007* were framed to govern the recruitment and conditions of service of the persons appointed to the Punjab Water Supply and Sanitation (Engineering Wing) Group-A Service. In these rules, the 'Chief Engineer' is defined to mean a Chief Engineer of

the Department of Water Supply and Sanitation, Punjab. The appointment is to be made from amongst the Superintending Engineers, who have an experience of working as such for a minimum period of two years. As per *Punjab Service of Engineers (Electrical Wing), Department of Public Works (B and R Branch) Group 'A' Service Rules, 2005* notified on 14.10.2005 the Chief Engineer has been defined to mean 'Chief Engineer (Electrical) of the Department of Public Works (B and R Branch). The appointment is to be made from amongst the Superintending Engineers, who have an experience of working as such for a minimum period of two years. The Electricity Wing does not find a mention in any of these Rules governing the appointment to the post of Chief Engineer. The Tribunal also accepted the contentions of the Respondents regarding the petitioner being not eligible in terms of the draft Rules as well.

The Tribunal also accepted the stand of the respondents about the special circumstances in which Sh. Surinder Pal from the Electricity Wing came to be appointed as Chief Engineer. It was explained that Surinder Pal Superintending Engineer PSEB while on deputation with the respondents as S..E. (Electricity) was promoted as Chief Engineer in his parent department i.e., PSEB. He was adjusted as Chief Engineer on deputation for one year as the senior most S.E. Sh. S.K. Jaitley was found unfit for promotion as Chief Engineer.

Thus, the OA was dismissed.

We have heard Sh. K.S. Khehar for the petitioner and Sh. Sanjeev Sharma Sr. Advocate and Ms. Deepali Puri for the Respondents.

We find there is no merit in the claim of the petitioner.

The solitary question that arises for consideration is whether the petitioner, who is working as Superintending Engineer (Electricity), is eligible to be considered for promotion to the post of Chief Engineer in the Engineering Department of U.T. Chandigarh.

There is no denying the fact that appointment and promotion to the post of Chief Engineer, Department of Engineering, UT Chandigarh was governed by the 1960 Rules. This was so held by Hon'ble Supreme Court in the case of ***K. K. Jerath (supra)***.

One of the questions considered in that case was :

“Who is eligible to be considered for the post of Chief Engineer in Buildings & Roads Department in the Union Territory of Chandigarh — a Superintending Engineer from any of the disciplines — Electrical, Mechanical, Housing — or a Superintending Engineer (Civil) alone?”

Hon'ble Supreme Court considered the 1960 Rules in detail and held that it envisaged appointment under different wings Civil, Public Health, Electrical. As the Rules did not contain any provision limiting filling the post of Chief Engineer to any of these wings, the Superintending Engineers serving in any of these wings were eligible for promotion to the post of Chief Engineer.

The relevant observations are as under:

“3. Since till now no rules have been framed by the appellant and the draft rules are still awaiting approval the appointment and promotion to the post of Chief Engineer in the Union Territory of Chandigarh is un-disputedly governed by the Rules. The ‘service’ under Rule 3 comprises Assistant Executive Engineers, Executive Engineers, Superintending

Engineers and Chief Engineers. Method of recruitment to the service is provided by Rule 5. It contemplates appointment by direct recruitment, by transfer of an officer already in the service of a State Government or the Union Territory and by promotion from Class II service. Sub-rule (4) of Rule 5 provides that “all first direct appointments to the Service shall be to the posts of Assistant Executive Engineers” except in exceptional cases where an appointment for reasons to be recorded may be made directly to the post of Executive Engineer. All other posts, i.e., of Executive Engineer, Superintending Engineer and Chief Engineer are promotional posts. Rule 9 provides that “subject to the provisions of sub-rules (2) and (3), members of the Service shall be eligible for promotion to any of the posts in the Service, namely, Executive Engineers, Superintending Engineers and Chief Engineers”. It is thus clear that the post of Chief Engineer is primarily a promotional post. The eligibility for being considered for appointment to the post of Chief Engineer is provided by clause (c) of sub-rule (3) of Rule 9 which reads as under:

*“9. Promotion with service.— (1) ****

*(2) ****

(3) A member of the service shall not be eligible for promotion to the rank of—

(c) Chief Engineer, unless he has rendered three years' service as Superintending Engineer:

Provided that, if it appears to be necessary to promote an officer in public interest the Government may, for reasons to be recorded in writing either generally for a specified period or in any individual case reduce the periods specified in clauses (a), (b) and (c) in such extent as it may deem proper.”

