

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-14885-2013 (O&M)

Date of decision: 08.01.2020

Ishwar Singh Dhanda and others

...Petitioner(s)

V/s.

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. S.K.Malik, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl.A.G., Haryana.

RITU BAHRI, J.

CM-3022-2019

Application for disposal of the main case is allowed and the main case is taken up on Board today itself.

CWP-14885-2013

By this petition, the petitioners are seeking quashing of impugned order dated 27.02.2013 (Annexure P-8) whereby respondent No. 2 has rejected the claim of the petitioners for the posts of Sub Divisional Engineers/Sub Division Officers w.e.f. the date they acquired degrees.

The petitioners were initially appointed and joined the Irrigation Department as Junior Engineers (Civil) on adhoc basis and thereafter their services were regularized as per details given in Annexure P-1. The petitioners acquired qualifications of AMIE/BE during their service after taking prior permission from the department. The petitioners are degree holders having degrees in Civil Engineering except petitioner No. 10

who is having degree of Mechanical Engineering. Petitioners are governed by the Rules known as “Haryana Service of Engineers Class-II, PWD (Irrigation Branch) Rules 1970 (Annexure P-2). Rule 6 of the aforesaid Rules was amended by the State Government vide notification dated 11.05.2004. On 20.02.2009, respondent No. 2 circulated the revised tentative ranking list of senior eligible officers as on 01.01.2009 (Annexure P-3) for the purpose of consideration for promotion to the rank of Sub Divisional Engineer/Officer as per Rule 9 of the Haryana Service of Engineer Class-II Rules, 1990. The names of the petitioners were not reflected in this ranking list. The candidates acquiring qualifications after the petitioners have been promoted to the post of SDE/SDO. The petitioners made representation dated 13.10.2010 (Annexure P-4) that they should be considered for promotion to the post of SDE/SDO from the date they acquired qualifications of AMIE/BE and thereafter they sent legal notice dated 27.12.2010 (Annexure P-5). The petitioners approached this Court by way of filing **CWP No. 3931 of 2011** titled as ***Ishwar Singh Danda V/s. State of Haryana and others***. This writ petition was disposed of on 30.11.2012 to consider the case of the petitioners within a period of two months from the date of submission of representation (Annexure P-6). Thereafter petitioners filed detailed representation dated 20.12.2012 (Annexure P-7). However, vide order dated 27.02.2013 (Annexure P-8), their claim was rejected. This order is now being challenged by way of the instant petition.

Learned counsel for the petitioners has argued that judgment of the Supreme Court in ***N.Suresh Nathan and others V/s. Union of India and others*** 2010 AIR SC 2171 decided on 22.04.2010 had not been

examined while rejecting the case of the petitioners vide order dated 27.02.2013 (Annexure P-8). The respondents have wrongly referred to a judgment passed by the Supreme Court in Civil Appeal No. 3837 of 1990 titled as ***Sushil Kumar Arora and others V/s. State of Haryana***. He has further argued that the judgment passed by this Court in ***CWP No. 10931 of 1990***, decided on 18.01.2011 (Annexure P-10) should have been followed whereby directions were given to find out the year wise list for which selection has not been made and thereafter consider the case of the petitioners for promotion to the post of Sub Divisional Engineer against the vacancies in the year in which Junior Engineers were eligible on passing the AMIE degrees.

Learned counsel for the petitioners has finally argued that the respondents prepare the seniority list every year but petitioners have been deprived of their legal rights as they acquired qualifications of AMIE/BE before the persons who have been promoted. He has also placed on record the judgment passed by Division Bench in ***LPA No. 1515 of 2015 titled as Sukhdev Singh and others V/s. Haryana Power Generation Corporation Limited and others*** (Annexure A-1) which squarely covers the case of the petitioners in which the dispute was regarding promotion to the post of Assistant Engineer against 12 ½ % quota which was to be filled amongst the Engineering Subordinates of Generation Cadre possessing A.M.I.E/B.E. qualification and having five years service. The Division Bench held that as per amended Regulation 9(1)(b)(ii) of Punjab State Electricity Board Service of Engineers (Civil) Recruitment Regulations, 1965, service of 5 years has to be counted from the date when Engineering Subordinate acquires A.M.I.E/B.E. and ranking list is to be prepared every year and the

promotion has to be made strictly in accordance with the said ranking list. He has further argued that since the petitioners had acquired the qualifications of A.M.I.E./B.E. prior to the candidates who have been promoted, their names should have been reflected in the ranking list as senior to the persons who acquired qualification after them.

