

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.4764 of 2003

Reserved on : 06.09.2024

Pronounced on : 17.09.2024

J. K. Jain

.....Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Arjun Partap Atma Ram, Advocate with
Mr. Sandeep Kumar, Advocate for the petitioner.

Mr. R.D. Sharma, DAG, Haryana.

NAMIT KUMAR, J. (Oral)

1. The petitioner has approached this Court by way of filing the instant petition under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 18.11.2002 (Annexure P-19), whereby the representation of the petitioner for notional promotion to the post of 'Engineer-in-Chief' with effect from the date his junior Sh. M. L. Gupta was promoted has been rejected, and to direct the respondent to promote the petitioner to the post of 'Engineer-in-Chief' with effect from 12.05.1998, when the said post became available and persons junior to the petitioner was given charge thereof.

2. The brief facts, as have been pleaded in the writ petition, are that the petitioner was appointed as 'Temporary Engineer' in the State of Punjab in the year, 1963 and was allocated to the State of Haryana vide orders dated 01.11.1966. He was promoted as 'Executive Engineer' in the year 1973 and as 'Superintending Engineer' on 17.03.1992.

It is the case of the petitioner that since next promotion from the post of 'Superintending Engineer' is to the post of 'Chief Engineer', the respondent authorities instead of making a regular promotion of the petitioner to the post of Chief Engineer, given current duty charge to the petitioner alongwith three other Superintending Engineers, vide order dated 12.12.1996. The other three Superintending Engineers, who were given current duty charge alongwith the petitioner, were regularly promoted as 'Chief Engineer' w.e.f. 12.12.1996, vide orders dated 21.07.1997 and two other Superintending Engineers namely Sh. S.P. Mehta and Sh. M.G. Thukral, were also given regular promotion w.e.f. 21.07.1997. All these persons were junior to the petitioner .

3. It has further been stated that even prior to the said promotion, the petitioner had submitted representation dated 10.03.1997 claiming regular promotion as 'Chief Engineer' and thereafter, another representation dated 22.07.1997 was submitted by him and when no action was taken, the petitioner filed CWP No.15279 of 1997 claiming promotion to the post of Chief Engineer w.e.f. the date when persons junior to him were promoted. During the pendency of the said petition, charge sheet dated 16.12.1997 under Rule 7 of the Haryana Civil Service (Punishment and Appeal) Rules, 1987 was issued to the petitioner. The above said writ petition was allowed by a Division Bench of this Court, vide Judgement dated 19.12.1997 and directions were issued to the respondent - State to promote the petitioner with effect from the date his juniors were promoted to the rank of Chief Engineer, if he was otherwise recommended for promotion *de hors* of the charge sheet dated 16.12.1997. In compliance of the aforesaid Judgement, vide order dated 05.02.1998 (Annexure P-4), the petitioner was promoted as Chief Engineer w.e.f. 12.12.1996 on regular basis i.e. from the date when persons juniors to him were promoted to the rank of Chief Engineer,

subject to final outcome of the Special Leave Petition, which was being filed by the State before the Hon'ble Supreme Court, however, the same was also dismissed by the Hon'ble Apex Court.

4. It has further been pleaded that next promotion from the post of 'Chief Engineer' is to the post of 'Engineer-in-Chief'. One vacancy of 'Engineer-in-Chief' became available on 12.05.1998, when Sh. S.K. Dua, 'Engineer-in-Chief', was sent on deputation to Command Area Development Authority (CADA) on 12.05.1998 and against the said vacancy, Sh. M.L. Gupta, who was junior to the petitioner, was given current duty charge of the post of 'Engineer-in-Chief', vide order dated 12.05.1998. Mr. S.K. Dua retired on 30.06.1998 and subsequently, the post of 'Engineer-in-Chief' became available w.e.f. 01.07.1998. The seniority list dated 07.07.1997 was issued by the State, wherein name of Sh. M.L. Gupta was at Sr. No.18 and that of the petitioner at Sr. No.10. The said seniority list was ordered to be revised, in terms of orders passed by the Hon'ble Supreme Court and in compliance thereto, final seniority list dated 28.10.1998 was issued, wherein the petitioner was shown in seniority at Sr. No.1, while Sh. M.L. Gupta was shown at Sr. No.5. In the interregnum, the petitioner submitted representation dated 22.05.1998 against assigning current duty charge of the post of 'Engineer-in-Chief' to Sh. M.L. Gupta. Thereafter, the petitioner was also assigned the current duty charge of the post of 'Engineer-in-Chief' on 13.08.1998 in his own pay scale. The petitioner submitted another representation dated 26.10.1998 for grant of regular pay scale of the post of 'Engineer-in-Chief'.

