

**267 IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**(1) CWP No. 3079 of 2022 (O&M)
Date of Decision: October 17th, 2022**

Devinder Kumar Hans

.....Petitioner

Versus

State of Punjab and others

.....Respondents

(2) CWP No. 5662 of 2022 (O&M)

Tejpal Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Gurminder Singh, Sr. Advocate assisted by
Mr. G.S. Sandhu, Advocate,
for the petitioner in CWP No.3079 of 2022.

Mr. Amit Jhanji, Sr. Advocate assisted by
Mr. Abhishek K. Premi, Advocate,
for petitioner in CWP-5662-2022 and
for respondent No.3 in CWP-3079-2022.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

Mr. Nakul Sharma, Advocate,
for respondent No.6 in CWP-5662-2022.

MAHABIR SINGH SINDHU. J.

This order shall dispose off afore-mentioned both the writ petitions
as common questions of facts and law are involved.

2. Facts are not in dispute.

3. CWP No. 3079 of 2022 (hereinafter referred as 'Ist case') has been
filed by Shri Devinder Kumar Hans.

CWP-5662-2022 (hereinafter referred as 'IInd case') is by Shri
Tejpal Singh.

In the Ist case, Shri Tejpal Singh has been impleaded as respondent No.3; whereas in IInd case, Shri Devinder Kumar Hans is arrayed as respondent No.6.

For brevity, Shri Devinder Kumar Hans shall be referred as petitioner; whereas, Tejpal Singh as respondent No.3.

Also relevant to mention here that petitioner belongs to Scheduled Caste category; whereas, respondent No.3 is a General candidate.

4. For reference, service particulars of both the officers are tabulated as under:-

	Initial appointment as Sub-Divisional Engineer.	First Promotion as Executive Engineer.	Second promotion as Superintending Engineer.
Devinder Kumar Hans (petitioner)	27.10.1989 (Seniority No.19)	14.12.2006 (Seniority No.14)	02.12.2016 (under S.C. Category) (Seniority No.3)
Tejpal Singh (respondent No.3)	20.10.1989 (Seniority No.16)	18.11.2003 (Seniority No.13)	29.05.2020 (Seniority No.2)

As noticed above, at present, both the officers are working as Superintending Engineer in the Department of Rural Development & Panchayats, Punjab (hereinafter referred as 'Department of RD & PR'). Primarily, the controversy in both the cases relates to promotion to the sole post of Chief Engineer (PR).

5. Petitioner as well as respondent No.3 are aggrieved against the impugned action dated 28.12.2021 of the Departmental Promotion Committee (for short 'DPC'), whereby proceedings for promotion to the post in question were deferred for seeking opinion from the Personnel Department.

6. **Contentions:-**

On behalf of petitioner (Devinder Kumar Hans)

Learned Senior counsel contended that post of Chief Engineer is governed under the Punjab Rural Development and Panchayats (Group-A) Technical Service Rules, 2016 (for short “Rules of 2016”). As per proviso to sub-rule (3) of rule 6, promotion to the post of Chief Engineer, being Head of the Department, shall be made on the basis of merit-cum-seniority. Further contended that keeping in view the provisions of sub-rule 2, rule 6 read with Appendix-B thereof, no person shall be appointed as Chief Engineer unless a Superintending Engineer is having an experience of working as such for a minimum period of two years.

Also contended that petitioner was promoted as Superintending Engineer on 02.12.2016, thus, he became eligible for promotion to the post in question w.e.f. 01.12.2018; however, the official respondents while depriving his lawful claim, did not consider the petitioner for promotion to the post of Chief Engineer, rather granted additional charge to one Shri Shiv Kumar Mangal, who was promoted as Superintending Engineer much after the petitioner. Also contended that on second occasion also, upon retirement of said Shri Shiv Kumar Mangal, additional charge of the post in question was assigned to respondent No.3 without realizing that he was promoted as Superintending Engineer only on 29.05.2020. Now again, when DPC was convened to shortlist the suitable person for promotion to the sole post of Chief Engineer, proceedings have been deferred *vide* impugned decision dated 28.12.2021 on the premise that respondent No.3, *“who is figuring at serial No.2 in the seniority list, however, he does not meet the requisite experience prescribed for promotion to the post of Chief Engineer”* and *“the DPC can only be held once the employee shown to be senior in the seniority list completes the required experience”*.

