

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

CWP No.1022 of 2017
Date of Decision: 27.1.2020

Gobind Lal Sachdeva

.....Petitioner

Versus

Haryana Urban Development Authority and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Sandeep Dhull, Advocate, for the petitioner.

Mr. Kartar Singh Malik, Advocate, for respondents No.1 to 3.

NIRMALJIT KAUR, J. (ORAL)

The petitioner herein is seeking direction to promote him as Sub Divisional Engineer from the date private respondents No.4 and 5 were promoted with all consequential benefits.

The petitioner was appointed as Assistant Draftsman on 23.3.1982, whereas, respondent No.4-Manohar Lal was appointed on the same post on 30.3.1982. The seniority list of the Assistant Draftsman was issued by the respondent-Department, in which, the petitioner was shown at Sr. No.6, whereas, respondents No.4 and 5 were shown at Sr.11 & 13, respectively. However, on 30.6.2014, a tentative seniority list of Drawing Staff of Engineering Wing of HUDA as on 31.5.2014, was issued. In the said list, the petitioner was shown at Sr. No.5 and the private respondents No.4 and 5 were shown at Sr. No.6 & 2, respectively. The petitioner filed his objection to the said seniority list qua respondent No.5-Gulshan Nanda on 14.7.2014 and a reminder was also sent on 5.12.2014. As per the

information received under the Right to Information Act, 2005, which is placed on record as Annexure P-7, the respondent-Department admitted that the said seniority list was never finalized. However, before the said seniority list could be finalized, respondents No.4 and 5 (Manohar Lal and Gulshan Nanda) were promoted as Sub Divisional Engineer vide order 22.9.2016 and 4/5.10.2016. respectively just few days before the retirement of the petitioner, who retired on 31.10.2016. Thus, the cause of action arose to the petitioner immediately on promotion of respondents No.4 and 5. Without loosing any time, the petitioner immediately filed the present writ petition seeking his promotion from the date of respondents No.4 and 5 were promoted.

Reply has been filed. As per the said reply, respondents No.4 and 5 were appointed as Assistant Draftsman on direct recruitment on 30.3.1982 and 6.6.1982 respectively and thereafter, promoted as Circle Head Draftsman Grade-I on 17.5.1995. Since, respondents No.4 and 5 belonged to the Scheduled Castes and Backward Class category, they were given benefit of accelerated promotion and promoted as Sub Divisional Engineer on 22.9.2016 and 5.10.2016, respectively.

Heard.

The date of promotion of the petitioner and the private respondents No.4 and 5 on various posts is as under:-

Name	Date of joining as Assistant Draftsman	Date of promotion as Head Draftsman Grade-II	Date of promotion as Circle Head Draftsman Grade-I	Date of promotion as Sub Divisional Engineer
Gobind Lal Sachdeva	23.3.1982	31.8.1988	21.8.2000	--
Manohar Lal	30.3.1982	June 1989	17.5.1995	22.9.2016
Gulshan Nanda	6.6.1982	December 1991	17.5.1995	5.10.2016

From the above, following facts have emerged:-

(a) The petitioner was appointed as Assistant Draftsman before the private respondents No.4 and 5 and therefore, is senior to them.

(b) Respondents No.4 and 5 were given accelerated promotion on account of their belonging to SC and BC category before the petitioner.

(c) The petitioner too was subsequently promoted on the post of Circle Head Draftsman on 21.8.2000.

It is not disputed that as per the well settled proposition of law, even if a person belonging to the reserved category is promoted on account of accelerated promotion under the reserved quota, a candidate promoted subsequently belonging to general category on the same post will be placed senior to the candidates, who were promoted under the reservation quota. It is further evident from instructions dated 5.3.2009 issued by the Government of Haryana, General Administration Department, General Services-III Branch, which is placed on record as Annexure P-3, that it was decided that no employee belonging to the categories of Scheduled Castes and Backward Class will be allowed to the benefit of accelerated seniority over his/her senior belonging to General category on account of his/her accelerated promotion from the feeder service under the policy of reservation consequent upon the judgments rendered by Hon'ble the Apex Court in the cases of Ajit Singh Januja and others Vs. State of Punjab and others, 1996 AIR 1189 and R.K.Sabharwal and others vs. State of Punjab and others, (1995) 2 SCC 745.