5. It has also been stated that against the charge sheet dated 16.12.1997, the petitioner had submitted his reply denying the charges and without holding any inquiry in the matter, the respondent – State inflicted minor penalty of

'Censure', vide order dated 28.10.1998 and thereafter, the petitioner retired from service on attaining the age of superannuation on 31.10.1998 and even after his retirement, the petitioner submitted representation(s) dated 19.12.1998 and 26.03.1999 for claiming regular promotion to the post of 'Engineer-in-Chief' but to no avail. The petitioner again approached this Court by way of filing CWP No.8135 of 1999 *inter alia* claiming notional promotion to the post of 'Engineer-in-Chief' w.e.f. 12.05.1998, with all consequential benefits. The said writ petition was disposed of by a Division Bench of this Court, vide order dated 08.08.2002, with a direction to the respondent – State to consider and decide the representation submitted by the petitioner. Thereafter, the petitioner submitted supplementary representation(s) dated 23.10.2002 and 29.10.2002, however, said representation(s) have been rejected by the respondent- State vide order dated 18.11.2002 (Annexure P-19). The said order has been impugned in the present writ petition.

6. On issuance of notice of motion, detailed written statement on behalf of the respondents-State has been filed, wherein it has been stated that the seniority of promotee Class-II members of Service vis-a-vis Assistant Executive Engineer Class I (Junior Scale) on promotion as Executive Engineer (against senior scale post of Class-I) remained in dispute in terms of provision in service rules of this category and later on Haryana Act No.20 of 1995 was enacted with retrospective effect i.e. from 01.11.1966 and thereafter, the seniority of Haryana Services of Engineers Class-I was finalized vide order dated 28.10.1998. It has further been stated that the seniority of Class-I Officers of the department from 12.05.1998 to 28.10.1998 was not finalized due to litigation pending in this Court and, therefore, current duty charge of the post of 'Engineer-in-Chief' was assigned to Sh. M.L. Gupta, Chief Engineer, with effect from 12.05.1998 and to the

petitioner from 13.08.1998 in his own pay scale. The petitioner retired from service on attaining the age of superannuation on 31.10.1998. He was placed senior to Sh. M. L. Gupta in the final seniority list of Class-I Officers issued on 28.10.1998. Sh. M. L. Gupta challenged the said seniority list by way of filing CWP No.17219 of 1998 and the same was disposed of on 21.03.2007 with direction to the State to redraw seniority list of the Executive Engineers on the basis of length of continuous service. In these circumstances, the petitioner was not considered for promotion as 'Engineer-in-Chief', as the seniority list was finalized on 28.10.1998 and he retired after three days i.e. on 31.10.1998. No person, junior to the petitioner, was promoted to the post of 'Engineer-in-Chief', prior to his date of retirement, therefore, the petitioner cannot claim notional promotion to the post of 'Engineer-in-Chief'. Sh. M. L. Gupta also retired as Chief Engineer and was not promoted to the post of 'Engineer-in-Chief' on regular basis, however, Sh. J. K. Chugh and Sh. J. S. Chauhan were promoted as 'Engineer-in-Chief', vide order dated 13.11.1998, after issuance of final seniority list dated 28.10.1998 and since, the petitioner retired from service on 31.10.1998 i.e. three days after the issuance of said final list, therefore, he could not be considered for promotion to the post of 'Engineer-in-Chief' on 13.11.1998, after his retirement.

