

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

126

CWP-28852-2023

Date of Decision: 21.12.2023

Atul Kumar Maheshwari

...Petitioner

Versus

NHPC Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Vijay Sharma, Advocate for the petitioner

Mr. Sukhandeep Singh, Advocate for the respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 05.01.2021 (Annexure P-11) whereby respondent has rejected claim of promotion of the petitioner.

2. The petitioner was appointed as Junior Engineer (Civil) Grade-II on 08.03.2004 by respondent-NHPC Limited. The petitioner acquired degree of B.Tech (Civil) from IASE Deemed University, Rajasthan. The petitioner was subsequently appointed as Engineer in E-2A Grade w.e.f. 14.12.2011. In May-June' 2016, the respondent initiated process of promotion to the post of Assistant Manager (Civil). The petitioner was asked to submit copy of approval of statutory body/appropriate authority of his B.Tech degree acquired through mode of distant education. The petitioner did not submit any document as required by respondent who in turn did not consider case of the petitioner for promotion. The petitioner w.e.f. 01.04.2017 was promoted to the post of Assistant Manager

(Civil) treating him a diploma holder. Supreme Court vide judgment dated 03.11.2017 in *Orissa Lift Irrigation Corp. v. Rabi Sankar Patro, (2018) 1 SCC 468*, declared B.Tech degree obtained through distant education mode invalid. Supreme Court vide order dated 22.01.2018 granted one time relaxation to candidates who had secured degree through distant education mode. The petitioner in terms of order dated 22.01.2018 of Supreme Court cleared exam and his degree was declared valid. The petitioner was entitled to retain all the advantages which he lost on account of judgment dated 03.11.2017 of Supreme Court. The petitioner, after clearing exam as enjoined by Supreme Court, requested the respondent to re-consider his case for promotion w.e.f. 01.04.2016.

3. Learned counsel for the petitioner submits that petitioner cleared exam in 2018, as enjoined by Supreme Court, thus, he was entitled to promotion from 01.04.2016 instead of 01.04.2017. The respondent did not consider him for promotion on the sole ground that his degree from distant education mode is invalid.

4. Learned counsel for the respondent submits that petitioner was not considered for promotion in DPC of 2016. The promotion of others was made w.e.f. 01.04.2016. The petitioner was promoted treating him as diploma holder w.e.f. 01.04.2017. The petitioner remained silent from 2016 to 2018. The petitioner after validation of his degree filed representation on 08.08.2018 which was followed by other representations and legal notice dated 03.10.2020. The respondent rejected representation/legal notice of the petitioner vide order dated 11.11.2020. This order was communicated to the petitioner on 05.01.2021 and he has preferred present petition after three years even from the impugned communication.

5. I have heard the arguments of learned counsels for the both sides and perused the record with their able assistance.

6. By order dated 22.01.2018, Supreme Court ordered that candidates who would clear exam, as one time exception, would be entitled to retain all advantages. The petitioner on the said date was holding post of Assistant Manager (Civil), thus, he was entitled to retain the said post. The petitioner was declined promotion w.e.f. 01.04.2016 and on the said date, there was no adverse order passed by Supreme Court. The petitioner opted not to assail outcome of DPC of 2016 and he accepted his promotion w.e.f. 01.04.2017. The act of the petitioner amounts to acquiescence of orders passed by respondent in 2016 as well as 2017. The petitioner was entitled to retain advantages which were going to be taken away in view of judgment dated 03.11.2017 passed by Supreme Court. The petitioner cannot claim any advantage or post which he was not holding on the date of order dated 03.11.2017 passed by Supreme Court.

7. In wake of above facts and findings, this Court is of the considered opinion that present petition deserves to be dismissed on the ground of delay as well as merit.

Dismissed.

(JAGMOHAN BANSAL)
JUDGE

21.12.2023
Mohit Kumar

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