

(251)

2023:PHHC:070200

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

CWP No.11193 of 2022

Date of decision : 15.05.2023

Harinder Singh

....Petitioner

Versus

Punjab State Power Corporation Ltd. & others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. D.S. Rawat, Advocate
for the petitioner.

Mr. Pawan Kumar, Advocate for
the respondents.

PANKAJ JAIN, J. (ORAL)

By way of this writ petition filed under Article 226/227 of the Constitution of India, petitioner prays for issuance of a writ in the nature of certiorari quashing the impugned letter/order dated 28th of March, 2022 (Annexure P-8), whereby the claim of the petitioners for deemed date of appointment on the post of Junior Engineer (Electrical) as 17.05.2010 (i.e. the date on which 1st Junior Engineer (Electrical) of advertisement CRA No.264/2008 joined the respondent-Corporation), stands rejected.

2. The respondent-Corporation vide public notice bearing *CRA-No.264/2008*, invited applications for recruitment of 225 posts of Junior Engineer (Electrical). The petitioner being eligible participated in the selection process and was placed in merit after securing 65 marks. On the other hand, respondent No.4, namely, Kamal Preet Sangar secured 57 marks

and was obviously placed below the petitioner in the merit list. Pursuant to the selection, the candidates were appointed in different zones. Zone-wise they joined on different dates. They were deemed to be in service from those dates. This led to jumbling of seniority list and a situation was created wherein a candidate though higher in merit was deemed to be in service on the date when he got appointment in his zone, which in many cases was later in time to the date of joining of person who was lower in merit, but was allowed to join earlier in time in his zone.

3. One of the matters came before this Court in CWP No.22762 of 2016 titled as 'Amrinder Singh Virk and others VS. Punjab State Power Corporation Ltd. & others', which was decided by a Coordinate Bench of this Court vide judgment dated 19.11.2020. The relevant extract of the said judgment read as under:-

“Facts of the case are not in dispute. Petitioners and private respondents herein participated in a common selection process for appointment to the post of Junior Engineers (Electrical) initiated vide advertisement No.264/2008. Petitioners secured a higher merit position as compared to the private respondents. Appointment letters, however, were issued on different dates. This was on account of names of selected candidates having been sent to different zones. Names of the petitioners were sent to South Zone whereas private respondents were allocated to Central Zone, Patiala, where from the appointment letters were issued prior in point of time.

Be that as it may, Condition No.11 was inserted in the appointment letters of all the selected candidates including the petitioners and private respondents herein and which was worded as follows:

“Condition No.11- Seniority of those candidates, whose seniority is yet to be determined, will not be entitled for seniority on account of earlier joining. You will not be entitled seniority on the basis of

earlier joining. Your seniority and seniority of other candidates will be decided by the Powercom/Transcom on the basis of merit decided by Powercom/Transcom.”

It was in terms of Condition No.11 and the well settled principle of law that seniority of direct recruits is to be prepared as per merit position determined by the Recruiting Agency irrespective of the date of issuance of the appointment letters that the seniority list of Junior Engineers (Electrical) was issued on 05.08.2013 (Annexure P-3) reflecting the petitioners as senior. Petitioners being eligible on account of possessing the requisite qualifications as also the three years experience and acting upon the seniority determined in the feeder cadre, petitioners were promoted as Assistant Engineers (Electrical) vide order dated 29.10.2013. Some of the private respondents were promoted along with the petitioners whereas some were promoted on a subsequent date.

Only on the basis that private respondents have completed three years of service on the post of Junior Engineer (Electrical) prior to the petitioners that the impugned seniority list dated 05.07.2016 (Annexure P-8) has been issued treating them to be senior to the petitioners. In the considered view of this Court, it was only due to the fortuitous circumstance of the names of the petitioners having been allocated to a different zone that the issuance of appointment letters was delayed. It is the Corporation which has to blame for such situation. In any event, it was not the fault of the petitioners as they otherwise had secured a higher merit position. The Corporation under such circumstances ought to have granted a deemed date of appointment to all the candidates on the post of Junior Engineers (Electrical) and who had participated in the same selection process. Corporation for reasons best known to it, has chosen not to do so. Under such circumstances, Rule 10.7 as also the 6 th proviso to Regulation 16 of the 1965 Regulations cannot operate to the prejudice of the petitioners while determining seniority.

