

CWP-15993-2018

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2023:PHHC:140070

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

CWP-15993-2018

Date of decision : 20.10.2023

Ranjit Singh

...Petitioner

Vs.

**Punjab State Power Corporation Ltd.
and others**

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. B.D.Sharma, Advocate
for the petitioner.

Mr. Naveen S.Bhardwaj, Advocate
for the respondent-PSPCL.

DEEPAK MANCHANDA, J.

1. Petitioner has moved this writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari seeking setting aside the order dated 17.10.2017 (Annexure P-4) passed by respondent No.1, whereby his claim for promotion was rejected. Further, the prayer has been made for issuance of directions to respondents to grant promotion to the petitioner from the post of Upper Division Clerk to ARA/Circle Assistant and then to Divisional Superintendent from the date when his juniors were promoted along with monetary benefits with interest @ 18 % per annum.

2. The facts emanated from the pleadings of the present petition are that petitioner had joined the respondent/department as Lower Division Clerk on 31.01.1979, in the office of Senior XEN/DS, Suburban Division, PSPCL,

Tarn Taran. Subsequently, on 28.05.1979, he was promoted as Upper Divisional Clerk and he worked with due diligence and to the utmost satisfaction of his superiors. His seniority was fixed at Sr.No.3252 (General) under unqualified incumbents of the category of Upper Divisional Clerk working in the PSPCL. It is mentioned that the juniors of the petitioner, who were at Sr.No.6000 in the seniority list were promoted, but the claim of the petitioner for promotion was denied by the respondents and the petitioner had to retire on 31.10.2009 as Upper Divisional Clerk. The promotions from Upper Divisional Clerk to ARA/Circle Assistant were made under Rule 8 (3) (1) of Punjab State Electricity Board, Ministerial Services, Class III Rule, 1985 on the basis of seniority and merit. It is also submitted that the necessary requirement for promotion was matric with Punjabi and two years of service as UDC and the rules further provide for unqualified quota of 20 % reservation for promotion from UDC to ARA/Circle Assistant and the petitioner falls under unqualified quota of 20% reservation. The petitioner is legally entitled to the promotion from UDC to ARA/Circle Assistant, then from ARA/Circle Assistant to Divisional Superintendent, but respondent has denied his claim, even when there was no disciplinary proceedings pending against him, therefore, aggrieved against the same, petitioner sent a legal notice dated 06.03.2017 (Annexure P-3) to respondent/department, but no action has been taken. Earlier also, petitioner approached this Hon'ble Court through CWP-14429-2017 seeking directions to respondents to grant the promotion and the said petition was disposed of vide order dated 07.07.2017 with direction to respondent No.1 to take decision on the legal notice dated 06.03.2017. Thereafter, respondent No.1 issued office order No.49 dated 17.10.2017,

whereby his claim was rejected stating therein that the petitioner was not promoted due to his in-eligibility for not passing Departmental Examination. Learned counsel for the petitioner contends that the act of respondent No.1 is against the principles of natural justice, unconditional and unwarranted, therefore, he prays for setting aside the order dated 17.10.2017.

3. Pursuant to issuance of notice of motion on 16.08.2018, learned counsel for respondents put an appearance and filed written statement.

4. Learned counsel for the petitioner contends that the rejection of the claim of the petitioner for promotion by respondent No.1 holding him to be ineligible for not passing the departmental examination is illegal as the case of the petitioner falls under the unqualified quota, & therefore, the condition of passing the departmental examination does not apply to the case of the petitioner, who was granted time bound relief of promotional scale after completion of 9/16 years of regular service, which is only given to the employees who are otherwise eligible and entitled to promotion. He also argues that the petitioner is legally entitled to promotion for the post of Upper Division Clerk to ARA/Circle Assistant and then from ARA/Circle Assistant to Divisional Superintendent, whereas the impugned order dated 17.10.2017 (Annexure P-4) is against the principles of natural justice, equity and fair play, whereas the junior from the petitioner have already been promoted ignoring the lawful claim of the petitioner.

5. Per contra, learned counsel representing respondents while opposing the prayer of the petitioner submits that as per Rule 8 (i) of Ministerial Services Class-III Rules, a person who is directly appointed to the post of Upper Division Clerk is required to pass the Departmental Examination

and further promotion can be given only on such account. He further submits that the petitioner failed to pass the departmental examination, therefore, his claim for promotion was rejected. Therefore, he prays for dismissal of the writ petition.

6. I have heard learned counsel for the parties and have gone through the case file carefully.

7. As per the stand taken by the respondents while referring to the Rule 8(i) of Ministerial Services Rules, the person directly recruited Upper Division Clerks shall be considered for promotion unless they have cleared the Departmental Accounts Examination prescribed for Ministerial Estt. and in case of passing the examination and on promotion, they shall rank junior to all those, who have been promoted earlier to them. The rule is produced below for the reference:-

“The directly recruited Upper Division Clerks shall be considered for promotion unless they have passed the Departmental Accounts Examination prescribed for Ministerial Estt..On passing the examination and, on promotion, they shall rank junior to all those, who have been promoted earlier to them.”

8. The aforementioned rule is clear in its mandate and since the petitioner failed to pass the departmental examination, which is the essential eligibility conditions of promotion, the respondent-corporation rejected the claim with regard to his promotion. As per the reply, the benefit of ACP upon completion of 9/16 years of service were granted to the petitioner on the basis of being direct appointee to the post of Upper Division Clerk, which was only disputed by the petitioner and after having availed the said benefits by computing the post of Upper Division clerk as an induction level post for grant of ACP, the petitioner has wrongly stated that he had been promoted to the post

of UDC knowing fully well that the averment to this effect was incorrect. As per the stand taken by the respondent/corporation, the claim for promotion is being claimed after being superannuated and arguments raised by the petitioner that junior to the petitioner were also promoted has been categorically denied by stating there that no person junior to the petitioner who has not passed the departmental examination has been promoted. Since the petitioner failed to clear the departmental examination, which is the mandatory requirement for promotion and also that no junior to him has ever been promoted as mentioned in the written statement filed by the respondents where even the contents of the same have not been rebutted by way of filing any replication.

9. The prayer of the petitioner seeking promotion and quashing of the order bearing No.49 dated 17.10.2017 is not acceptable.

10. In the light of the above, present petition is devoid of merits and the same is dismissed.

(DEEPAK MANCHANDA)
JUDGE

20.10.2023
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No