Again contended that seniority in the cadre does not entitle a public servant for promotion to the higher post, unless he fulfills the eligibility condition prescribed under the relevant rules.

Lastly contended that petitioner is the most meritorious candidate who has been awarded four “Outstanding” ACRs and one “Very Good” in the last five years; thus, the action of respondents is legally unsustainable.

On behalf of respondent No.3(Teupal Singh)

Learned Senior Counsel contended that on 28.08.2019 he was assigned the additional charge for the post of Superintending Engineer; thereafter, promoted substantively as such *vide* order dated 28.05.2020. Later on, after the retirement of aforesaid Shiv Kumar Mangal, he was assigned the additional charge of Chief Engineer with effect from 30.04.2021 being the most deserving person. Specifically argued that additional charge assigned to respondent No.3 on 28.08.2019 as Superintending Engineer was never withdrawn; thus, in such a situation, he is entitled to be considered as eligible for promotion to the post of Chief Engineer as per rules of 2016. In other words, respondent No.3 is claiming that period of current duty/additional charge for the post of Superintending Engineer w.e.f. 28.08.2019 to 29.05.2020 be treated as a valid experience for promotion to the post in question as per rule 6 read with Appendix-B, thereof.

On behalf of official respondents/State:-

Learned State counsel while defending the course adopted by the DPC, opposed the claim of petitioner as well as of respondent No.3 on the premise that since no final decision was taken in the meeting held on 28.12.2021, therefore, both the writ petitions are liable to be dismissed being premature as no cause of action has arisen till date in favour of the petitioner or respondent No.3. Further submitted that they are in process for convening the

DPC after taking into consideration the views of Personnel Department as well as opinion from Legal Remembrancer. Also submitted that the meeting of DPC shall be held as soon as possible and all the parameters regarding merit-cum-seniority shall be kept in view while short-listing the candidates. Again submitted that the candidate(s) who is/are fulfilling the requisite conditions shall be considered as per law and after following due procedure, the post of Chief Engineer would be filled-up, at the earliest. Lastly submitted that the department has been following well-established norms while assigning additional charge for the post of Chief Engineer in the exigency of service; hence, present writ petitions are liable to be dismissed.

7. Heard learned counsel for the parties and perused the records.

8. The points for consideration of this Court would be as under:-

(i) Whether in view of the facts and circumstances of the present cases, petitioner or respondent No.3 or both of them have any cause of action for seeking judicial review of the course adopted by the DPC in its meeting held on 28.12.2021?

(ii) If yes, whether respondent No.3 is fulfilling the requisite experience for consideration to the post of Chief Engineer (PR) in terms of rule 6 read with Appendix-B thereof?

Point No.(i):-

9. Law is well settled that no public servant has a fundamental right for promotion; however, it is well settled that consideration for promotion in accordance with law has been recognized akin to fundamental right. Reference in this regard can be made to the decision of the Hon'ble Supreme Court dated 08.12.2021 in Civil Appeal No.5966 of 2021 ***Ajay Kumar Shukla and others vs. Arvind Rai and others*** and relevant part of the same reads as under:-

“37. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in the case of Director, Lift Irrigation Corporation Ltd. and Others vs. Pravat Kiran Mohanty and Others in paragraph 4 of the report which is reproduced below:

“4... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent/writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent/writ petitioner was unjustly denied of the same is obviously unjustified.”

38. A Constitution Bench in case of Ajit Singh vs. State of Punjab, laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, CJI., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paragraphs 21 and 22 and 27:

“21: Articles 14 and 16(1): is right to be considered for promotion a fundamental right.

22: Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the "State shall not deny to any person equality before the law or the equal protection of the laws". Article 16(1) issues a positive command that "there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State".

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity in matters of employment

and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

"Promotion based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1) xxxx xxxx xxxx xxxx xxxx

27. In our opinion, the above view expressed in Ashok Kumar Gupta and followed in Jagdish Lal and other cases, if it is intended to lay down that the right guarantee to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta right from 1950."

