

CWP-3361-2018 (O&M)

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2023:PHHC:166959

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

**CM-10854-CWP-2023 in/and
CWP-3361-2018
Date of decision : 29.08.2023**

Varinder Vanaik

...Petitioner

Vs.

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

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Kapil Kakkar, Advocate
for the applicant-petitioner.

Mr. Vikas Chatrath, Advocate
for the applicant-respondent Nos.1 to 4.

Respondent Nos.5 to 16 proceeded
ex parte vide order dated 13.07.2022.

DEEPAK MANCHANDA, J.(Oral)

CM-10854-CWP-2023

This application has been filed under Section 151 CPC for placing
on record the affidavit in compliance of the order dated 24.04.2023.

For the reasons mentioned in the application, same is allowed and
affidavit is taken on record subject to all just exceptions.

Main case

1. Petitioner-Varinder Vanaik has filed this writ petition under
Articles 226/227 of Constitution of India for issuance of a writ in the nature of
certiorari seeking quashing the Memo dated 07.08.2017 (Annexure P-11),

declaring tentative seniority list dated 19.07.2017 (Annexure P-8) pertaining to Junior Engineers (Electrical) as final, and also the consequential promotion order dated 11.09.2017 (Annexure P-12) of J.E (Electrical)-PSTCL, whereby junior to the petitioner have been promoted to post of Assistant Engineer under 14% quota of AMIE/degree holder. A further prayer has been made for directing the respondents-PSTCL to frame the seniority list of JE (Electrical) afresh by taking into consideration their continuous length of service and then consequently consider the case of the petitioner for promotion to the post of Assistant Engineer(Electrical) against 14% quota provided under Regulation 10.7 of 1965 Regulations.

2. The facts in brief leading to the present petition are that the petitioner was appointed as Junior Engineer vide order dated 18.07.2012 (Annexure P-1) and joined as such on 19.07.2012. The erstwhile Punjab State Punjab State Electricity Board (PSEB) was bifurcated into two Corporations i.e. Punjab State Power Corporation Limited(PSPCL) and Punjab State Transmission Corporation Limited(PSTCL) and vide office order dated 20.03.2015, PSTCL framed its own regulations for certain post by way of amendment in the erstwhile PSEB service Regulations, however, the said amendment did not cover the post of Junior Engineer and it was provided that service regulation for remaining post will be covered under their respective existing PSEB Service Regulations. The next channel of promotion from the post of Junior Engineer is to the post of Assistant Engineer.

3. It is mentioned that the Punjab State Electricity Board in exercise of the powers conferred under Section 79 of Electricity Act, 1948 framed the Punjab State Electricity Board Service of Engineers (Electrical) Recruitment

Regulations, 1965 and Rule 9 of the said Regulation prescribed the qualifications for direct appointment to the post of Assistant Engineers and Regulation No.10 for appointment, by way of promotion, and Regulation 10.7 further laid reservation of post for departmental employees possessing AMIE/Degree in Electrical, who have completed three years of service.

4. A reference to proviso 6 of Regulation 16 of the 1965 Regulations has been made, which contains how, *inter se* seniority for and on appointment as Assistant Engineer is to be determined in order to their acquiring prescribed qualification of AMIE/degree in engineering, the subordinates who clear the final examination in earlier batch and completes a minimum of 3 years service will be placed above those fulfilling the two conditions subsequently. Vide Circular No.1/2016 dated 11.02.2016 (Annexure P-6), the PSPCL issued a clarificatory note whereby it was proposed to consider the period of three years of service after the date of declaration of result of the acquired requisite qualification in place of three years service. On the basis of clarificatory note, PSPCL issued memo dated 03.03.2016 to revise the seniority list under 14% quota for AMIE/B.Tech, however, without framing any seniority list, tentative or final, respondents vide letter dated 27.09.2016 (Annexure P-7) invited 24 persons for promotion to the post of Assistant Engineer. Therefore, petitioner along with some others employees, raised objection, and thus, vide memo dated 19.07.2017 (Annexure P-8), respondents issued a tentative seniority list, wherein petitioner was placed at Sr.No.30 and objections were invited within 15 days. Thereafter, on 28.07.2017 (Annexure P-9), the petitioner submitted the objections through proper channel, which were forwarded to respondent No.2. On 03.08.2017, respondents invited the case for promotion to the post of

