

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-26330-2018 (O&M)
Date of decision: 13.09.2023

Shanti Parkash Sachdeva

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. AK Viridi, Advocate for the petitioner

Mr. RS Longia, Advocate for respondents No.2 to 4

Sandeep Moudgil, J.

(1). The short issue involved in the present writ petition is whether the petitioner who had acquired qualification of Bachelor of Engineering had a right for promotion under 12.5% quota for AMIE/BE over and above respondent No.5, who acquired such qualification after the petitioner.

(2). The petitioner has filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *mandamus* directing the respondents to grant deemed date of promotion to the petitioner as AE/SDO, AEE and XEN with all consequential benefits from the date respondent NO.5 was promoted as AE, w.e.f. 07.07.2003.

(3). Learned counsel for the petitioner submitted that the petitioner qualified Bachelor of Engineering in June, 1992 and joined the respondent-Nigam on 28.04.1993 and was eligible for 12.5% accelerated promotion to the post of AE as he acquired AMIE/BE qualification in June 1992, in view of amended Regulation 9 of PSEB Service of Engineers (Electrical) Recruitment Regulations, 1965 as well as notifications dated 12.10.1993,

18.12.2002 and 22.11.2006 (Annexures P14 to P16, respectively). He then submitted that respondent No.5, namely, Ashok Kumar Goel acquired BE degree during May, 1993 (Annexure P4) and was wrongly promoted as AE/SDO vide order dated 07.07.2003 (Annexure P1) and further promoted as XEN vide order dated 02.06.2010 (Annexure P13).

(4). It is argued that as per the revised tentative ranking list (Annexure P5) of Engineering Subordinates (General Cadre) possessing AMIE/BE qualifications in Electrical Engineering till 15.03.2013, the name of the petitioner was wrongly placed at Sr.No.23 and on the other hand, respondent No.5 was placed at Sr.No.1 wherein it is specifically mentioned that the date of eligibility for promotion as AE/SDO and date of fulfillment of eligibility conditions qua the petitioner as 28.04.1998 and that of private respondent No.5 as 16.07.1993 who acquired BE degree in May, 1993.

(5). Learned counsel further averred that as per amendments made in Regulation-9 (Annexure- P/15) vide erstwhile HSEB Notification dated 12.10.1993 (Annexure-P/14), 18.12.2002 (Annexure-P/15) and 22.11.2006 (Annexure-P/16) in relation to appointment as Assistant Engineer (AE) by promotion, the Engineering Subordinates *inter alia* possessing only and only AMIE/BE qualifications are eligible for being considered for promotions and as such any promotions granted on the basis of invalid IME degree is invalid and patently wrong in view of the judgment passed by this Court in **Kartar Singh vs. UOI and others 2012 (8) SLR 593 P&H.**

(6). The further argument raised on behalf of the petitioner is that the respondents granted deemed date promotions to large number of officers/officials retrospectively, including to one Sh.Anand Prakash, on 30-

01-2017, was promoted as AE with effect from 15-10-2010 against the 12.5% quota for AMIE/BE qualified Engineering Subordinates provided under the amended Regulation-9 (Annexure-P/2) albeit Sh.Anand Prakash was possessing IME degree from Mumbai, which was declared as invalid by this Court in **Kartar Singh vs. Union of India and others** (supra) which has attained finality.

(7). Written statement has been filed on behalf of respondents No.2 to 4 through Ram Tilak, Under Secretary, DHBVN, Hisar, wherein it has been, *inter alia*, averred that the petitioner has concealed the material facts *inasmuch as* the claim of the petitioner for re-fixation of his rank in the ranking lists as well as the deemed date of his promotion as AE was considered by the Competent Authority and was assigned Sr.No.20 in the ranking list above the rank of Sh. Anish Kumar vide order dated 28.01.2017 and was also assigned deemed date of promotion as AE w.e.f. 07.11.2008 i.e. the date on which his immediate juniors were promoted vide order dated 30.01.2017 (Annexure R-1 and R-2, respectively).