7. Learned counsel for the petitioner submits that the action of the respondents in assigning current duty charge of the post of 'Engineer-in-Chief' to Sh. M. L. Gupta, vide order dated 12.05.1998, is totally illegal, as Sh. M. L. Gupta was junior to the petitioner. He further submits that even, if the petitioner has retired, his case was required to be considered for notional promotion as 'Engineer-in-Chief'. In support of said contentions, he has placed reliance on the

Division Bench Judgements of this Court in '*Shingara Chand and others versus*

Punjab Water Supply & Sewerage Board and others' 2000 (2) SCT 195 and 'Chaman Lal Lakhanpal versus Union Public Service Commission 1999 (1) SCT 175.

8. *Per contra* learned State counsel has submitted that assignment of current duty charge to Sh. M. L. Gupta is not under challenge in the present petition. He further submits that since issue of seniority of Class- I Officers was under adjudication in judicial proceedings, for being pending in the Court at that point of time, therefore, current duty charge of the post of 'Engineer-in-Chief' was assigned to Sh. M. L. Gupta and, thereafter, to the petitioner and no person, junior to the petitioner, was promoted as 'Engineer-in-Chief' till 31.10.1998, when the petitioner retired from the service, therefore, action of the respondents in rejecting the claim of the petitioner, for grant of notional promotion to the post of 'Engineer-in-Chief', is perfectly legal and valid.

9. I have heard learned counsel for the parties and perused the record.

10. The undisputed facts, which have emerged from the aforesaid factual position, are that the petitioner was appointed as 'Temporary Engineer' in the State of Punjab in the year 1963; and was allocated to the State of Haryana vide orders dated 01.11.1966; and was promoted as Executive Engineer in the year 1973; and as Superintending Engineer on 17.03.1992; and was given current duty charge of the post of 'Engineer-in-Chief' on 12.12.1996; and persons junior to him were regularly promoted as Chief Engineer on 21.07.1997. In pursuance to the directions of this Court in CWP No.15279 of 1997, the petitioner was also promoted as Chief Engineer, vide order dated 05.02.1998, w.e.f. 12.12.1996 i.e. from the date, when persons junior to him were promoted. The seniority of

promotee Class-II members of Service vis-a-vis Assistant Executive Engineer Class I (Junior Scale) on promotion as Executive Engineer (against senior scale post of Class-I) remained in dispute in terms of provision in service rules of this category and later on Haryana Act No.20 of 1995 was enacted with retrospective effect i.e. from 01.11.1966, when State of Haryana came into existence. Thereafter, the seniority of Haryana Services of Engineers Class-I was finalized, vide order dated 28.10.1998 and for the relevant period i.e. from 12.05.1998 to 28.10.1998, the seniority of Class-I Officers of the respondent-department was not finalized due to litigation pending before the Courts and, therefore, current duty charge of the post of 'Engineer-in-Chief' was assigned to Sh. M.L. Gupta, Chief Engineer, w.e.f. 12.05.1998 and thereafter, to the petitioner on 13.08.1998. The petitioner retired from government service, on attaining the age of superannuation, on 31.10.1998 i.e. 03 days after the final seniority list dated 28.10.1998 was issued. No person junior to the petitioner was promoted to the post of 'Engineer-in-Chief' till the date of his retirement i.e. 31.10.1998, although 02 persons namely Sh. S.K. Chugh and Sh. B.S. Chauhan, who were junior to the petitioner, were promoted as 'Engineer-in-Chief', vide order dated 13.11.1998, after issuance of final seniority list dated 28.10.1998 and since the petitioner stood already retired on 31.10.1998, therefore, his claim for notional promotion as 'Engineer-in-Chief' could not be considered on the said date.

