

CWP-7882-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-7882-2023 (O&M)
Date of Decision: 05.09.2023

Kewal Krishan

... Petitioner

V/s.

Punjab State Power Corporation Limited and others

... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Mr. Kanwaljeet Singh, Advocate for the petitioner.

Mr. Gurnoor Singh Sethi, Advocate for the respondents.

DEEPAK MANCHANDA, J.(Oral)

The instant writ petition has been filed by the petitioner for quashing the Speaking Order dated 09.08.2022 (Annexure P-8) passed against petitioner, vide which claim of the petitioner was declined with a further prayer for issuance of writ in the nature of mandamus directing the respondents to grant the promotion of Assistant Engineer/AE as per the principal policy under Punjab State Electricity Board Service of Engineers (Electrical) Regulations, 1965 amended from time to time, with consequential re-fixation of pay and to release to the petitioner the arrears of revised pay along with interest @ 12% per annum to the petitioner.

The facts emanates from the pleadings of the writ petition are that the petitioner joined the service of erstwhile Punjab State Electricity Board, presently Punjab State Power Corporation limited on 10.11.1984 as Sub-Station Attendant (SSA) and was promoted to the post of Junior Engineer/JE on 29.11.2003 and thereafter was promoted as Additional

Assistant Engineer/AAE on 04.04.2016.

Learned counsel for the petitioner contends that in pursuance to the order passed in CWP-11868-2022, which was disposed vide order dated 30.05.2022 (Annexure P-7) where a direction to respondent No. 1 was issued to decide the claim of the petitioner by passing a Speaking Order. Respondent No. 2 vide impugned Speaking Order dated 09.08.2022 (Annexure P-8) has declined the claim of the petitioner on the ground that petitioner has not passed the requisite Departmental Accounts Examination which is compulsory for promotion to the post of Assistant Engineer and the same is under challenge by way of present petition. Learned counsel for the petitioner further contends that the petitioner is presently working as Additional Assistant Engineer/AAE and had to pass the examination of Engineering Subordinates and has to appear six times for his next promotion as Assistant Engineer but in reference to Rule 19 (4) (i) (c) the In-charge may grant exemption to any member of the Service from passing the Departmental Accounts Examination. He has further referred to Rule 19 of Punjab State Electricity Board Service of Engineers (Electrical) Regulations, 1965, which is reproduced as under:-

“ 19. (1) The member of the Service shall be required to pass the following examination, after successful completion of training period:

(a) Departmental Accounts Examination prescribed for Engineer Officers of the Board under Punjab State Electricity Board Engineer Officers Departmental Examination Regulations 1983 as amended from time to time.

(b) Departmental Professional Examination; and

(c) any other examination(s) as may be introduced by the Board from time to time.

NOTE: Examination against item (b) above shall be application to the new entrants only, who were/are appointed to the service on or after 02.06.71 either by direct recruitment or otherwise.

This would also apply to the provisions of Departmental Professional Examination appearing in Regulation 12 and 13.

(2) Such of the Asstt. Engineers who are fit eligible for promotion as Asstt. Executive Engineers on the basis of seniority but could not pass the Departmental Accounts Examination upto the time their turn for promotion comes up . may also be considered for promotion as Asstt. Executive Engineer but they will not be entitled for promotional increment(s) till they qualify the prescribed examination. The promotional increments in their regular scale of Asstt. Executive Engineer to such officers who are promoted without passing the examination will be released only from the date when they pass the Departmental Accounts Examination. Further promotion as Executive Engineer shall be made only after the officers qualify the Departmental Accounts Examination or have been exempted from the same.

NOTE: These amendments shall be effective from 17.10.96 and apply only in case of promotion in future.

(3) They Engineering Subordinates with at least five years service may be allowed to appear and qualify the Departmental Accounts Examination prescribed for Engineer Officers at any time prior to their promotion to the rank of Assistant Engineer.

(4) (i) The Member Incharge may grant exemption to any member of the Service from passing the Departmental Accounts Examination at (a) above. The grant of exemption shall be considered in extremely hard cases on the following considerations:

(a) The Officer making the request has attained the age of 50 years.

(b) The record of the Officer is consistently good and without blemish.

(c) The Officer has at least made six attempts to clear the examination.

(ii) Once exemption has been granted to an Officer, no disability, whatsoever, shall attach to him in order to consider him for further promotions.

(5) The Assistant Engineer's who have crossed the age of 54 years, are exempted from passing Departmental Accounts Examination of Engineering Officers.

He further submitted that the petitioner is a 50% handicapped person and could not appear in the said examinations due to prevailing outbreak of novel corona virus (COVID-19) pandemic.

Vide order dated 18.04.2023, Mr. G. S. Sethi, Advocate, on receipt of advance copy had put in appearance on behalf of the respondents.

Learned counsel for the respondents submits that petitioner has already been superannuated on 31.07.2022 and had appeared for 04 times in Engineering Subordination (Electrical) Examination but could not clear those exams, which is the requisite qualification for the promotion, hence the person who has not passed the essential Departmental Accounts Examination which is compulsory for the post of Assistant Engineer as such cannot be considered for promotion.

Learned counsel for the respondents also refers to Rule 19 sub-Clause 2, which is as under:-

(2) Such of the Asstt. Engineers who are fit eligible for promotion as Asstt. Executive Engineers on the basis of seniority but could not pass the Departmental Accounts Examination upto the time their turn for promotion comes up . may also be considered for promotion as Asstt. Executive Engineer but they will not be entitled for promotional increment(s) till they qualify the prescribed examination. The promotional increments in their regular scale of Asstt. Executive Engineer to such officers who are promoted without passing the examination will be released only from the date when they pass the Departmental Accounts Examination. Further promotion as Executive Engineer shall be made only after the officers qualify the Departmental Accounts Examination or have been exempted from the same.

I have heard learned counsel for the parties.

In rebuttal to the arguments raised by learned counsel for the respondents, learned counsel for the petitioner is not in a position to

controvert the same as the petitioner has not passed the Departmental Accounts Examination, which is the requisite essential requirement for promotion to the post of Assistant Engineer and in absence of the same, the claim of the petitioner cannot be considered for promotion. Even as per Rule 19 of Punjab State Electricity Board (Electrical) Regulations, 1965 on which the petitioner has relied upon, the exemption can be granted only to those who have at least made 6 attempts to clear the examination but in the case of the petitioner admittedly 6 chances are given and out of which he availed 04 attempts but could not succeed and to avail rest of the two attempts he did not appear due to COVID, even thereafter immediately after the COVID period, no such request was made.

Moreover, as per Rule 19, granting exemption from passing the Departmental Accounts Examination in aforesaid clause is not mandatory in nature. The same is discretionary, where the department may or may not exempt any member of the service for promotion, but now for most of the remaining chances, the petitioner could not clear requisite examination in four attempts, the respondent is not bound for granting exemption and the prayer for conducting examination at this belated stage is meaningless.

Considering the factual aspects as well as the merits of the case, this Court finds that the instant petition is devoid of merits.

Petition is dismissed.

05.09.2023
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(DEEPAK MANCHANDA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes /No