

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

CWP 18622 of 2005 (O&M)

Date of Decision: May 20, 2021

A.K. Tembore and othersPetitioners

Versus

Union of India and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Arjun Pratap Advocate,
for the petitioners.

Respondent No.1 deleted vide order dated
02.03.2006.

Mr. Lokesh Sinhal, Senior Advocate
for remaining respondents.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through
video-conferencing on account of outbreak of pandemic COVID-
19.

The petitioners in all numbering 37 are working on
various posts with respondent No. 2-National Hydroelectric

Power Corporation (in short '**the NHPC**'), a Government of India undertaking. The petitioners claim to be degree holders/professionally qualified officers and were appointed as trainee engineers/trainee officers to various disciplines by way of direct recruitment by the respondents on 13/14.11.1995 in the then grade of E-2. At the time of appointment of the petitioners they were governed under Rules and Promotion Policy detailed as Annexure P-2. As per this policy, the entry level was at E-2 grade and upon successful completion of one year training period, (which was to be counted as eligibility for promotion) further promotion was after time scale of completion of four years in the existing scale of E-2 (which policy also provided for relaxation and which power vests with the Chairman and Managing Director of the NHPC). It was, thereafter, on 01.01.1997, the rules were revised by way of Annexure P-3, under which, promotion from Grade E-2 to E-3 an intermediate grade of E-2A was introduced in the new policy/rules and a diploma holder was required to put in 06 years for promotion

from E-2 to E-3, i.e. from E-2 grade to E-2A, one year was required and thereafter to E-2A to E-3 five years while for degree holder, the requirement was five years for promotion from grade E-2 to E-3, i.e. E-2 to E-2A (one year) and E-2A to E-3 (four years) and similarly relaxation power was granted as per old rules in the new rules as well.

The primary grouse of the petitioners is that certain diploma holders who were juniors to the petitioners managed to misuse the concession and benefit of relaxation and gained promotion to E-3 grade. Upon representation of discrimination vide letter dated 30.06.2003, the petitioners too were promoted from E-3 grade to E-4, w.e.f. 01.04.2003. However, it was thereafter, on 14.07.2003 order Annexure P-16 was issued by the respondents withdrawing the same and it is precisely what had led to the heart burning whereby the petitioners aggrieved over this conduct of the respondents invoked the jurisdiction of this Court by filing the instant civil writ petition under Articles 226/227 of the Constitution of India seeking writ in the nature of

mandamus/certiorari, thereby, quashing of orders dated 29.03.2005 (Annexure P-19), which has resulted in grant of relaxation to the person junior to the petitioners and thus superceding their seniority as on 01.01.1997. Further it was prayed for setting aside the orders of earlier promotion dated 14.07.2003 (Annexure P-16). The petitioners had termed the act of the respondents to be illegal in contravention of the principles of natural justice, whereby, the persons junior to them were made seniors and thereby adversely impacting their career progression.

Respondents No. 2 to 5 in their detailed reply denied that there was any violation of fundamental rights of the petitioners or contravention of the service rules governing the petitioners. Though the respondents did not deny the appointment of the petitioners and the fact that they were governed by the previous rules. The respondents claim that petitioners were on probation for a period of one year and that under the old promotion policy, the promotion from the scale of

E-2A grade to EA-3 grade was four years inclusive of training/probation period subject to the availability of vacancies and which period of probation was included in the eligibility for promotion to E-3 grade of Assistant Manager. It is claimed that with the revised recruitment policy the period of training has been excluded for eligibility for promotion to E-3 grade of Assistant Manager and claimed that after completion period, the period is counted for eligibility of next promotion.

On merits denied that any legitimate cause of action has ever arisen to the petitioners to invoke the jurisdiction of this Court and claimed that the orders dated 14.07.2003 (P-16) and 29.03.2005 (Annexure P-19) are well reasoned orders upon due application of mind by the respondents which are speaking orders and adhered strictly to the principles of natural justice. The respondents have reiterated their stand that the Chairman and Managing Director of the NHPC had the prerogative to extend relaxation to any executive officer to mitigate the hardship and admitted that earlier promotion orders were

withdrawn as the same were erroneously issued and accepted the fact that vide office order No. 25/96 dated 14.06.1996 w.e.f. 01.01.1992, the wage structure of grade code was revised by the NHPC and in the light of the same, the respondents sought dismissal of the petition.