In view of the above, no fault can be found in the action of the respondents in giving current duty charge of the post of 'Engineer-in-Chief' to Sh. M. L. Gupta and thereafter to the petitioner, as litigation with regard to the seniority, amongst Class-I Officers of the Cadre, was pending before this Court and no person junior to the petitioner has been promoted till 31.10.1998, when the petitioner had superannuated.

11. During the course of hearing, learned counsel for the petitioner has relied upon the Division Bench Judgement of this Court in '*Shingara Chand*' case (*Supra*) to contend that the current duty charge cannot be assigned to junior officers. There is no quarrel about the said proposition of law, however, the said Judgement is not applicable to the facts of the present case, as in the said case, current duty charge of the post of 'Sub Divisional Engineer' was given to the private respondents therein, vide order dated 16.10.1998 and 22.10.1998, and till decision of the said case on 02.02.2000, the respondents were enjoying the status of higher post of 'Sub Divisional Engineers' and in these circumstances, it was held that if the current duty charge of higher post, ignoring the claim of senior persons is assigned for longer period, the same is not justified, however in the present case, the assignment of current duty charge, vide order dated 12.05.1998, to Sh. M. L. Gupta is not under challenge in the present writ petition. Further, the said current duty charge was assigned to Sh. M. L. Gupta on 12.05.1998 and thereafter, the petitioner was also assigned the current duty charge of the post of 'Engineer-in-Chief' on 13.08.1998. The assignment of current duty charge is justified, since the seniority of Class-I Officers, was under litigation and, therefore, no regular promotion to the post of 'Engineer-in-Chief' could have been made at that point of time.

12. The Judgement cited by learned counsel for the petitioner in the case of '*Chaman Lal Lakhanpal*' (*Supra*), to contend that even if the petitioner has retired from service on 31.10.1998 his case for notional promotion as 'Engineer-in-Chief' was required to be considered, is also not applicable to the facts of the present case, as in the said case the petitioner therein was claiming that he had become eligible to be considered for promotion to the Indian Administrative Service in the year 1987 and prior to the year 1992, the claims of the persons

senior to him were considered, however, in the year 1992, the Selection Committee did not meet and thereafter, again from the year 1994-95 onwards, the Committee has not met and therefore, the Selection Committee should be directed to consider his claim for appointment by promotion to the IAS with effect from the year 1994-95. The Central Administrative Tribunal rejected the said claim of the petitioner. The Division Bench of this Court while interpreting the provisions of Indian Administrative Service (Appointment by Promotion) Regulations, 1995, has held that it was the Commission's own case that the Selection Committee could not meet during the years 1994-95, 1995-96 and 1996-97 on account of the interim order of stay granted by the Tribunal in another case of '*S. P. Gupta*' and after the stay was vacated on 03.12.1996, the Commissioner took no steps for the meeting of the Selection Committee immediately; and if it had performed its duty and nominated a member of the Committee, as constituted under the regulations, the petitioner's right as guaranteed to him under the Rules, would not have violated and by merely failing to nominate the member and not allowing the Selection Committee to meet, the Commission cannot be permitted to defeat the rights of the petitioner. Hence, the Judgements cited by learned counsel for the petitioner are clearly distinguishable and not applicable to the facts of the present case.

13. The Hon'ble Supreme Court in '*Ajit Singh v. State of Punjab*', **1999(4) SCT 1**; '*Union of India and others versus Sangram Keshari Nayak*, **2007 (3) SCT 512** and '*Union of India and another versus Hemraj Singh Chauhan and others*', **2010(2) SCT 421** has held that the promotion is not a fundamental right, however, consideration for promotion is a fundamental right. The promotion can only be considered in terms of the rules governing the service of the employee.

14. In this view of the matter, no case is made out to interfere in the impugned order dated 18.11.2002 (Annexure P-19), while invoking jurisdiction under Article 226 of the Constitution of India and consequently, the present petition is hereby dismissed, being devoid of any merits, with no orders as to costs.

15. Pending application(s), if any, also stand disposed of accordingly.

September 17, 2024
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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*