No doubt, the said instructions pertain to the step up of pay to the General Category employees at par with those of the junior counter parts of the reserved category. However, para one of the said instructions is clear

and is reproduced as under:-

“I am directed to invite your attention to the subject cite above and to say that consequent upon the judgment given by the Hon'ble the Supreme Court of India in the case of Ajit Singh Januja and others Vs. State of Punjab and R.K. Sabharwal instructions were issued vide letter No.22/73/92-3GS-III and 14.10.1999 vide which it was decided that no employee belonging to the reserved categories of Scheduled Castes or Backward Classes should be allowed the benefit of accelerated seniority over his/her senior belonging to General Category on account of his/her accelerated promotion from the feeder service under the policy of reservation.”

Moreover, the issue is no more res integra in view of the judgment in the case of Ajit Singh Januja (supra), which held as under:-

“We respectfully concur with the view in Union of India vs. Virpal Singh Chauhan, (supra) that seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position i.e. with reference to their inter se seniority in the lower grade. The rule of reservation gives accelerated promotion, but it does not give the accelerated consequential seniority'. If a Scheduled Caste/Scheduled Tribe candidate is promoted earlier because of the rule of reservation/roster and his senior belonging to the general category candidate is promoted later to that higher grade the general category candidate shall regain his seniority over such earlier promoted scheduled caste/tribe candidate. As already pointed out above that when a scheduled caste/tribe candidate is promoted earlier by applying the rule of reservation/roster against a post reserved for such scheduled caste/tribe candidate, in this process he does not supersede his seniors belonging to the

general category. In this process there was no occasion to examine the merit of such scheduled caste/tribe candidate vis-a-vis his seniors belonging to the general category. As such it will be only rational, just and proper to hold that when the general category candidate is promoted later from the lower grade to the higher grade, he will be considered senior to a candidate belonging to the scheduled caste/tribe who had been given accelerated promotion against the post reserved for him. Whenever a question arises for filling up a post reserved for scheduled caste/tribe candidate in still higher grade then such candidate belonging to scheduled caste/tribe shall be promoted first but when the consideration is in respect of promotion against the general category post in still higher grade then the general category candidate who has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of seniority cum merit or merit cum seniority. If this rule and procedure is not applied then result will be that majority of the posts in the higher grade shall be held at one stage by persons who have not only entered in service on basis of reservation and roster but have excluded the general category candidates from being promoted to the posts reserved for general category candidates merely on the ground of their initial accelerated promotions. This will not be consistent with the requirement or the spirit of [Article 16 \(4\)](#) or [Article 335](#) of the Constitution.

The facts and the legal position are not disputed by learned counsel for respondents No.1 to 3 either in reply or before this Court.

Thus, the only argument that the petitioner has since retired does not help in the facts of the present petition. The cause of action arose to the petitioner when the tentative seniority list was circulated on 31.5.2014. The petitioner raised his objection immediately thereafter.

However, respondents No.4 and 5 granted the promotion to the next post on 22.9.2016 and 5.10.2016, respectively without deciding objection or finalizing the seniority list. It is also an admitted position that the promotion to the post of Circle Head Draftsman was supposed to be on the basis of seniority and not on account of roster point. In case, the said objection of the petitioner had been decided, the petitioner would have been deemed to be placed senior to the private respondents No.4 and 5 in view of the instructions and the law applicable as discussed above. Even otherwise, Manohar Lal-respondent No.4 was junior to the petitioner, even as per the tentative seniority (Annexure P-4). In spite of the same, the petitioner was not considered for promotion.

In view of the above, the present writ petition is accordingly allowed. The respondent-Department is directed to consider the case of the petitioner for promotion to the post of Sub Divisional Engineer from the date 22.9.2016 his junior was promoted. The petitioner already stands retired on 31.10.2016. Since, the difference is hardly any, therefore, the notional benefit be given from the date of promotion of his junior uptill the date of his retirement. Thereafter, the same be counted towards his pension.

Needful be done within two months from the receipt of the certified copy of this order.

(NIRMALJIT KAUR)
JUDGE

27.1.2020
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No