39. This Court in Major General H.M. Singh, VSM vs. UOI and Another, again reiterated the legal position, i.e. right to be considered for promotion as a fundamental right enshrined under Article 14 and Article 16 of the Constitution of India. The relevant extract from paragraph 28 is reproduced below:

"28. The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the

condition that the respondents were desirous of filling the vacancy of Lieutenant-General, when it became available on 1-1-2007. The factual position depicted in the counter-affidavit reveals that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the senior most serving Major-General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws, extended by Article 14 of the Constitution of India. We are of the view that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential Order dated 29-2-2008, and thereafter, by a further Presidential Order dated 30-5-2008. The above orders clearly depict that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier.”

By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant-General (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet, stands affirmed). The action of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant-General would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary.”

10. Before proceeding further, it is necessary to recapitulate rule 6 as well as Appendix-B of the rules of 2016 and which read as under:-

“6. Method of appointment, qualifications and experience.-

(1) Appointment to the Service shall be made in the manner specified in Appendix 'B'

Provided that if no suitable candidate is available for appointment by promotion and by direct appointment, then appointment to the service shall be made by transfer of a person holding an analogous post under a State Government or Government of India.

(2) No person shall be appointed to a post in the service, unless he possesses the qualifications and experience as specified for such a post in Appendix 'B'.

(3) Appointment to the Service by promotion shall be made on seniority-cum-merit, but no person shall have any right to claim promotion on the basis of seniority alone.

Provided that promotion to the post of Chief Engineer, being Head of the Department shall be made on the basis of merit-cum-seniority.”

APPENDIX 'B'

(See rules 6)

Serial No.	Designation of the posts	Percentage for appointment by		Method, qualification and experience for appointment by	
		Promotion	Direct appointment	Promotion	Direct appointment
1.	2	3	4	5	6
1.	Chief Engineer (Panchayati Raj)	Hundred per cent		From amongst the Superintending Engineers (Panchayati Raj) who have an experience of working as such for a minimum period of two years	
2.				...	

11. It is an admitted position that on the basis of Council of Ministers' decision dated 31.01.2020, the Government of Punjab, vide order dated 19.02.2020 (P-14) restructured the technical wing of the Department of RD & PR in the following manner:-

Post	Existing number	Newly created	After restructuring
Chief Engineer (PR)	1	0	1
Superintending Engineer (PR)	2	2	4

12. As per proviso to sub rule (3) of rule 6 (*ibid*), the Chief Engineer is the Head of Department. Also noteworthy that according to instructions dated 6th September, 2001 issued by the Department of Personnel, for promotion to the post of Head of Department, a panel of three suitable officers is to be sent for consideration by the DPC and for reference, relevant part of the above instructions is recapitulated as under:-

“Copy of Punjab Government circular letter No. 4/6/2000-3PPI/13720, dated 6th September, 2001 from the Department of Personnel, addressed to all the Financial Commissioners/Principal Secretaries and Administrative Secretaries to the Government of Punjab and a copy to all the Heads of Departments etc. in the State of Punjab.

Subject: Setting up of Departmental Promotion Committees for considering cases of promotion to Class-I and Class-II (now Group 'A' and Group 'B') posts.

I am directed to refer to the subject noted above and to say that the matter has been under consideration of the Government to review/modify the existing policy instructions contained in Circular letter No. 4/6/2000-3PPI/16189, dated the 29th December, 2000. As a sequel to this, these instructions were held in abeyance vide this Department I.D. No. 4/6/2000-3PPI/11173, dated the 19th July, 2001. After careful consideration of the matter by the Government, it has been decided to modify the instructions dated the 29th, December, 2000, as under:-

(a) The Punjab Services (Appointment by Promotion) Rules, 1962 have become obsolete and necessary action to repeal these rules is being taken separately.

(b) As far as the zone of consideration is concerned the guidelines of the Government of India on the subject should be followed. These guidelines specifically are as follows:

No. of vacancies Normal Zone Zone for consideration SC/ST

1.	5	5
2.	8	10
3.	10	15
4.	12	20
5.	Twice the number of vacancies plus 4	5 time number of vacancies

'Vacancy' would mean the existing vacancies and the clear regular vacancies arising during the course of the year.

