

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

CWP-15699-2015

Date of Decision: 11.08.2023

Subhash Chander

.... Petitioner

Versus

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Rajesh Garg, Senior Advocate with
Ms. Neha Matharoo, Advocate and
Ms. Latika Garg, Advocate
for the petitioner.

Mr. D.K. Singal, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. The petitioner has preferred this writ petition with a prayer to promote him as Sub Divisional Engineer with effect from 1993, with all consequential benefits of arrears of pay and seniority.

2. Brief facts of the case are that the petitioner was appointed as Sectional Officer (Civil) on temporary basis on 29.12.1983 and was regularized with effect from 01.04.1985, vide order dated 17.08.1987. The construction cell of the Department was abolished and he was, therefore, adjusted in the Punjab Roadways.

3. The case of the petitioner is that he was a degree holder having qualified AMIE examination on 05.04.1993 and was thus, eligible for promotion as Sub Divisional Engineer in terms of Appendix 'B' of the Punjab Service of Engineers Class II, PWD (B&R) Branch Rules, 1965, which requires five years service experience with AMIE qualification for the

post of Sub Divisional Engineer.

4. As per the affidavit of the Secretary, Department of Transport, dated 31.01.2019, the representation of the petitioner was considered in terms of the Finance Department circular dated 16.10.2014 and was rejected as the circular did not allow creation or upgradation of post.

5. The respondents have denied the claim of the petitioner on the ground that there is no rule granting such promotion in Transport Department and the PWD Rules would not be applicable. The parity claimed by the petitioner relating to Labh Singh was misconceived as Labh Singh was holding the post of Draftsman from where he was promoted as Head Draftsman in the parent Department.

6. Learned counsel for the petitioner has relied upon a judgment in the case of '*Major General H.M. Singh Vs. Union of India and another*', (2014) 3 SCC 670. However, this Court is of the firm view that the army rules which are applicable in the aforesaid case will have no application to the present facts of the case as there is no post available for promotion, the claim of the petitioner is found to be without basis.

7. The petitioner claims promotion on the post of Sub Divisional Engineer w.e.f. 1993 while the petition has been filed in the year 2015 without there being any explanation for the long delay. The petition, therefore, suffers from gross delay and latches. Even on merits, this Court finds that the appointment of the petitioner in the Transport Department after abolition of the post in construction cell was made on a personal measure post which does not come in purview of any rules. The claim of the petitioner, therefore, for promotion to the post of Sub Divisional Officer in Transport Department, is found to be misconceived.

8. The Transport Department is not governed by the Public Works

Department PWD (B&R) Rules and the claim of the petitioner on the said basis thereof, is found to be wholly misconceived. The respondents cannot be asked to create a post in absence of any departmental rules for the petitioner who has been adjusted after abolition of the parent Department of the petitioner. He cannot be said to be holding a post from which promotion can be given. No person has a right of promotion and the only right available is for consideration for promotion. However, as no exercise for promotion was being conducted from the post held by him, it cannot be said that the petitioner has been deprived.

9. Keeping in view the above, the present petition is found to be hit by latches and fails on merit also and accordingly, the same is dismissed.

11.08.2023*D.Bansal***(SANJEEV PRAKASH SHARMA)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No