

CWP-21063-2013 (O&M)

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

CWP-21063-2013 (O&M)
Date of Decision: March 12, 2019

Dinesh Kumar

... Petitioner

vs.

Punjab State Power Corporation Ltd & ors

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sarju Puri, Advocate
for the petitioner.

Mr. Vishal Chaudhary, Advocate
for the respondents.

ARUN MONGA, J

The present petition has been filed for issuance of a writ in the nature of *mandamus* directing the respondents to consider the petitioner for promotion to the post of Additional Assistant Engineer (A.E.E) as per the applicable Rules/instructions of the respondent-Punjab State Power Corporation Limited.

2. The facts in the present case are not disputed. The short controversy is that petitioner was suspended from 27.10.2012 to 27.12.2012 owing to criminal proceedings initiated against him under Section 304-A of IPC, which eventually led to his conviction, but, the said conviction has since been stayed vide order dated 19.07.2013 (Annexure P4), passed by this Court in CRR-3446-2012, and his case for promotion is kept in a sealed cover during pendency of the criminal revision petition before this Court.

3. Learned counsel for the petitioner contends that even though during the pendency of said criminal revision, the case of the petitioner for

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promotion was considered and the outcome thereof has been kept in a sealed cover but due to the inordinate delay in hearing of the criminal revision, he has not been given the benefit of the outcome of the decision taken as the sealed cover has not been opened.

4. Learned counsel for the petitioner has drawn my attention to circular dated 21.09.2001 (Annexure R2), the relevant whereof is reproduced herein below:

“i) In the event of delay in the conclusion of the disciplinary proceedings/criminal prosecution as the delay being attributable to the administration and not attributable to the charged employee and in the opinion of the Departmental Promotion Committee or Competent Authority, as the case may be, the Charges against the employee concerned are not very serious and the disciplinary proceedings/criminal prosecution against the employee concerned are not concluded within 6 months of putting the findings/ recommendations in respect of the employee concerned in “Sealed Cover”, the Departmental Promotion Committee or the Competent Authority, as the case may be, shall have the discretion to review the case of the employee, provided he is not under suspension, and consider and order promotion of the employee and on final outcome of disciplinary proceedings/criminal prosecution pending against him, punishment of the same shall be applicable to him in the promoted rank. In case the promotion case of such an employee is not processed accordingly, the Departmental Promotion Committee or the Competent Authority shall record reasons for the same in writing.

j) In case the relevant disciplinary proceedings, criminal prosecution/Chargesheet etc. pending against the employee are not concluded/decided even after one year of putting the findings, recommendations in respect of the

employees concerned in “Sealed Cover”, his promotion case will be processed according to the General Criteria for Promotion provided the employees concerned is not under suspension and the disciplinary cases pending against him do not involve fraud or embezzlement causing direct financial loss to the Board.

k) In case the employee against whom disciplinary proceedings/criminal prosecutions are pending, does not co-operate or approaches court, and if prima-facie delay in the conclusion of the disciplinary proceedings/criminal prosecution is attributable to the charged employee, the case of the employee for promotion shall be kept in the “Sealed Cover” till the disciplinary case/criminal prosecution against him is finally concluded.”

5. Learned counsel for the petitioner further contends that as per Clause (I) and (J), *ibid*, the respondents are duty bound to review their decision on expiry of 06 months of having kept the decision in sealed cover and, thereafter, review it again after expiry of one year.

6. Per contra, learned counsel for the respondent relies on Clause (K) *Supra* and contends that in view of the pendency of the criminal prosecution, the case of the petitioner for his promotion has rightly been kept in a sealed cover till the prosecution is finally concluded.

7. Having gone through the circular as relied upon by learned counsel for the petitioner, I am of the opinion that the respondents, though, are entitled to keep the decision of the promotion in a sealed cover but at the same time, they are also under duty to review the same on expiry of 06 months/01 years as envisaged under the same circular.

8. As regards the pendency of the criminal prosecution, the delay in disposal of the same is not attributable to the petitioner in the present case.

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9. In view of my above discussion and the reasoning contained therein, the present writ petition is disposed of with a direction to the respondents to consider the case of the petitioner in accordance with Clause (I) and (J) of the abovesaid circular and pass a speaking order on the same within a period of three months from the date of receipt of certified copy of this order.

March 12, 2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No