(8). It is further averred that the amended policy dated 12.10.1993 regarding preparation of ranking list in respect of JEs Electrical of all the Power Utilities was under challenge before this Court in **LPA No. 1515 of 2015 (Sukhdev Singh & Ors. Vs. HPGCL & Ors.)** decided on 09.08.2018 and this Court held that for the purpose of accelerate 12.5% promotion, service of 5 years has to be counted from the date when Engineering Subordinate acquires AMIE/BE qualification, however, the various review applications were preferred by different persons which are still pending adjudication before this Court.

(9). The averments made by the petitioner has been countered by the respondents by stating that the respondent No.5 joined as JE w.e.f. 18.07.1986 and acquired BE/AMIE Degree qualification in July, 1993 and was already having 5 years experience as JE whereas the petitioner joined as JE w.e.f. 28.04.1993 and therefore, according to the prevalent policy, the petitioner became eligible to be brought on the Ranking List immediately in July, 1993 on acquiring BE/AMIE Degree qualification as he completed 5 years' experience as JE on 28.04.1998 and became eligible to be brought on the Ranking List only from that date.

(10). Heard learned counsel for the parties.

(11). The issue regarding counting 5 years' service as Engineering Subordinate either from the date of passing of AMIE/BE or from the date of joining as Engineering Subordinate, for the purpose of accelerated promotion, under 12.5% quota, remained in controversy before this Court since 1993 and was ultimately decided by a Division Bench on 09/08/2018 in **LPA No. 1515 of 2015 (Sukhdev Singh & Ors. Vs. HPGCL & Ors.)** wherein it was, *inter alia*, held that for the purpose of accelerated 12.5% promotion to the post of Assistant Engineer, service of 5 years, has to be counted from the date when the Engineering Subordinate acquires A.M.I.E./BE qualification, and accordingly in deference thereof, the respondent-Nigam has drawn the revised Tentative Ranking List of Engineering Subordinates on 22/09/2022 (Annexure P-18). On a reading of the Ranking List, it would stand established that the petitioner has now been placed at Sr.No.38 whereas the private respondent No. 5 has been placed at Sr.No.42 of the said Ranking List. It thus makes crystal clear that admittedly, the petitioner has been placed

senior to the private respondent No.5 and as such, there remains hardly any doubt that the petitioner would be entitled for the consequential promotional/service benefits by considering him to be senior to the private respondent No.5, as per the Ranking List prepared by the respondent-Nigam itself.

(12). Even as per the Supreme Court judgment in *Civil Appeal No.7076 of 2010 (Parveen Gera vs. HSEB & Ors., 2018 (1) SLR 668*, the regulation of Punjab State Electricity Board as applicable to the respondent-Nigam was never under challenge and the eligibility criteria has to be considered from the date AMIE/BE qualification was attained. Furthermore, the respondents themselves had held that the petitioner's eligibility for promotion as AE/SDO on 28.04.1998 in ranking list dated 15.03.2013. It is also evident that the respondents had also granted deemed date of promotion to other similarly-situated employees from back date including one Anand Prakash who was promoted as AE w.e.f. 15.10.2010 against 12.5% quota for AMIE/BE qualified engineering subordinates provided under amended Regulation 9 of the aforesaid Regulations.

(13). Undeniably, the petitioner acquired AMIE/BE qualification in June, 1992 before the respondent No.5 acquired the said qualification in May, 1993. The notification dated 12th October, 1993 (Annexure P-14) of the erstwhile HSEB provided for quota of 12.5% for promotion to the post of AE from amongst Engineering Subordinates possessing AMIE/BE qualifications and 5 years' service as such, which the petitioner fulfilled on 28.04.1998 and became eligible for such promotion on 28.04.1998 which in case of the private respondent No. 5 was taken as 16.07.1993 who otherwise acquired his

BE degree in May, 1993 and as such, by no stretch of imagination, could respondent No.5 be promoted as AE before the petitioner was promoted, as the petitioner fulfilled both the conditions for grant of promotion under Regulation-9 much before the private respondent No.5.

(14). For the reasons aforestated, the writ petition is allowed and the respondents are directed to grant deemed date of promotions to the petitioner and all such consequential benefits etc. w.e.f. 07.07.2003 i.e. the date when respondent No.5 was promoted as AE, along with interest @ 6% p.a., within a period of four months from the date of receipt of certified copy of this order and in default thereof, the petitioner shall be entitled for penal interest @ 18% p.a. from the deemed date of promotion, referred to above.

(15). Ordered accordingly.

13.09.2023
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No