Learned counsel for the State has argued that LPA judgment in the case of Sukhdev Singh (Annexure A-1) is based on separate set of rules. Hence, LPA judgment is not applicable to the facts of the present case as in that case dispute was regarding promotion to the post of Assistant Engineer against 12½% quota was given to those Engineering Subordinates who possess A.M.I.E./B.E. qualification with five years service. As per notification dated 27.02.1989, ranking list of Engineering Subordinates for promotion as Assistant Engineer was to be prepared after they acquire qualification of A.M.I.E./B.E. and completion of 5 years service in the cadre. This notification also provides that names will be added in the ranking list as per the date of acquiring qualification. Further there was another notification dated 20.10.1993 whereby it was again reiterated that eligibility has to be determined on satisfying both the conditions and the names have to be entered strictly from the date official acquires qualification and 5 years experience and if two officers fulfill both the conditions on the same day then seniority is to be given preference and hence the date of acquiring the qualification was to be made for giving promotion in 12½% quota for the post of Assistant Engineer.

He has further argued that in the present case as per the Rules, the date of qualifying A.M.I.E./B.E. does not entitle for promotion to HSE Group-B service and Junior Engineers will be considered for promotion to

HSE Group-B service as and when their turn comes up and this issue has already considered and attained finality by this Court in *CWP-4403-1985* titled as *Ranjit Singh and others V/s. State of Haryana and others* (Annexure R-1).

Heard learned counsel for the parties.

At the outset, the relevant Rules have to be examined. In the written statement, it is stated that the Rule 9 of Haryana Services of Engineers, Group-B Public Works Department (Irrigation Branch) Rules, 1970 (hereinafter referred to as 'Service Rules') deals the provision of promotion from Junior Engineers and Drawing Establishment category to the post of Assistant Engineer (Sub Divisional Officer) which reads as under:-

Rule 9-Appointment by promotion:-

- 1) Government shall at intervals, ordinarily not exceeding one year, consider the cases of all eligible officers for promotion to the Service, as on the first day of January of that year.
- 2) Government shall prepare a list of officers suitable for promotion to the service. The selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority.
- 3) The names of the officers included in this list shall be arranged in order of seniority in Haryana Public works Department (Irrigation Branch) Overseas (Engineering) Service and Members of the Draftsmen and Tracers Service, provided that any junior officer who in the opinion of the Government is of exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him in his own class.
- 4) The list so prepared shall be revised every year.

- 5) If in the process of preparing the list or its revision, it is proposed to supersede any eligible candidate, Government shall draw up a list of such officers and may record its reasons for the proposed supersession.
- 6) The list prepared or revised in accordance with sub-rules(2), (4) and (5) shall then be forwarded to the Commission by Government alongwith-
 - (i) records of all officers included in the list;
 - (ii) records of all officers proposed to be superseded as a result of the recommendations of Government;
 - (iii) the reasons, if any, recorded by Government for the proposed supersession of any officer.
- 7) The Commission shall consider the list prepared by Government alongwith other documents received and unless it considers any change necessary, approve the list.
- 8) If the Commission considers if necessary to make any change in the list received from Government, the Commission shall make the changes it proposes and forward the list it considers suitable to the State Government.
- 9) Appointment to the Service shall be made by Government from this list in the order of which names have been placed by the Commission.
- 10) Appointment by promotion may be made to an ex-cadre post or to any post in the cadre in an officiating capacity from the list prepared under this rule.

Note:-This rule shall also apply for assessing the suitability of Temporary Engineers for the Service as provided in Appendix 'F'."

As per the above said Rule 9(2) of the Service Rules, the list of officers has to be prepared who are suitable for promotion to the service and due regard is to be given to the seniority. Petitioner No. 1 was appointed as