There is no further indication in the rule whether the post of Chief Engineer shall be filled in by a Superintending Engineer (Civil), (Mechanical) or (Electrical). Clause (4) of Rule 2 defines a “Chief Engineer” to mean “a Chief Engineer of Public Works Department, Buildings & Roads Branch and

includes a post declared by Government as of equivalent responsibility”. A reading of this definition along with what is provided by Rule 3 specifying the strength of service and the definition of Executive Engineer and Superintending Engineer makes it abundantly clear that the Chief Engineer is at the apex of service which comprises of four layers. The Assistant Engineer is at the threshold. The next post in hierarchy is Executive Engineer who under sub-rule (9) of Rule 2 means “an officer-in-charge of a division and includes an officer holding a post of equivalent responsibility”. Over him is the Superintending Engineer defined in sub-rule (13) of Rule 2 to mean “an officer-in-charge of an area known as a Circle or whose duties are of equivalent responsibility to the charge of a Circle”. The last promotional post under the Rules is from Superintending Engineer to Chief Engineer. It is further clear that the Rules contemplate three wings — Civil, Electrical and Mechanical. Any officer appointed in any wing becomes a member of the service and under Explanation under sub-rule (1) of Rule 9 he is liable to be promoted from one rank to another and such promotion is regarded as a promotion within the same cadre. Therefore, even though one officer may belong to one wing or the other, he continues to be a member of the service within meaning of sub-rule (14) of Rule 2 which defines a service to mean “the Punjab Service of Engineers Class I, PWD (Buildings and Roads Branch)”. To say, therefore, that the post of Chief Engineer is a post in the wing or cadre of Civil Engineer, would not be correct. The engineer in the Electrical or Mechanical Wing is as much a member of the service as a Civil Engineer. Therefore, when the Rules provide that the Superintending Engineer who has put in three years of service is eligible to be considered for promotion to the post of Chief Engineer then in absence of any rule to the contrary it has to be held that the field of eligibility is not confined to

Superintending Engineer (Civil) only, but it extends and includes Superintending Engineer from other branches as well.”

The Court referred to Note to Appendix B of Rule 6 which reads as under:

“The candidates to be appointed for civil posts shall be recruited with qualification in Civil Engineering, whereas those recruited in the Electrical Engineering Unit shall possess qualifications in Electrical Engineering. Candidates recruited for Mechanical charges will be required to possess degree in Mechanical Engineering.”

The Court held that the definition of “Chief Engineer” shows that he is Chief Engineer, Buildings & Roads Branch. This branch comprises Civil Engineering, Electrical and Mechanical as well. It is significant that in this case the Court did not list Electricity Wing as one of the branches of this service.

The respondents have referred to letter No.1/2/66-Chd dated 30.10.1966 of the Government of India, Ministry of Home Affairs, New Delhi for creation of various posts in Chandigarh Administration. Appendix-II(B) to this letter pertains to the posts in the Engineering Organisation. This included one post of Chief Engineer and one post of Superintending Engineer in other circles of B&R Branch (i) Superintending Engineer (Planning Circle), (ii) Superintending Engineer (Construction Circle) (iii) Superintending Engineer (Public Health Circle) (iv) Superintending Engineer (Electrical Circle). Other allied posts were also created in the Engineering Organisation. All such posts pertained to Building and Roads Branch. The post of Superintending Engineer

(Electricity) was not one of them. Temporary post of Superintending Engineer (Electricity) and Executive Engineer and Assistant Executive Engineer in the Electricity Department were sanctioned by the Ministry of Home Affairs, New Delhi vide order dated 24.3.1988 for the financial year 1988-89 and it has continued as such.

The respondents have stated that the main role of the electricity wing is the supply of power to the residents and non-residential buildings. It has also been asserted that not only are the employees working in this Wing governed by different Regulations i.e., PSEB Regulations 1965 from those governing employees working in the other wings, but they are also drawing PSEB pay scales. Even in Punjab, for Electricity Department, a separate Board has been constituted and the employees thereof constitute a separate cadre distinct from Public Works Department (B&R, Electrical and Public Health).

All this also indicates and supports the stand of the respondents that Electricity Operations Circle (Electricity Wing) under which the petitioner is serving is not a part of the B & R Branch. Consequently, he could not claim promotion to the post of Chief Engineer, Engineering Department, Chandigarh.

Further even as per the case of the petitioner his service conditions are governed by PSEB Regulations 1965. He has been promoted as Assistant Executive Engineer, Executive Engineer and later as Superintending Engineer under the aforesaid Regulations. In OA No.769 of 2010 filed by him he claimed and was allowed the benefit of reduced

experience for eligibility for promotion from Executive Engineer to Superintending Engineer from 10 years to 8 years under the PSEB Regulations 1965. Without reliance on those Regulations, he would not have been eligible for promotion as Superintending Engineer and been promoted as such on 29.09.2011. The respondents have stated that the Joint Electricity Regulatory Commission had already sent a proposal for creating the post of Chief Engineer under the PSEB Regulations 1965. Only persons governed by those Regulations will be eligible for that post and not those working in the other Wings and governed by different Rules.

It is unfathomable as to how a person who is governed by one set of rules and regulations can claim the benefit of promotion under another Rule. Apart from the claim being legally untenable as held above, the petitioner also is clearly estopped from raising such a claim.

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

(RAJIV SHARMA) (HARINDER SINGH SIDHU)
JUDGE JUDGE

January 29, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No