

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-4149-2017

Date of decision: - 06.02.2020

Tarlok Singh Kahlon

....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Kewal Krishan, Advocate
for Mr. Premjit Kalia, Advocate
for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge is to the order dated 09.09.2016 (Annexure P-5), whereby the claim of the petitioner for the grant of promotion with effect from the date person junior to him was promoted as a Sub Divisional Engineer, has been declined.

As per the facts mentioned in the writ petition, petitioner joined as a Junior Engineer (Mechanical) on 30.10.1980 after being selected by the Service Selection Board. In the year 1998, a seniority list in the cadre of Junior Engineer (Mechanical) was issued, wherein, the name of the petitioner was shown at Serial No.361. While amending the said seniority list, in the year 2012, the name of the petitioner was not mentioned, though, he was discharging the duties of the post of Junior

Engineer (Mechanical) even in the year 2012.

As the name of the petitioner was missing from the seniority list, he represented the respondents that his name is missing in the seniority list in the cadre of Junior Engineer (Mechanical), which has been issued in the year 2012 and therefore, his name should be included between Serial Nos.22 and 23 keeping in view the date of his appointment.

Without amending the seniority list, keeping in view the recommendation of the Departmental Promotion Committee held on 22.08.2012, the respondents issued the promotion orders of the Junior Engineers (Mechanical), who were at Serial No.23 onwards till 35, but petitioner was not granted the said benefit of promotion.

Thereafter again, the promotions to the post of Sub Divisional Engineer were made on 24.04.2013 and the employees at seniority Nos.44 and 45 were promoted. Thereafter again, while making promotion to the post of Sub Divisional Engineers, the employees up to the seniority post 64 were promoted. This order was passed on 16.03.2015. While passing the order of promotion, claim of the petitioner was not considered as his name was missing from the seniority list.

Petitioner attained the age of superannuation on 30.06.2014 and he was granted the extension in service for a period of two years. While the petitioner was on extension, he approached this Court by filing a CWP No.2117 of 2016 claiming the benefit of promotion to the post of Sub Divisional Engineer by incorporating his name in the seniority list at Serial No.22-A i.e. between seniority position Nos.22 and 23 and for the

grant of consequential benefits of promotion to the post of Sub Divisional Engineer. The said writ petition was disposed of this Court on 03.02.2016 directing the respondents to consider the claim of the petitioner as raised in his legal notice dated 20.07.2015 and pass the appropriate orders.

Keeping in view the direction given by this Court in CWP No.2117 of 2016, decided on 03.02.2016, the respondents passed an order on 09.09.2016 (Annexure P-5). In the said order, the respondents have declined the claim of the petitioner for promotion as Sub-Divisional Officer by stating that till his name was not in the seniority list of Junior Engineer (Mechanical), as amended in the year 2012, though he was working on the said post, by attributing the said omission upon the petitioner on the ground that he failed to respond to the tentatively seniority list by raising any objection.

By the order dated 09.09.2016 (P-5), the name of the petitioner was added in the seniority list in the cadre of Junior Engineer (Mechanical) at Serial No.22-A. Despite the fact that the petitioner was granted seniority at Serial No.22-A, his claim for the grant of retrospective promotion with effect from the date of person junior to him was promoted, has been declined by the same order on the ground that as the petitioner, on the date of passing of the order dated 09.09.2016 (P-5), was working on extension and no promotion can be granted to an employee during the period of extension, therefore, petitioner cannot be granted promotion as Sub Divisional Officer from the date his junior was promoted. The said order dated 09.09.2016 (P-5) declining the relief of

the promotion to the post of Sub Divisional Engineer with effect from the date the junior of the petitioner were promoted is under challenge.

Upon notice of motion, the respondents have filed the reply.

In the reply it has been stated by the respondents that though, the benefit of seniority has already been given to the petitioner in the cadre of Junior Engineer (Mechanical) at Seniority position No.22-A, but keeping in view the notification of the Government of Punjab dated 30.10.2015, according to which, the employees who are on extension, cannot be granted the benefit of promotion, his claim has rightly been rejected by the respondents.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Once, the petitioner has been granted the benefit of seniority at Serial No.22-A in the cadre of Junior Engineer (Mechanical), he becomes entitled for promotion on the post of said seniority as well to the next higher post. It is not being disputed by learned counsel for the respondents that immediate junior of the petitioner, who was at Serial No.23 in the seniority list, was promoted as a Sub Divisional Engineer in the year 2012. Further, it is not disputed that Junior Engineers (Mechanical) up to the seniority position No.64 have been promoted by March, 2015, when the petitioner was in service. It is a settled principle of law that the senior employee cannot be ignored for promotion without a valid reason. Though, name of the petitioner did not find mention in the seniority list of the Junior Engineer (Mechanical), which was issued in the year 2012 and that may be for any reason whether on account of the

mistake on the part of the petitioner or the respondents, once the benefit of seniority has been granted to the petitioner at seniority position No.22-A, petitioner becomes entitled for the consequential benefits as well including the retrospective promotion from the date of persons junior to him were promoted.

The claim of the retrospective promotion is being denied to the petitioner on the basis of the instructions dated 30.10.2015. The said instructions are wrongly been brought into operation by the respondents in the case of the petitioner. Those instructions, which have been attached as Annexure P-9, only deals with the grant of extension to the employees, who are in service and according to the said instructions, an employee, who is on extension and becomes entitled for promotion during the period of extension, will not be granted the same and he will continue to work on the post on which he/she was granted the extension though his junior might be promoted during the said period of extension. The claim of the petitioner was not for promotion to a higher post during the period of extension, but the claim was from a retrospective date i.e. from the year 2012, when employee junior to him was promoted and on the said date petitioner was in regular service and not on extension. Applying the instructions dated 30.10.2015 upon the claim of the petitioner by the respondents is without any application of mind. Petitioner is claiming the benefit of retrospective promotion from the date when his junior has been promoted, which according to law, is a valid claim and is liable to be allowed.

The impugned order dated 09.09.2016 (P-5) to the extent it

denies the claim of the petitioner for retrospective promotion to the post of Sub Divisional Engineer with effect from the date person at Serial No.23 in the seniority list was promoted, is set aside. The respondents are directed to consider the claim of the petitioner on the basis of his seniority position No.22-A in the cadre of Junior Engineer (Mechanical) for further promotion as a Sub Divisional Engineer with effect from the date person juniors to him were promoted by holding a review Departmental Promotional Committee. In case, the petitioner is eligible in all respects on the date when the employee at seniority position No.23 was promoted, petitioner will be granted the said benefit of promotion with all consequential benefits.

Let the consideration of the case of the petitioner for promotion as Sub Divisional Engineer, as directed above, be undertaken within a period of two months from the date of receipt of certified copy of this order and all the consequential relief, which the petitioner is found entitled for in pursuance to the order, which will be passed by the respondents, be extended to him within a period of one month thereafter.

Present writ petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

February 06, 2020
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	Yes