

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7668 of 2020 (O&M)

Date of Decision: 18.06.2020

RK Sharma

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Mr. Gurinder Pal Singh, Advocate for the petitioner

Mr. Sukhdeep Parmar, DAG, Haryana

Mr. Anand Bhardwaj, Advocate for respondent No.4

Mr. Anurag Goyal, Advocate for respondent No.5

GIRISH AGNIHOTRI, J. (Oral)

CM-5356-CWP-2020

Additional affidavit filed by the petitioner along with Annexure P11 is taken on record subject to just exceptions.

CM stands disposed of.

Main case

(1) The petitioner RK Sharma stated to be aged 53 years has filed the present writ petition *inter alia* seeking a writ in the nature of mandamus directing the respondents to consider his case for promotion before promoting his juniors, namely, private respondents No.4 & 5. A further prayer is made to promote the petitioner w.e.f. 25.02.2020 i.e. the date when his junior Shiv Raj Singh (respondent No.3) was promoted, with consequential benefits.

(2) Record of the case shows that the present writ petition was filed on 23.05.2020. Thereafter, it was listed on 02.06.2020 and on the said date, learned State counsel was directed to seek instructions.

(3) On 05.06.2020, notice of motion was issued. The concerned respondents have filed their replies on 12.06.2020.

(4) In the peculiar circumstances to be noticed hereinunder, this Court deems it appropriate to dispose of the writ petition.

(5) Without going into the details of the merits of the claim and counter claim, this Court deems it appropriate to notice the brief facts which are deemed appropriate by this Court for proper adjudication of the writ petition.

(6) Learned counsel for the petitioner based upon the pleadings submits that the petitioner had initially joined the Department as SDO by way of direct recruitment on 01.03.2007. He has further submitted that private respondents No.3 to 5 were also selected in the same list. On 04.12.2013 (P6), the petitioner was issued a charge-sheet under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987. The statement of allegations appended with the memo *inter alia* mentioned that the petitioner had allegedly extended undue benefit to four Group-D employees by allowing some pay scales. This Court does not intend to go deep into the controversy involved nor, in any manner, wishes to opine on the merits of the charge-sheet or otherwise. However, it is worthwhile to notice that those four employees as named or alleged in the charge-sheet had filed two rounds of litigation. In CWP No.19131 of 2012 (Narotam Dev Sharma and others vs. State of Haryana & Ors.), vide order dated 20.04.2017 (P4), the respondent-Department had made a statement that they intend to withdraw orders impugned therein and they intend to issue show cause notice containing reasons for withdrawal. It was further mentioned

considering each of the contentions stated in the explanation to be submitted by the petitioners to the show cause notice.

(7) Learned counsel for the petitioner then makes reference to the order dated 14.03.2020 (P10) passed by the Additional Chief Secretary, Haryana, Public Health Department. It was stated therein that *“keeping in view the above facts and circumstances of the case and submission made by the officer during hearing by taking a lenient view a warning to be more careful in future is imposed upon Sh. RK Sharma”*. It has further been stated in the order that issue of refund however shall be considered on finality of the aforesaid court case.

(8) Learned counsel for the petitioner then makes submissions by making reference to para 10 & 11 of the writ petition to submit that once the competent authority had actually passed an order dated 14.03.2020, the Department ought to have considered the case of the petitioner for further promotion. He further submits that because of certain facts mentioned in the para 10 & 11 of the writ petition, the final consideration however has not taken place. Lastly, counsel submits that the petitioner’s grievance in fact is that he being the senior-most, before others being considered for promotion to the post of Superintending Engineer, his case should also be considered in view of Articles 14 & 16 of the Constitution of India.

(9) On a question put by this Court, learned State counsel submits that the competent authority has yet not passed any final order of promotion to fill up two vacant posts of Superintending Engineers.

(10) Learned counsel for respondent No.4 submits that in fact by making reference to page 35 of the writ petition that in fact at Sr.No.106 one

more number of vacancies which would fall vacant later and thus the cases of respondent No.4 should be considered for promotion against the existing vacant vacancies.

(11) Learned counsel for respondent No.5 however submits that in fact the petitioner has not complied with the mandatory requirements of submitting the representation to the competent authority before actually seeking prayer of mandamus in the present writ petition. He further makes reference to the earlier communications which are on record as orders Annexures P8 & P9 to submit that the petitioner has chosen not to challenge these orders and has yet filed the present writ petition.

(12) In the peculiar circumstances, the present writ petition is disposed of with the following directions:-

- (i) the competent authority in the case of the petitioner is directed to take a final decision at the earliest and pass formal order on the disciplinary proceedings keeping in view the earlier order (P10);
- (ii) the competent authority is directed to thereafter take a decision as expeditiously as possible, preferably within 2 weeks from today regarding consideration for promotion to fill up two posts of Superintending Engineers lying vacant. It is made clear that the said consideration should take place to consider all eligible officials in accordance with law;
- (iii) based upon the decision taken by the competent authority on direction No.(i) as also direction No.(ii) above, the competent authority would then take a decision as to if the petitioner

would be entitled to his second prayer viz. to consider his case
for promotion w.e.f. date of promotion of his junior.

(13) So ordered.

18.06.2020
Vvishal

(Girish Agnihotri)
Judge

1. <i>Whether speaking/reasoned?</i>	Yes/No
2. <i>Whether reportable?</i>	<i>Yes/No</i>