

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

CWP No.3375 of 2017 (O&M)

Date of decision : 10.01.2023

Mewa Singh

..... Petitioner

versus

Special Secretary, Government of Punjab & others

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. R.Kartikeya, Advocate
for the petitioner.

Mr. Sehajbir S.Aulakh, Asstt. A.G., Punjab.

Mr. Vishal Chaudhri, Advocate
for respondents No.2 & 3.

PANKAJ JAIN, J. (ORAL)

Present petition has been filed under Article 226/227 of the Constitution of India praying for issuance of writ in the nature of Certiorari seeking quashing of the communication dated 03.11.2015 placed on record as Annexure P-6 and that dated 04.04.2016 placed on record as Annexure P-8 issued by respondent No.3 whereby the claim of the petitioner for grant of deemed date of promotion against the vacant post in reserved category stands declined. Learned counsel for the petitioner further prays for issuance of writ in the nature of mandamus directing the respondents to grant deemed promotion to the petitioner w.e.f. 15.12.1992 i.e. the date on which person junior to him namely Harjinder Singh Bhangu was ordered to be promoted.

Petitioner was appointed as a Lower Division Clerk (LDC) where he joined on 04.03.1985. As per the Punjab State Electricity Board

Ministerial Services (Class-III) Regulations, 1985 (herein after referred to as the Regulations, 1985), the LDC is entitled to be promoted as Upper Division Clerk (UDC) subject to fulfilling minimum educational and other qualifications which read as under :-

Sr.No.	Name of Post	Mode of Appointment	Minimum Educational & Other Qualifications	Minimum Experience	Special Remarks
1	2	3	4	5	6
XX	XX	XX	XX	XX	XX
4	Upper Division Clerk	i. Direct Recruitment (40% of the vacant Posts) ii. By way of promotion from Lower Division Clerks (40% of vacant posts) iii. By way of promotion of those lower Division Clerks who fail to clear the departmental accounts examination (20% of the vacant posts)	Graduate with minimum 60% marks in science/commerce/arts (in the case of candidates having post graduation qualification with 50% marks – 50%) and the candidate should have passed 6 months computer course relating to windows and MS Office from any state/central government approved recognized institutions After passing of prescribed departmental accounts examination for ministerial employees ---	3 Years service as Lower Division Clerk 6 Years service in case of metric pass LDC and 3 Years in case of graduate LDCs	At the time of conducting written test for examining efficiency of the candidate qua educational qualifications, their efficiency in the subject of computer shall also be examined by way of joint test to be conducted by the recruitment branch of PSEB. By holding written test for testing the proficiency of the candidates in academic qualifications, their proficiency in computer discipline shall also be put to test through composite test to be conducted by the recruitment section of PSEB. Lower Division Clerks of Head Office Cadre & Composite Circle Cadre shall be serial wise eligible for promotion to upper division clerks in Head Office Cadre & Composite Circle Cadre upon arising of vacancy in the aforestated cadres. The remaining posts shall be filled up from amongst the LDCs of composite unified cadre.

Admittedly the petitioner became eligible after he cleared all the four examinations only in the year June 1990 as per the pleadings in the writ petition the relevant dates of clearing the examination are tabulated as under :-

Sr.No.	Paper	Roll No.	Session
i.	4 th Paper	1806	June 1986
ii.	3 rd Paper	3922	June 1987

<i>Sr.No.</i>	<i>Paper</i>	<i>Roll No.</i>	<i>Session</i>
iii.	1 st & 2 nd Paper	2091	June 1990

The petitioner though became eligible for promotion in June 1990 was promoted on 03.06.1998 vide order which has been placed on record as Annexure P-4 and the name of the petitioner finds mention at Sr.No.58. The petitioner accepted the order of promotion and retired from the services on attaining the age of superannuation.

Learned counsel for the petitioner submits that the petitioner has been wrongly denied promotional post despite being eligible. He submits that the roster maintained by the employer will show that roster points reserved for the category to which the petitioner belongs were lying vacant on that date and thus the petitioner ought to have been promoted. He further submits that Harjinder Singh Bhangu, the person who was junior to him was also promoted in the year 1989 and thus he ought not have been denied deemed promotion. Further assertion has been made on the basis of a deemed promotion granted to one Ranjit Singh who belongs to same category vide order dated 17.04.2014 which as per the petitioner gave him cause of action to file the present writ petition. Further reliance has been placed on record instructions (Annexure P-9).

Per contra learned counsel for respondents No.2 & 3 has argued that it is a stale claim which has been agitated by way of present writ petition. The petitioner having been accepted the order of promotion dated 03.06.1998 without any murmur, he is not entitled to claim deemed promotion by way of present writ petition. It has been further submitted that as per the stand of the respondents in the written statement the promotions at the given point of time were being made on the batch basis and thus the batch of the employees that cleared the departmental

examination in the June, 1990 having been considered for promotion in the year 1998, no fault can be found with the action of the authorities in promoting the petitioner on the said date.

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

The petitioner became eligible for promotion as UDC in the year 1990. The petitioner never agitated his claim to be promoted. Yet again on 03.06.1998 when the petitioner was promoted he never disputed the said order by putting forth his claim that he was entitled for deemed promotion from the retrospective effect. The contention raised by the petitioner with respect to the roster point is total mis-found and mis-conceived. Trite it is that the roster point cannot be treated as seniority point and thus the petitioner cannot claim to have a vested right over the same. So far as reliance on Annexure P-9 is concerned on the basis of which promotion has been granted to one Ranjit Singh, in the considered opinion of this Court, the instructions relied upon by the petitioner as Annexure P-9 do not cover the case of the petitioner. Relevant part of the instructions read as under :-

“3. To bring uniformity in such cases, it has been decided that retrospective promotion may be given by the authority competent to order promotion in the following cases: -

i) Where the promotion of an employee was deferred on account of a pending disciplinary case from which he is subsequently exonerated completely, provided that the competent authority is satisfied that this disciplinary case was the only factor coming in the way of employee's promotion and but for this case the employee would have been promoted.

ii) Where the promotion of an employee is deferred because the office record is not complete and later, on completion of record, he is found fit for promotion.

iii) Where the promotion of an employee is held up on account of

adverse entries in the confidential record which are later expunged provided the competent authority is satisfied, but for these entries the employee would have been promoted.

iv) Where the promotion of an employee is held up on account of a penalty already awarded which is set aside on appeal provided that the competent authority is satisfied that except for this punishment the employee would have been promoted.

In all these case the employees concerned should be given a deemed date of promotion and he would be paid full arrears of pay.”

On a pointed query being put to the counsel for the petitioner as to in which category the case of the petitioner would fall he submits that the petitioner if at all will fall within clause (ii). In the present case there is nothing on record to show that the promotion of the petitioner was deferred because the office record was not complete. In view of the aforesaid the case of the petitioner does not fall in any of the categories as spelled out in para 3 of the instructions. Rather, this Court finds that the case of the petitioner is barred by delays and latches. He had a right to agitate his claim the moment he became eligible or at the most the day he was promoted i.e. on 03.06.1998.

Present petition has been filed more than 19 years thereafter cannot be entertained.

Consequently, the present writ petition is dismissed.

(PANKAJ JAIN)
JUDGE

10.01.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No