

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

226

CWP No.11458 of 2020 (O&M)
DATE OF DECISION : 13th July, 2022

Ms. Priyanka

.... Petitioner

Versus

**Chandigarh Administration through its Secretary, Local
Government Department, UT Chandigarh & others**

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Aman Chaudhary, Advocate for the petitioner.

Ms. Priyanka Dalal, Advocate for respondent No. 1.

Mr. Sanjiv Ghai, Advocate for respondent No. 2-MC, Chd.

Mr. Birender Singh Rana, Senior Advocate with
Mr. Shubham Singh Gangola, Advocate
for respondent No.3.

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RAJBIR SEHRAWAT, J. (Oral)

1. The petitioner has filed this petition under Articles 226 & 227 of the Constitution of India, for issuance of a writ in the nature of certiorari for quashing the action of clubbing/treating one post of SDE (Building & Enforcement) as a part of the B & R Wing/Branch by respondent No.2 based on illegal interpretation and without any order of the competent authority who created the said post along with other technical posts in the B & E Branch in the year 2008 (Annexure P-1), due to this action 2 more posts became available in B & R Wing (1 each in Diploma and Degree category) against which Sh. Ravinder Kumar Sharma and respondent No.3 were illegally promoted; with further prayer

that the petitioner be promoted as SDE with effect from the date respondent No.3 was promoted; along with certain other prayers.

2. The facts, as asserted by the petitioner in the present petition, are that the petitioner is having degree of B.Tech in Civil Engineering from Kurukshetra University, Kurukshetra and Diploma in Civil Engineering from Punjab Technical Education Board and Industrial Training. The respondent-Chandigarh Municipal Corporation (in short, the 'Corporation') advertised one post of Junior Engineer (Civil) in Building and Enforcement Branch of Municipal Corporation. After completing the process of selection the petitioner had joined as Junior Engineer (Civil) on 28.01.2009. Since then she had been continuing as such. After being selected, the petitioner was posted in Building and Enforcement Branch of the Corporation and she continued there. The petitioner was promoted as SDE (Civil) (Building and Enforcement) on 17.04.2018. The petitioner is continuing as such. However, earlier the petitioner was member of the cadre of Junior Engineer Building and Enforcement Wing of the Corporation Engineering Department. At that time, the Building and Enforcement Branch was a separate cadre. There was one post of SDE in Building Enforcement Branch. The qualification prescribed for promotion to the post of SDE (Building and Enforcement) was Diploma in Civil Engineering with 10 years' experience as Junior Engineer (in short, 'JE') and 15% posts were meant for JEs (Civil) possessing qualification of degree in Civil Engineering with three years of regular service. Since the petitioner had completed three years of service as JE (Civil) in Building and Enforcement Wing, therefore, she was entitled to be promoted as SDE (Building and Enforcement).

However, she was not considered for the same. Subsequently, in the year 2015, the respondent-Corporation merged the cadre of Building and Enforcement with the cadre of Building and Roads. Although, the petitioner has been promoted as SDE after merger of the cadre, however, she was wrongly deprived of the promotion before the merger, when she had acquired qualification. This had caused great prejudice to the petitioner. As a result the petitioner has been rendered junior to respondent No.3 who before promotion was only the member of the cadre of JE (Civil) (Building and Roads), who could not have been promoted as SDE, Building and Enforcement Branch. Therefore, the petitioner has challenged the action of the Corporation clubbing the post of SDE (Civil)(Building and Roads) and that of SDE (Building and Enforcement). Accordingly, it is prayed that the date of promotion of the petitioner be ordered to be rectified by granting her the deemed date of promotion w.e.f. 13.11.2015; when respondent No.3 was promoted.

3. Continuing the case of the petitioner, learned counsel for the petitioner has submitted that since the action of the respondents has caused prejudice to the petitioner, therefore, to grant the petitioner her due, the petitioner deserves to be granted promotion to the post of SDE, at least w.e.f. the date respondent No.3 was promoted. Still further, it is submitted that the cadre of JE and SDE in Building and Enforcement had been sanctioned separately by the competent authority. There was no justification for merger of these cadre posts with those in the Building and Roads. When these posts were separately existing the petitioner had already acquired the eligibility for promotion. Yet she was not promoted.

Later on respondent No.3 was promoted wrongly by clubbing the posts of SDE (Building and Roads) and SDE (Building and Enforcement). The petitioner deserves to be promoted from the date of her acquiring eligibility.

4. On the other hand, the counsel for the respondent-Corporation has submitted that the post of the SDE (Building and Road) and the post of SDE (Building and Enforcement) already stood merged way back in the year 2012 while defining the cadres under the Rules called Municipal Corporation Chandigarh Service Regulations, 2012. After the said regulations, no separate cadre of SDE (Building and Road) and SDE (Building and Enforcement) exists any more. The finally merged cadre of the Sub Divisional Engineer is known as SDE (Civil) (Building and Enforcement). Even the feeder cadre for the promotion to the said post is constituted by JE (Civil) with Diploma and Degree; with varying degree of experience. The petitioner has been considered for promotion to the said post as and when the promotion to the said cadre-post was made; and as per her seniority. Accordingly, the petitioner already stands promoted on the post of SDE (Civil) (Building and Enforcement). There is no ground for ante-dating the date of promotion of the petitioner w.e.f. the date of promotion of respondent No.3. Even respondent No.3, who was senior to the petitioner, was promoted in accordance with the Regulations of 2012, mentioned above as per his seniority. In the cadre of JE (Civil) respondent No.3 is bound to be treated as senior because the petitioner was appointed much after appointment of respondent No.3 as JE (Civil). The counsel has further submitted that since the petitioner herself has been promoted on the post

which has been defined after the merger under the Statutory Rules, therefore, she could not question the merger now. Anything written in the noting file, just by way of official discussions, cannot be taken as something superseding the statutory provisions. Hence, there is no force in the petition filed by the petitioner. Moreover, the petitioner has not challenged the Statutory Regulations.