Junior Engineer (Mechanical) whereas he acquired A.M.I.E. degree in Civil discipline. As the petitioner No. 1 has acquired degree in other discipline to which he was originally appointed. Hence as per note given in HSE Group-B, PWD (Irrigation Branch) Rules 1970, he is not eligible to be considered for promotion as Sub Divisional Officer in Degree holder category. Therefore, a junior employee will have preferential right of promotion only if the senior does not have degree of A.M.I.E./B.E. Hence, keeping in view Rule 9(2) of Service Rules, it is the seniority which has to be given preference for promotion even if the senior acquires the degree of A.M.I.E./B.E. after the junior. Even if the list is to be revised every year as per Rule 9(4) of the Service Rules, it is only to include those candidates who acquire qualification of A.M.I.E./B.E. and it does not affect the seniority of feeder cadre post of Junior Engineer. This Rule came up for consideration before this Court and this Court vide judgment passed in ***Ranjit Singh's case (supra)*** (Annexure R-1) while interpreting Rule 9(4) of the Service Rules, held that ranking list is prepared every year and the officers who become eligible for promotion has a right to include their names in the list of the next year. Even if in the list of previous year, names of some officer junior to the petitioners have been placed. There is no provision to place the names of seniors at the bottom of the ranking list as envisaged in para 11.4 of the Manual of Administrative instructions. Even if the senior qualifies the departmental examination after the junior his name would be placed higher to the junior in such ranking list and finally it was held that the seniority in the Junior Engineering Services has to be respected. Further as per Rule 9(4) at the time of revising the ranking list, every year the name of officer higher in the ranking list has to be placed in

their parent cadre. A junior cannot be placed over and above his senior in the ranking list even if he has qualified the A.M.I.E./B.E. degree before the senior.

The issue regarding promotion has already been decided in judgment passed in *Ranjit Singh's case (supra)* and by the Hon'ble Apex Court in *Civil Appeal No. 3837 of 1990* arising out of *SLP(C) No. 2525 of 1990* titled as *Sushil Kumar Arora V/s. State of Haryana* while interpreting the Rules as applicable to the petitioners. It is the seniority which has to be made basis for entering the names in the ranking list as per Rule 9(4).

In this background, the rules referred in *LPA No. 1515 of 2015* are distinguished. A notification was issued on 27.02.1989 to implement the promotion policy to the post of Assistant Engineer. This notification was superseded by another notification dated 20.10.1993 (Annexure P-6) and the following guidelines were provided:-

- i. The determination of the eligibility for promotion will be the acquisition of qualification of AMIE/BE and completion of 5 years service in the cadre of Engineering Subordinates. The eligibility shall thus be determined on satisfying both the conditions i.e. passing of AMIE/BE examination of the official will be entered in the ranking and experience. The name(s) of list from the date they complete both the conditions. If a candidate is recruited as Engineering Subordinates having qualification of AMIE/BE, his eligibility for promotion will also be considered after he attained experience of 5 years on the post.
- ii. The ranking list of Engineering Subordinates for their promotion as AE, shall normally be prepared on 1st day of January of each year and duly notified to all

concerned. The name(s) of the eligible candidate(s) in the ranking list will be entered strictly from the date of official fulfills both the conditions i.e. passing of AMIE/BE examination and completion of 5 years service of Engineering Subordinates. If two or more officials fulfills both the conditions on the same date, the names in the ranking list will be entered in accordance with their original seniority in the Engineering Subordinates.”

The above said guidelines make it abundantly clear that ranking list is to be prepared on the 1st day of January every year and the names of the eligible candidates is to be entered strictly from the date of official fulfills both the conditions i.e. passing of A.M.I.E./B.E. examination and completion of 5 years service. If two or more officials fulfill both the conditions on the same date, the names in the ranking list will be entered in accordance with their original seniority in the Engineering Subordinates. Hence the petitioner cannot get any benefit from this judgment (Annexure A-1).

The Service Rules have already been interpreted vide judgment passed in *Ranjit Singh's case (supra)* (Annexure R-1) which has been upheld by the Supreme Court. The respondents have also placed on record the ranking list for the year 2009 as on 01.01.2009 (Annexure R-2). A perusal of this ranking list (Annexure R-2) shows that the petitioners No. 1 to 9 are at Sr. No. 25, 59, 79, 80, 89, 92, 93, 95 and 96 in the list of ASDEs/JEs (Civil) AMIE/BE degree holder candidates and petitioner No. 10 was at Sr. No. 12 in the list of ASDEs/JEs (Mech) AMIE/BE degree holders candidates. The petitioners were much juniors and did not find place in promotion zone against the vacancies of Sub Divisional Officers of promotional quota available in the year 2009 and no official junior to the

petitioners has been promoted. The petitioner No. 10 has been promoted to the post of SDO against the vacancies for the year 2013 vide order dated 19.03.2013. Representations and the legal notice dated 27.12.2010 served by the petitioners have been examined and rejected vide order dated 14.03.2011 (Annexure R-3).

Writ petition is dismissed as the Rules governing the service conditions are Haryana Services of Engineers, Group-B Public Works Department (Irrigation Branch) Rules, 1970 and as per Rule 9(2) due respect is to be given to the seniority.

(RITU BAHRI)
JUDGE

08.01.2020
Divyanshi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No