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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-3024-1993(O&M)

Date of Decision:17.07.2023

KAMALJIT SINGH

.....Petitioner

V/s.

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Sanjeev Sharma, Advocate,
for the petitioner.

Mr. Vikas Arora, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of this Writ Petition has challenged the denial of promotion to the petitioner on the post of Sub Divisional Engineer as per the Punjab Service of Engineers (Class II) PWD (B&R) Branch Rules, 1965 (hereinafter referred to as “the Rules of 1965”)

2. Learned counsel for the petitioner submits that the petitioner possessed the requisite experience for consideration for promotion on having AIME qualification to his credit. Accordingly, the Screening Committee/Promotion Committee considered his case, along with other Officers, for promotion to the post of P.S.E Class II and recommended case of the petitioner for promotion on the basis of his record. The name of the petitioner was shown at Sr. No.21 and while name of one Ashok Kumar Dhir was shown at Sr. No.22 in the said list.

3. Learned counsel for the petitioner submits that he was, however, denied promotion on the basis that a charge-sheet has been issued to him on 15.07.1980 (Annexure P-11). The departmental proceedings were dropped by

withdrawing the charge-sheet mentioning that revised charge-sheet is being issued separately. Thereafter, another order was passed on 13.06.1995 whereby the Government decided to drop charge-sheet and close the matter against the petitioner on the basis of the report of the Enquiry Officer.

4. Learned counsel for the petitioner submits that in the meanwhile, one Ashok Kumar Dhir, who was placed at Sr. No.22 in the list prepared by the Screening Committee for promotion, was promoted in the pay scale of ₹400-1100 (unrevised) as Sub Divisional Engineer w.e.f. 07.11.1979 vide order dated 26.05.1998, however, case of the petitioner was not considered for promotion.

5. Learned counsel for the petitioner submits that once the proceedings were dropped against the petitioner, he was entitled for all consequential benefits and as the petitioner's claim for promotion had already been recommended by the Screening Committee, the respondents were obliged to promote him from the date his juniors have been promoted.

6. *Per contra*, learned State counsel submits that since an enquiry was pending against the petitioner, he could not be granted promotion. Further he submits that Ashok Kumar Dhir, who was placed at Sr. No.22 in the list, had been promoted based on his qualification of being a Graduate in Engineering while the petitioner was AIME holder. Learned State counsel submits that the petitioner, therefore, cannot have any *lis* or equality with Ashok Kumar Dhir as the qualification of the petitioner was different from that of the said Officer who has been promoted w.e.f. 07.11.1979.

7. I have considered the submissions of learned counsel for both the parties and perused the record available.

8. Rule 7 of the Rules of 1965 is reproduced as under:-

“7. Qualifications:-

No person shall be appointed to the service unless he ;

XXXX XXXX XXXX XXXX

(3) *in case of appointment by promotion from source 141 under rule 6 (1) :-*

(i) *a member of the Punjab P. W.D. (B&R) Sectional Officers Engineering Service or a Draftsman member of the B&R Branch, Draftsman and Tracers Service;*

(ii) *Possesses any of the qualifications included in Appendix ‘B’ and has put in five years service in case he possesses A.M.I.E. qualification and two years service in case he is a degree holder.”*

9. Thus, for the purpose of eligibility for consideration for promotion, the petitioner was required to have 5 years experience while another person who may have 2 years experience and is a degree holder, would fall within the zone of consideration for promotion. However, when the Screening Committee will consider the cases of eligible Engineers, a person holding A.I.M.E. degree and otherwise senior, would be placed over and above a Junior Engineer having a degree qualification who may also be recommended for promotion on completion of 2 years of service alone.

10. The petitioner being senior to that of Ashok Kumar Dhir was recommended for promotion and placed at Sr. No.21 in the panel of recommended Officers while Ashok Kumar Dhir was placed at Sr. No.22. Since the petitioner was already exonerated from the departmental proceedings on 13.06.1995, when the respondents granted promotion to Ashok Kumar Dhir vide 26.05.1998 w.e.f. 07.11.1979, the petitioner too was

required to be considered and he, therefore, could not have been ignored or sidelined for granting retrospective promotion w.e.f. 07.11.1979.

11. In view of the aforesaid observations, the claim of the petitioner is made out and the Writ Petition is accordingly allowed. Accordingly, the action of the respondents in not considering petitioner for grant of promotion inspite of being already recommended for promotion by the Screening Committee and also action of the respondents in promoting a junior person to the petitioner w.e.f. 07.11.1979 is held to be unjustified and illegal and accordingly it is directed that the petitioner too shall be considered to be promoted from the date his junior; Ashok Kumar Dhir was promoted i.e. with effect from 07.11.1979.

12. In case there was no post available, the respondents will be required to create a supernumerary post for the other incumbent namely Ashok Kumar Dhir while the petitioner, being senior to Ashok Kumar Dhir, would be holding substantive post which was given to Ashok Kumar Dhir.

13. The petitioner would also be entitled to all consequential benefits as granted to Ashok Kumar Dhir. The exercise shall be conducted and concluded within a period of 3 months from the date of submission of certified copy of this order to the respondent-Department.

July 17, 2023
Ess Kay

[SANJEEV PRAKASH SHARMA]
JUDGE

Whether speaking / reasoned : Yes
Whether Reportable : Yes