Assistant Engineer and vide memo dated 07.08.2017 (Annexure P-11) declared the tentative seniority list as final list and by passing order dated 11.09.2017, it promoted respondent Nos.5 to 16 to the post of Assistant Engineers, who were junior to the petitioner. Hence the present writ petition.

5. Learned counsel for the petitioner contends that the petitioner had higher merit than the private respondents selected and appointed in the same batch, therefore, has been wrongly placed junior to them. He argues that while framing the impugned seniority list, the respondents-PSTCL have not followed the Regulations 1965 for promotion to the post of Assistant Engineer (Electrical) under 14% quota as the seniority is to be determined in order of acquiring prescribed AMIE/degree and completion of minimum 3 years of service and whosoever fulfills these 2 conditions earlier, is to be placed senior than those fulfilling the 2 conditions subsequently. He further contends that the respondents failed to consider the material fact that 14% promotion quota is a special quota for the employees already serving the corporation and under this quota promotion is to be made on the basis of seniority-cum-merit and not on the basis of merit-cum-seniority and the petitioner has attained the eligibility on 18.07.2015, whereas the private respondents attained the eligibility later than him, who are not entitled to be promoted as Assistant Engineer before the petitioner. He submits that the petitioner has been deprived of chance to become the Assistant Engineer on the basis of the impugned seniority list, where even objections filed by him has also not been considered before finalization of the said list, therefore, petitioner prays for quashing of the memo dated 07.08.2017 as well as for promotion order dated 11.09.2017.

In support of his contention, learned counsel for the petitioner has placed

reliance upon the Division Bench judgment passed in LPA No.541-2009, titled as “*Risal Singh Vs. The State of Haryana and others*”, decided on 01.07.2009.

6. Per contra, learned counsel representing respondent Nos.1 to 4 while referring to the reply dated 28.12.2018 filed by way of affidavit of Er.Talwinder Singh, Additional Superintending Engineer, Punjab State Transmission Corporation Ltd., Patiala has submitted that after restructuring manpower of PSTCL, there are 169 sanctioned posts of AE/Electrical and 112 posts of AEE/Electrical out of which 19 posts have been filled against 14% promotion quota of AMIE/Degree holders departmental employees as per Punjab State Electricity Board, Service of Engineer (Elect.), Regulations 1965. He submits that seniority of the petitioner under 14% quota was allotted on account of the fact that he had passed his degree in July 2012, consequently, for the purpose of being considered for promotion to the post of Assistant Engineer in terms of Regulation 10.7, the eligibility of both the conditions is necessary. The seniority list was finalized on 07.08.2017 and promotions were made as per vacancy on seniority-cum-merit basis. He further submits that PSPCL and PSTCL are two distinct companies/Corporations, they are governed by their own Regulations etc., as such in the absence of the clarificatory note dated 11.02.2016 as having not been adopted, petitioner's submission with a tacit silence shows his attempt to over reach the Hon'ble Court for helping in getting order contrary to the factual position, is not sustainable and as such the writ petition is liable to be dismissed. In support of his contention, he has placed reliance upon the judgment passed by Division Bench of this Court in “*Dhani Ram Vs. State of Haryana and others*”, 2005 (1)

SCT 571 (DB), judgment passed by Hon'ble Supreme Court titled as "Chander Kishore Jha Vs. Mahavir Parsad and others" 1999 (8) SCC 266 and another judgment passed by this Court in "Rakesh Kumar Sharma and others Vs. Punjab State Transmission Corp.Ltd.and others", 2015 (3) SCT 220.