Officer in the zone of consideration, who are considered unsuitable for promotion are to be weeded out and the list of only those who are suitable for promotion has to be drawn up. A panel of three suitable officers, out of zone of consideration, will be prepared if there is one post, four if there are two posts and five if there are three posts and so on.

(c) It has been decided to retain the numbering system of evaluation of ACRs as contained in the instructions dated 29.12.2000 which is as under:-

<i>'Outstanding'</i>	<i>:</i>	<i>4 marks</i>
<i>'Very Good'</i>	<i>:</i>	<i>3 marks</i>
<i>'Good'</i>	<i>:</i>	<i>2 marks</i>
<i>'Average'</i>	<i>:</i>	<i>1 mark</i>

ACRs for the last 5 years are to be taken into consideration for promotion. The criteria for promotions will be as under:-

(1) The case pertaining to the promotions as Head of Departments would be decided strictly on the basis of merit-cum-seniority. The minimum bench mark for promotion for such posts would be 'Very Good'. The marking system adopted earlier in instructions dated the 29th December, 2000 would be followed and a minimum of 15 marks would be required to be considered as Very Good. The Officer who is graded as Outstanding would supersede the officer graded as Very Good.

(2) For promotion to posts falling in Group 'A' other than Head of Departments, the minimum bench mark will be Very Good with at-least 12 marks. Amongst those meeting this criteria, there would be no supersession.

(3) In the case of promotion to posts falling in Group 'B' the minimum bench mark will be 'Good' and there would be no supersession i.e. Promotions would be made strictly on seniority-cum-merit.

(4) *For making promotion in all the categories there should not be any adverse remarks in the ACRs under consideration.*

2. *As a consequence of this decision of the Government, the appropriate changes in the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 would be made separately.*

3. *These instructions would be applicable prospectively."*

13. Record reveals that process for promotion to the post in question was initiated on 20.09.2021 in the following manner:-

“Subject: For promotion to the post of Chief Engineer (PR) from Superintending Engineer (PR) in Rural Development & Panchayat Department.

On the subject cited above, it is informed that there is one post of Chief Engineer (PR) and the same is to be filled-up on the basis of merit-cum-seniority. At present, Sh. Tejpal Singh, Superintending Engineer has been assigned additional charge of Chief Engineer (PR) on temporarily basis. In order to fill-up one post of Chief Engineer (PR), a panel of three eligible candidates is to be prepared, but at present, there are two Superintending Engineers viz. Sh. Devinder Kumar Hans and Sh. Tejpal Singh. It is relevant to mention here that Superintendent RDE-5 Branch has received a message on whatsapp from higher officers that in order to promote Chief Engineer (PR), agenda be prepared for Departmental Promotion Committee. For preparing agenda, record of the officers is required. The record of Superintending Engineers has been sent to the office of Chief Engineer.”

14. In view of the instructions dated 06.09.2001 (*ibid*), the panel of three officers was prepared on 25.11.2021 and agenda prepared to that effect reads as under:-

“Subject: For holding Departmental Promotion Committee meeting for promotion to the vacant post of Chief Engineer (PR) from Superintending Engineer (PR) in Rural Development & Panchayat Department.

....

As far as reservation in the cadre is concerned, according to rule 6(b) of the rules, it is written that one post of Chief Engineer (PR) is sanctioned. This post is to be filled up on the basis of merit-cum-seniority and there is no reservation regarding this post. For one post of Chief Engineer (PR), a panel of three eligible officers is to be prepared. As per the Punjab Rural Development and Panchayats (Group-A) Technical Service Rules, 2016, there are two vacancies of Superintending Engineer (PR). At present there are two Superintending Engineers (PR) i.e. Sh. Tej Pal Singh and Sh. Davinder Kumar Hans. Vide office letter No. 1/15/2020-3R.D.E./582 dated 25.01.2021 (Copy enclosed) seniority list of Superintending Engineers (PR) was circulated. In this manner, the panel for filling-up the post of Chief Engineer is as under:-

1. Sh. Shiv Kumar Mangal, Superintending Engineer(PR)

The official at serial No.1 in the seniority list i.e. Sh. Shiv Kumar Mangal has superannuated on 30.04.2021.