Appreciating the submissions of the two sides Shri Rajiv Atma Ram assisted by Shri Arjun Pratap has sought to hammer home the point that period of training as per the old rules and policy was included in determining service rendered and thus for seniority and in the subsequent rules that came into effect in the year 1997 (Anneuxre P-3), the training period stood excluded and claimed that upon representation of the petitioners', the redressal of the grievance was duly made but, subsequently, was unilaterally in a tersely worded letter stands cancelled which is illegal, contrary to the principles of law and without affording any reasonable opportunity, the same has been withdrawn without citing any reasons. It is argued that the petitioners were already granted promotions w.e.f. 01.04.2001

on 13.06.2003 and which were withdrawn on 14.07.2004 and that is the bone of contention if the respondents could resort to such a means and have sought to place reliance on S.L. Chandrakishore Singh Vs. State of Manipur and connected appeals, 2000 (1) CLR 61, Uttaranchal Forest Rangers' Asson. (Director Recruit) and others Vs. State of U.P. and others 2006(4) S.C.T. 487, Dr. Prem Swroop Gaur Vs. State of Haryana 1991(3) S.C.T. 129, Direct Recruit Class II Engg. Officers' Assocn. Vs. State of Maharashtra and others 1990(2) CLR 235, S.K. Bhandari and another Vs. Union of India and others 2011(2) SLR 625, Er. K.C. Verma Vs. The Punjab State Electricity Board, The Mall Patiala through its Secretary 2008(3) S.C.T. 512, judgment dated 26.07.1995 passed in **CWP No. 7995 of 1994**, titled as Hem Raj Kalia Vs. State of Punjab and another, R.K. Khandelwal Vs. State of U.P. and others, 1981, AIR (SC) 1673, The Principal, King George's Medical College, Luknow Vs. Dr. Vishan Kumar Aggarwal and another, 1984

AIR (SC) 221, Naresh Kumar Vs. State of Haryana 2004 (2) SLR, 276, State of Punjab and another Vs. Gurnam Singh 1991 (1) S.C.T. 445 and Union of India and another Vs. Narendra Singh, 2008(2) S.C.T. 359, Virendra Chawla Vs. The Chandigarh Administration and another, 1984(1) SLR 452 and Anil Sagar Vs. State of Haryana and others, 2008(4) S.C.T. 402.

Mr. Lokesh Sinhal Advocate for the respondents had delved at length the recourse of events how or in what manner necessitated the change of promotion policy/rules, the claim that where promotion have been erroneously granted the respondents reserved their rights to recall the same and, therefore, cannot be termed as unconstitutional or arbitrary and citing Subodh Kumar and others Vs. Commissioner of Police and others Civil Appeal 2047 of 2020, Indian Council of Agricultural Research and another Vs. T.K Suryanarayan and others (1197) 6 Supreme Court Cases 766, Union of India and another Vs. Narendra Singh (2008) 2 Supreme Court

Cases 750, Commissioner, Municipal Corporation, Hyderabad and others Vs. P. Mary Manoranjani and another (2008) 2 Supreme Court Cases 758 and J.C. Yadav and others Vs. State of Haryana and others (1990) 2 Supreme Court Cases 189 have vociferously claimed that the respondents were not barred from applying the rules correctly to bring about equality of opportunity which is in the larger public interest. It is claimed that under the old rules as well as new rules there vests in the Chairman/Managing Director of the NHPC power to relax the rules in case of mitigating hardship to an individual in a particular case and which is purely with a view to meet the situation which was in public interest. Concluding his submissions the counsel has prayed that after such a belated stage, it would be too preposterous for the petitioners to lay challenge to such a stale claim and sought dismissal of the petition.

In the light of these submissions so raised it is an admitted fact that the petitioners were appointed directly on

13/14.11.1995 and at that point of time old promotion policy/rules Annexure P-2 were in force which remained so till 01.01.1997 and on which date new promotion policy/rules (Annexure P-3) came into effect vide letter dated 05.03.1997 and, therefore, by all means were put into effect retrospectively.

Under old rules, the petitioners were to undergo one year training on the grade of E-1 and only after successfully putting in four years of service were promoted to E-2 grade. With the advent of new policy, a new grade E-2A was introduced under the new rules and diploma holders who were selected directly on grade E-1 after one year were to enter grade E-2 to E-2A and, thereafter, five years to Grade E-3 training period of one year was excluded from being counted in the new rules which was not so under the old rules. Thus, a degree holder like the petitioners who have stepped up from E-2 to E-2A grade were supposed to be put in one year and from E-2A to E3 four years.

It is not displaced by the counsel for the respondents Mr. Lokesh Singal that earlier on 30.06.2003, the petitioners were

promoted after it was found that under the new rules on account of relaxation certain persons juniors to the petitioners became their seniors. However, this promotion was withdrawn on 14.07.2003. It is worthwhile to refer here that during the course of events because of relaxation given certain persons who were juniors to the petitioners were promoted only after completion of less than four years of qualifying service and in the process managed to avail of more than one relaxation and thereby benefitted from the new promotion policy of almost 02 years. It is by virtue of this preferential treatment given to certain promotees by special dispensation has led to heart burning and invocation of jurisdiction of this Court. The undue favoritism in the promotion is well elicited from Annexure P-21 (Colly.).