A similar issue came to be dealt with by a Division Bench of this Court in Prem Singh and others Vs. State of Haryana, 2015 (4) SCT 578. In such matter, the Haryana Staff Selection Commission had invited applications from eligible candidates for recruitment to the post of Clerks in different departments under the State of Haryana. The advertisement had been issued in the year 1989. A large number of candidates were duly selected and thereafter allotted to different departments. Certain

candidates, who otherwise had secured a higher merit position were allotted to certain departments, where there were no vacancies and resultantly, their appointments got delayed. On the other hand, candidates, who were lower in order of merit were appointed on a prior date. Under such situation, the candidates, who were higher in merit had approached the writ Court seeking relief and to be treated as senior or at par with other candidates, who even though having been appointed much earlier, but had secured a lower merit position. The writ petition was allowed. LPA having been filed, the Division Bench in **Prem Singh's case (supra)** while affirming the view taken by the learned Single Judge held as follows:-

“12. It is undisputed that appellants and private respondents were candidates to the post of Clerk in pursuance to the advertisement issued by the Commission in the year 1989, both appellants and private respondents were in the merit list and the private respondents were more merited than the appellants, they were allotted to different departments. In so far as private respondents are concerned,, even though they were allotted to a different department, unfortunately vacancies were not available to accommodate them in the allotted department. Consequently, their appointment process was got delayed at the behest of official respondents. At this juncture, it is to be noted that for no fault of the private respondents, their appointment process was got delayed. In other words, due to communication gap between the Commission and the Departments), the Commission committed a serious error in allotting the private respondents to a Department where vacancies of Clerks were not available, for which the private respondents should not be penalised.

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15. The contention of the appellants that they were appointed earlier to the private respondents, their seniority was settled and they were promoted to the next higher cadre, namely, Accountant/Kanungo (Sales) and there is inordinate delay and latches on part of private respondents, seeking relief in respect of seniority is concerned, is without any merits, firstly, at the instance of department/Government, the private respondents were denied appointment on par with the appellants. Due to fault of the

department/Government, the private respondents should not be penalised in denying the service conditions on par with those who are lessor merited than the private respondents.”

Adverting back to the facts of the present case, petitioners are being treated as junior to the private respondents only on account of belated issuance of appointment letters inspite of (i) having secured a higher merit position at the stage of appointment to the post of Junior Engineer (Electrical); (ii) having been shown senior in the feeder cadre and each one of the petitioners actually being eligible in terms of possessing the requisite qualifications as also the three years experience on the lower post on the date they were promoted to the post of Assistant Engineers (Electrical). Following the dictum laid down in **Prem Singh's case (supra)** and for the reasons recorded herein above, the action of the Corporation treating the petitioners as juniors to the private respondents is held to be patently unjust unfair, arbitrary and in violation of Articles 14 and 16 of the Constitution of India. The impugned seniority list dated 05.07.2016 (Annexure P-8) qua the petitioners and private respondents is quashed. Corporation is directed to grant to the petitioners a deemed date of appointment on the post of Junior Engineer (Electrical) w.e.f. the date the first Junior Engineer (Electrical) had been so appointed pursuant to the same very selection process initiated vide advertisement No.264/2008. Fresh seniority list in the cadre of Assistant Engineers (Electrical) be prepared thereafter and issued within a period of six weeks from the date of receipt of a certified copy of this judgment.”

4. Pursuant to the aforesaid judgment, the respondents though have revised the seniority list but have granted benefit only to the petitioners in the said writ petition which has further complexed the situation rather than solving the same.

5. Learned counsel for the petitioner has invited attention of this Court to the marks obtained by respondent No.4 and that by the petitioner and submits yet owing to later date of joining, the petitioner has been rendered junior to respondent No.4

6. *Per contra*, learned counsel for the respondent does not dispute the aforesaid factual position being borne from the record. However asserts that the fresh seniority list stands casted pursuant to judgment passed in *CWP No. 22762 of 2016* and, thus, cannot be faulted with.

7. I have heard counsel for the parties and have gone through records of the case.

8. The respondent-corporation has completely misread the judgment passed by this Court in *CWP No.22762 of 2016* passed in 'Amrinder Singh Virk's case (supra). The ratio in the said judgment is that the Corporation being at fault in assigning different joining dates to the candidates cannot allow the covenant contained in the appointment letter governing seniority to be diluted and, thus, leading to a situation where the merit gets ignored. Mandate was not only to assign deemed date of appointment to the petitioner in that case but was also to frame fresh seniority list in the cadre of Assistant Engineers (Electrical) thereafter in accordance with law. Once that was the mandate, Corporation ought to have drawn fresh seniority list in accordance with the provisions contained in the regulations along with those contained in the appointment letter (Annexure P-1) to the following effect:-

11. “Seniority of those candidates, whose seniority is yet to be determined, will not be entitled for seniority on account of earlier joining. You will not be entitled seniority on the basis of earlier joining. Your seniority and seniority of other candidates will be decided by the Powercom/Transcom on the basis of merit decided by Powercom/Transcom.”

9. In view of the above, the present writ petition is allowed. Impugned order dated 28th of March, 2022 (Annexure P-8), is ordered to be quashed.

10. Respondents are directed to carry out necessary exercise and to re-cast the seniority list within a period of 04 weeks from the date of receipt of a certified copy of this order, strictly in accordance with the merit in the recruitment process as contemplated under aforesaid clause.

11. Needless to observe that any candidate who joined beyond the time granted by the respondent-Corporation, will be granted date of appointment from the date he/she joined services.

May 15, 2023

Anjal

**(Pankaj Jain)
Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No