2. Sh. Tej Pal Singh, Superintending Engineer(PR)

1.	Seniority No.	2
2.	Date of appointment	20.10.1989
3.	Date of promotion as Superintending Engineer	29.05.2020
4.	Date of retirement	28.02.2023
5.	Category	General

Precise of Annual Confidential Reports:-

Sr. No.	Year	Grading	Bench Mark
1.	2016-17	Very Good	3
2.	2017-18	Outstanding	4
3.	2018-19	Outstanding	4
4.	2019-20	Outstanding	4
5.	2020-21	Outstanding	4
	Total marks		19

As per record, there is no departmental inquiry pending against the officer. As per ACRs, he fulfils the bench-mark but as per rules he does not fulfil the experience of two years. At present, he has experience of 1 year and 6 months in his credit.

3. Sh. Devinder Kumar Hans, Superintending Engineer(PR)

1.	Seniority No.	3
2.	Date of appointment	27.10.1989
3.	Date of promotion as Superintending Engineer	02.12.2016
4.	Date of retirement	31.10.22
5.	Category	Scheduled Caste

Precise of Annual Confidential Reports:-

Sr. No.	Year	Grading	Bench Mark
1.	2015-16	Very Good	3
2.	2016-17	Outstanding	4
3.	2017-18	Outstanding	4
4.	2018-19	Outstanding	4
5.	2019-20	No Report	--
6.	2020-21	Outstanding	4
	Total marks		19

As per record, there is no departmental inquiry pending against the officer. As per ACRs, he fulfils the bench-mark and the officer also fulfils the condition of two years' experience under the rules. As per the situation reflected above, the agenda for promotion to the post of Chief Engineer is placed. The concerned departments should be informed at least 15 days before the date of meeting. Therefore, date for holding meeting of Departmental Promotion Committee be fixed.

*Sd/-
Sagar Mittal
(25.11.2021)”*

15. It is an admitted fact that candidate at serial No.1 i.e. Shri Shiv Kumar Mangal had retired way back on 30.04.2021; but curiously his name was also included in the Panel for the reasons best known to the official respondents. Also not in dispute that on 28.12.2021, no final decision was taken by the DPC; rather proceedings were deferred for seeking opinion of the Personnel Department on the premise that respondent No.3 was not fulfilling the requisite experience, as per rule 6(2) (*ibid*).

16. Even during the course of hearing also, it was the categorical stand of the official respondents that in the meeting held on 28.12.2021, no final decision was taken by the DPC and they are in the process for re-convening the meeting for promotion to the post in question after taking into consideration the views of Personnel Department as well as opinion from Legal Remembrancer. Still further official respondents have raised a specific plea that relevant parameters of merit-cum-seniority shall be kept in view by the DPC at the time of assessment of all the eligible candidates and the officer(s) whosoever is/are fulfilling the pre-conditions, shall be considered in a transparent manner.

17. There is nothing on record that on 28.12.2021, the DPC has finally assessed the suitability of candidate(s) after considering their respective service records in terms of the criteria laid down under the instructions dated 06.09.2021; rather the course adopted by the DPC while seeking opinion from Personnel Department is an internal communication for seeking guidance in the matter at intermediate stage. In such a scenario, this Court is of the opinion that merely seeking guidance by the DPC on 28.12.2021, from the Personnel Department shall not give any cause of action, either to the petitioner or to respondent No.3 for seeking judicial review in the matter.