During the course of arguments, Mr. Lokesh Singal, counsel for the respondents though has cited Indian Council of Agricultural Research and Union of India (supra) to impress upon the Court that where erroneous promotions have been given departmentally by misreading the rules, the

respondents reserved their right to rectify the same and remove hardship so caused to the other employees and that in view of ratio settled in Indian Council of Agricultural Research (surpa), it is the date of consideration of promotion which is material. The counsel has sought to place reliance upon Commissioner, Municipal Corporation, Hyderabad and others and J.C. Yadav and others (supra) to drive home the point that where relaxation has been given for extraneous reasons against rules, the same can be withdrawn by the authorities. It is well settled proposition reliance of which can be placed on S.L. Chandrakishore Singh's case (supra) where it is held that length of service is one of the parameters for grant of promotion and, thus, continuous officiating service determining the factor and similarly while considering the seniority fixation in Uttanchal Forest Rangers' Asson. (Direct Recruit) and others and Dr. Prem Swroop Gaur cases (supra) stress has been made that one cannot get seniority from a date when he was not there in service and has to be

fixed from the point of time provided in the service rules. What has come before this Court that there has been arbitrary instances of relaxation by misuse of powers that vests in the Chairman/Managing Director of the NHPC without fulfillment of the conditions prescribed under the rules. This Court seeks support from State of Punjab and another Vs. Gurnam Singh's case (supra) where in a similar situation a Division Bench view has held that relaxation is not a concession and cannot be enforced especially where a senior is ignored and the junior is granted promotion by giving relaxation and is clearly held to be arbitrary and violative of Articles 15 and 16 of the Constitution of India.

In the present case by virtue of office order dated 30.06.2003 Annexure P-15 promotions were given to the petitioners from Grade E-3 to E-4 w.e.f. 01.04.2003 and it is by another quirk of fate, the office order was recalled on 14.07.2003.

To the mind of this Court, once considering the case

for promotion and finding their service records to be satisfactory promotions have been granted and how without issuing any show cause notice the respondents have without assigning any reasons in tersely worded order had withdrawn the promotions is in violation to the rules of administrative law. More so, the petitioners have already put in the training period and two years more than that when the new rules were brought into force, it would not be in the fitness of things to accept the arguments of Mr. Lokesh Singal counsel for the respondents in view of the submissions of Mr. Rajiv Atma Ram learned counsel for the petitioners that how such a rule can be applied retrospectively to the detriment of the employees who have already completed that period. Thus, considering the training period of one year already undergone by the petitioners, and under the old rules which were applicable then, Training Period has to be considered for their promotion to the subsequent higher grade and cannot at the whims and fancies of the respondents be excluded in the light of the new rules it cannot be under the law

applied retrospectively and that too to the detriment of the employee. By this, the period already undergone on training and, thereafter, has to be considered as per old rules for determination of seniority of petitioners. This Court feels that the new Rules will be only enforced in the case of petitioners from the next promotion and not midway to upset their seniority as they have already undergone sufficient period in service which cannot be washed away by the introduction of new Rules. That the respondents have given relaxation for promotion by treating the employees holding one year diploma as per the qualification and thus, relaxaing, the promotion criteria to E-3 grade for the employees who were appointed in the year 1993 certainly to the mind of the Court is a serious illegality in utter disregard and contravention of the service rules and appears to be misuse of powers by the authorities. It is precisely this very act of relaxation which has further aggravated the grievance of the petitioners. The flagrant violation of the promotion policy and the rules is further borne out from the fact that certain officials were

promoted by the respondents by giving undue and illegal relaxations of required qualifications with the stipulation that further promotions of such officials would be considered after they acquired prescribed qualification which is well prescribed in the office orders Annexure P-20 (Colly.) in the case of Sh. A.K. Bhatia, S.P.S. Law Division, Corporate Officer, Mrs. Kusum Mehta, S.P.S. Vigilance Division, Corporate Officers, Shri Om Parkash, S.P.S. Salal Project and Shri Gian Chand, S.P.S. Chamera-II Project and in their promotion orders finds mention that they are promoted as officiating case and their further promotion shall be considered upon requiring requisite qualification in terms of the promotion policy are matters which cannot escape judicial scrutiny and are non-speaking without explaining the special reasons for it and similar is case of one Jatender Jain, Dy. Manager-Power Engg. -(Elect). C.O., (Annexure P-21) who has been given one time relaxation of rules as a special case.

Thus, from all this above, it stands deduced that the

NHPC which in exercise of its powers under the Rules had promoted the petitioners being senior could not withdraw the said orders unilaterally without assigning any reasons and further that the act of the respondents in not promoting the petitioners by similarly granting relaxation to them when they had already exercised so in the case of persons juniors to the petitioners comes to be highly arbitrary and illegal and, therefore, order of promotion dated 30.06.2003 (Annexure P-15 Colly.) which was withdrawn needs to be restored. All the petitioners are entitled to next one promotion due to them on introduction of new Rules, as per the old Rules alongwith consequent service benefits commensurate with that promotion and subsequently that accrues in course of their employment as per the new Rules.

In the light of the same, the instant petition stands allowed and disposed off accordingly.

May 20, 2021

(FATEH DEEP SINGH)

amit rana

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No