7. I have heard learned counsel for the parties and perused the material available on record.

8. The foremost argument which has been raised by the learned counsel for the petitioner is that the objections filed by the petitioner were not at all considered before finalization of the seniority list, which were raised at the appropriate time. A perusal of the objections annexed as Annexure P-9 dated 28.07.2017 shows that three objections were raised against the circulated tentative seniority list including the objections raised by other degree holder, which were replied by the respondents and were dealt and replied by the respondent vide Annexure R-1/1 dated 04.08.2017. The objections raised by the petitioner are mentioned at Sr.No.4 and 5, wherein specifically reference of three objections have also been endorsed by the respondents, but in remarks column, it is clearly mentioned that respondent instead of dealing with the detailed objections submitted by the petitioner, it was simply observed that ***"before issuance of tentative seniority list under 14% quota, the point had already been considered. The tentative seniority list had been issued as per rules."*** Apart from this, no explanation has been submitted by the respondents qua the detailed objections submitted by the petitioner. A bare perusal of the remarks given in the reply dated 04.08.2017 reveals that the very purpose of inviting the objections has been defeated which were raised against the tentative list and the object of filing objections was to meet out the grievance of

the petitioner and to consider those by passing the reasoned orders so that the petitioner who is affected by the action of the respondents is assured that his case has received proper consideration at the hands of the authorities and same has been decided in accordance with law, and have not been a result of caparice, whim or fancy.

9. This Court is in agreement with the arguments raised by the petitioner that the impugned seniority list was finalized in hurried manner which has resulted into miscarriage of justice with the petitioner, who has been deprived of from the chance of promotion, which is a valuable right. The reason is the heartbeat of every conclusion and without the same it becomes lifeless. Right to reason is an indispensable part of a sound administrative system, reasons are at least sufficient to indicate an application of mind to the matter before authority and other rationale behind the same is that the affected party can know why the decision has gone against him, which is the salutary requirement of natural justice which spells out reasons for the order made. The recording of reasons is a safeguard to observe rule of law, introduce clarity, check extraneous consideration which reduces arbitrariness. The object of recording of reasons and communication thereof has been read as an integral part of the concept of fair procedure. The necessity of giving reasons flows from the concept of rule of law which constitutes one of the corner stones of our constitutional set up. The administrative authorities chartered with the duty to act judicially cannot decide the matter on considerations of policy of expediency. The requirement of recording of reasons by such authorities is an important safeguard to ensure observance of the rule of law. Reference in this regard may be made to the judgment of the Hon'ble Apex Court in case titled

as “*M/S Kranti Associates Pvt. Ltd. And Anr. Vs. Sh. Masood Ahmed Khan and others*”, 2010 (3) SCC (Civil) 852, in which it has been held as under:-

“xxx xxx

51. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasijudicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

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10. Reference may also be made to the judgment of the Hon’ble Division Bench of this Court in case titled as “**Banarsi Das Cotton Mills (P) Ltd. Vs. State of Haryana and another**”, reported as 1997(1) PLR 17, in which, it has been held as under:-

“xxx xxx

3. Although the impugned order/notice has been challenged on various grounds, we are of the opinion that the same is liable to be quashed on the short ground it does not contain reasons. There can be no manner of doubt that while deciding the appeal the Higher Level Screening Committee

acts as a quasi judicial authority and it is duty bound to record reasons in support of its decision. The recording of reasons and communication thereof is imperative for compliance of the principles of natural justice which must inform the proceedings of every quasi judicial body and even in the absence of a statutory provision or administrative instructions requiring recording of reasons in support of the orders, the quasi judicial authority must pass speaking orders so as to stand the test of scrutiny.