18. *A fortiori*, it is well settled that mere inter-departmental communication is neither a final decision; nor the same shall give rise to any cause of action and reference in this regard can be made to judgment of ***Mahadeo and others Versus Smt. Sovan Devi and others, Civil Appeal No. 5876 of 2022 decided on 30.08.2022***, wherein it was held as under:-

*“14. It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. This Court examined the said question in a judgment reported as **Omkar Sinha v. Sahadat Khan**. Reliance was placed on **Bachhittar Singh v. State of Punjab** to hold*

*that merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government, two things are necessary. First, the order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and second, it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up, the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. The said judgment was followed in **K.S.B. Ali v. State of Andhra Pradesh** and **Dyna Technologies Pvt. Ltd. v. Crompton Greaves Limited**. In **Bachhittar Singh**, it has been held as under:*

“8. What we have now to consider is the effect of the note recorded by the Revenue Minister of PEPSU upon the file. We will assume for the purpose of this case that it is an order. Even so, the question is whether it can be regarded as the order of the State Government which alone, as admitted by the appellant, was competent to hear and decide an appeal from the order of the Revenue Secretary. Article 166(1) of the Constitution requires that all executive action of the Government of a State shall be expressed in the name of the Governor. Clause (2) of Article 166 provides for the authentication of orders and other instruments made and executed in the name of the Governor. Clause (3) of that Article enables the Governor to make rules for the more convenient transaction of the business of the Government and for the allocation among the Ministers of the said business. What the appellant calls an order of the State Government is admittedly not expressed to be in the name of the Governor. But with that point we shall deal later. What we must first ascertain is whether the order of the Revenue Minister is an order of the State Government i.e. of the Governor. In this connection we may refer to Rule 25 of the Rules of Business of the Government of PEPSU which reads thus:

“Except as otherwise provided by any other Rule, cases shall ordinarily be disposed of by or under the authority of the Minister in charge who may by means of standing orders give such directions as he thinks fit for the disposal of cases in the Department. Copies of such standing

orders shall be sent to the Rajpramukh and the Chief Minister.”

According to learned counsel for the appellant his appeal pertains to the department which was in charge of the Revenue Minister and, therefore, he could deal with it. His decision and order would, according to him, be the decision and order of the State Government. On behalf of the State reliance was, however, placed on Rule 34 which required certain classes of cases to be submitted to the Rajpramukh and the Chief Minister before the issue of orders. But it was conceded during the course of the argument that a case of the kind before us does not fall within that rule. No other provision bearing on the point having been brought to our notice we would, therefore, hold that the Revenue Minister could make an order on behalf of the State Government.

9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

xxx

xxx

xxx

11. We are, therefore, of the opinion that the remarks or the order of the Revenue Minister, PEPSU are of no avail to the appellant.”

*15. This Court in **Municipal Committee v. Jai Narayan & Co.** held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of an opinion by the particular individual. It was held as under:*

*“16. This Court in a judgment reported as **State of Uttaranchal v. Sunil Kumar Vaish**, (2011) 8 SCC 670 held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular*

individual. By no stretch of imagination, such noting can be treated as a decision of the Government. It was held as under:

“24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review. (See State of Punjab v. Sodhi Sukhdev Singh AIR 1961 SC 493, Bachhittar Singh v. State of Punjab, AIR 1963 SC 395, State of Bihar v. Kripalu Shankar (1987) 3 SCC 34, Rajasthan Housing Board v. Shri Kishan (1993) 2 SCC 84, Sethi Auto Service Station v. DDA (2009) 1 SCC 180 and Shanti Sports Club v. Union of India (2009) 15 SCC 705).”

17. Thus, the letter seeking approval of the State Government by the Deputy Commissioner is not the approval granted by him, which could be enforced by the plaintiff in the court of law.”

19. In view of the facts and circumstances discussed here-in-above, there is no hesitation to observe that as on today, no cause of action has arisen either in favour of the petitioner or for respondent No.3 to seek judicial review of the proceedings dated 28.12.2021, hence both the writ petitions are held to be premature. Point No.1 is decided accordingly.

20. As held above, since there is no cause of action for respondent No.3 to file CWP No.5662 of 2022, therefore, point No.2 has been rendered as academic in nature.

21. Consequently, there is no option except to dismiss both the writ petitions.

22. Ordered accordingly.

23. Pending civil misc. application(s), if any, shall also stand disposed off.

24. Record be returned to the quarter concerned.

October 17th, 2022

(MAHABIR SINGH SINDHU)
JUDGE

SN

Whether speaking/reasoned : Yes/No

Whether Reportable: Yes/No