5. The learned senior counsel for respondent No.3 has referred to the appointment letter of the petitioner on the post of Junior Engineer and submitted that the petitioner was never appointed specifically for Building and Enforcement Wing. Her appointment was pure and simple on the post of JE (Civil); with a further stipulation that she can be posted in any one of the wings under the Corporation's Engineering Department. Therefore, the petitioner cannot claim to be member of any separate cadre of JE(Civil) (Building and Enforcement). The counsel has further submitted that, in any case, with the enforcement of the regulations of 2012 there is only one cadre which is JE (Civil) and there is no distinction between the cadres of JE. The respondent No.3, being senior in the cadre of JE (Civil); by the date of appointment as JE (Civil), is bound to be treated as senior to the petitioner under the said Regulations. Hence, respondent No.3 was rightly promoted as per his seniority, eligibility and entitlement. The petitioner was much junior to respondent No.3. Hence, there is no question of petitioner claiming the same date of promotion as that of respondent No.3, simply on the ground that she was asked to work in particular wing, though on the post of JE (Civil). It is further pointed out that respondent No.3 was promoted as SDE (Civil)(Building and Enforcement) under the Regulations of 2012. The

said promotion was never challenged by the petitioner. On the contrary, the petitioner had filed CWP No.4213 of 2018; wherein she claimed the promotion under the Regulations of 2012 only. After filing the said petition, the petitioner has also been promoted as SDE (Civil) (Building and Enforcement). Thereafter the petitioner has also claimed promotion as Executive Engineer. The petitioner herself has claimed promotion to the post of Executive Engineer (Civil), which is based on presumption that the post of SDE (Building and Roads) and SDE (Civil) (Building and Enforcement) constitute one cadre. The petitioner could not have claimed the promotion on the post of XEN; had her assertion qua existence of cadre separately, got any merits or any substance.

6. Having heard the counsel for the parties and perusing the case file, this court does not find any substance in the arguments raised by counsel for the petitioner. The petitioner has questioned the clubbing of the posts for the purpose of promotion, citing certain noting files; statedly; prepared at the time of dealing with promotion to the post of SDE. However, there is no question of clubbing, allegedly, mentioned in the notings, in the year 2015 being any proof of existence of separate cadres of SDE (Civil) Building and Roads and SDE (Civil) (Building and Enforcement). All these posts already stood merged by creation of a single cadre of SDE (Civil)(Building and Enforcement) through the Statutory Rules in 2012. Once a single cadre of SDE has already been envisaged and statutorily created by the Regulations, then anything written in the noting file, cannot be taken as having any relevance qua factum existence of the cadres of SDE as separate cadres. It is not even in dispute that the petitioner has not even challenged the above said

Statutory Rules. There can not be estoppel against the statutory provisions. The petitioner, as well as, the respondents are bound by the same. Hence, the argument of counsel for the petitioner that posts have been clubbed only in the year 2015 only, is totally bereft of any substance. The posts already stood merged in a single cadre by the statutorily created Regulations. Moreover, the petitioner has already been promoted following the said Regulations only.

7. Although, the counsel for the petitioner has submitted that she deserves to be promoted w.e.f. the date the respondent No. 3 was promoted, however, this court does not find any substance in this argument as well. It is not even in dispute that the petitioner, as well as, respondent No.3, both held post of JE (Civil). Respondent No.3 was appointed as JE (Civil) on 14.02.2006 whereas petitioner was appointed on 15.01.2009. Therefore, by any means, respondent No.3 was senior to the petitioner in the feeder cadre of JE(Civil). Hence, he is entitled to be promoted prior to the petitioner, by any means. The statutory regulation prescribe the JE (Civil) as the feeder cadre and the criteria for promotion is seniority. Therefore, there is nothing wrong if the respondent No.3 has been promoted prior than the petitioner.

8. To stretch her claim for promotion before the date of promotion of respondent No.3, the petitioner has tried to argue that the post of SDE (Civil) (Building and Enforcement) existed as an independent post prior to the enforcement of the Regulations of 2012 and she had acquired the eligibility for promotion. Therefore, she should have been promoted even before enforcement of the Rules. However, this argument is totally without any substance. Mere eligibility for

promotion does not confer any right upon the petitioner to be promoted from the date she acquired the eligibility qualifications. The promotion is not a condition of service. It is only an incidence of service. The petitioner is entitled only to be considered for promotion; as and when the employer so considers appropriate to make promotions. It is not even the case of the petitioner that any person junior to her was promoted as SDE (Building and Enforcement) before enforcement of the regulations of 2012. Neither has pointed out any statutory rule under which the respondent-Corporation was bound to promote her from the date of acquisition of eligibility for promotion. Hence this argument of the counsel for the petitioner is also liable to be noted only to be rejected. Although the counsel for the petitioner has submitted that before the introduction of the 2012 Regulations she was liable to be considered for promotion under the Punjab Service of Engineers, Class II, PWD (Buildings and Roads Branch) Rules, 1965, however, the counsel for the petitioner has failed to point out any provision in the said Rules under which the respondent-Corporation was bound to consider the petitioner for promotion from the date she acquired the eligibility condition.

9. In view of the above, finding no merits in the present petition the same is dismissed.

13th JULY, 2022
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>