*4. In **Testeels Ltd. v. N.M. Desai, Conciliation Officer, A.I.R. 1970 Gujarat 1 (F.B.)**, Full Bench of the Gujarat High Court held that the jurisdiction of the High Court under Article 226 and that of the Supreme Court under Article 136 of the Constitution of India cannot be stultified by administrative authorities by passing non-speaking orders.*

*5. The requirement of recording of reasons and communication thereof by quasi judicial authorities has been emphasised in several judgments of the Supreme Court including a Constitution Bench Judgment in **S.N. Mukherjee v. Union of India, A.I.R. 1990 S.C. 1984**.*

*6. Similar view has been expressed by a Division Bench of this Court in C.W.P. No. 10769 of 1995 (**Haryana Cotton Mills P. Ltd. Tohana v. State of Haryana and Ors.**), decided on 8.12.1995.*

7. In view of the above legal position, we quash the rejection of the petitioner's appeal by the Higher Level Screening Committee and direct that Higher Level Screening Committee shall reconsider the appeal filed by the petitioner and pass a fresh order after giving opportunity of hearing to the petitioner. The High Level Screening Committee is further directed to decide the appeal afresh by passing a reasoned order within a period of one month after issuing notice to the petitioner for a specific date of hearing, on receipt of a copy of this order. The registry of this Court is directed to send a copy of this order to respondent No. 2.

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11. Since the respondents' order/reply dated 04.08.2017 does not contain any reasons in reference to the objections raised by the petitioner mentioned at Sr.No.4 and 5 of the said reply, the same does not show any

application of mind, unless reasons are disclosed to the petitioner.

12. Hence, it is essential requirement of the rule of law that some reasons at least in brief should have been disclosed even if it is an order of affirmations. Further the judicial precedent mentioned in the pleadings are also in favour of the petitioner.

13. It has to be kept into consideration that seniority even by one day may materially affect the future prospects and career of an officer. The person appointed even on day earlier may reach a position which the person appointed one day later may not be able to reach due to reasons such as limited number of higher posts or his becoming age barred by the time next vacancy arises.

14. After having a glance the seniority list prepared by the respondents where the objections raised by the petitioner on valid grounds which were not at all considered, it will not be fair and equitable to give march to a later appointee over a prior appointee in absence of valid reasons or dealing with the objections raised by the petitioner which would produce inequality for officers from one or the other which must be avoided, which is fair and reasonable to all can be applied. The reply filed by the respondents clearly demonstrates that given reasoning is not plausible, which has sparked the discussion by not giving due weightage to the objections where the petitioner has suffered from injustice and timely decision of objections could have also stopped the petitioner from diverting him towards the litigation.

15. Further, in reply dated 28.12.2018, the categoric stand of the respondents is that out of 169 sanctioned posts of AE/Electrical, 19 such posts of AE/Electrical have been filled against 14% promotion quota qua departmental employees as per Punjab State Electricity Board (Elect.)

Regulations 1965. As per conclusion, out of 169 sanctioned posts for the purpose of promoted employees, 14% comes to 24, whereas the department has filled up only 19 posts and apart from this, nothing has been placed on record or has been apprised to this Court about filling up of the remaining five posts against prescribed quota of 14%.

16. Moreover, vide Annexure P-12, persons who were promoted were also impleaded as respondent Nos.5 to 16 in the petition, who were duly served, but were proceeded *ex parte* vide order dated 13.07.2022 and never came forward to challenge the same by moving an appropriate application, from which this Court can safely draw the conclusion that private respondents No.5 to 16, who were promoted vide Annexure P-12, inspite of having been given opportunity of being heard by this Court, were not interested to safeguard their interest. So far as the judgment(s) relied upon by learned counsel for the respondents are concerned, same are not applicable to the facts and circumstances of the present case.

17. Moreover, by efflux of time, since the respondent Nos.5 to 16 have already been promoted and the main grouse of the petitioner is for consideration of his claim as promotion to the post of Assistant Engineer, this Court deems it appropriate to issue directions to respondent Nos.1 to 4-department to consider his claim.

18. For the afore-mentioned reasons, present petition is partly allowed and respondent Nos.1 to 4 are directed to consider the claim of the petitioner afresh for seeking promotion to the post of Assistant Engineer within three months from the date of receipt of certified copy of this order.

19. No order as to costs.

20. Pending application(s), if any, shall also stand disposed of.

(DEEPAK MANCHANDA)
JUDGE

29.08.2023

vanita

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