



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

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CWP-5000-2021

Date of decision : 16.05.2024

Maninderjit Singh

...Petitioner

V/S

Punjab State Power Corporation Ltd. and another

....Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Ankur Sheoran, Advocate for the petitioner.

Mr. Sehaj Bir Singh, Advocate with
Ms. Karishma Sharma, Advocate for the respondents.

NAMIT KUMAR, J. (ORAL)

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India seeking a writ of certiorari for quashing the decision dated 16.12.2020 (Annexure P-4) by which the claim of the petitioner for promotion to the post of Assistant Executive Engineer/Senior Executive Engineer w.e.f. the date person junior to him has been promoted, has been withheld.

2. Brief facts of the case, as have been pleaded in the present petition, are that the petitioner was appointed as Assistant Engineer (Electronics and Communication) on regular basis and joined as such on 10.05.2010. His appointment was challenged by one Dilpreet Singh by filing CWP No.15797 of 2010 titled as 'Dilpreet Singh Vs. Punjab State Power Corporation Limited (earlier PSEB) and others' with a grievance that out of total 15 posts, 01 post should have been reserved for freedom



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fighter category and if one post would have been reserved then he would be entitled for selection and appointment. The said writ petition was allowed vide judgment dated 30.05.2011. The concluding para of the said judgment is as under :-

“In this view of the matter, the Court is left with no option except to quash the selection of respondent No.2, who has chosen not to defend his selection in the Court and to issue a direction to the Punjab State Electricity Board (Now Punjab State Power Corporation Ltd.) to consider the claim of the petitioner for appointment to the post of Assistant Engineer (Electronics & Communication), as the said post is to be filled up from the category of Freedom Fighters’, to which the petitioner admittedly belongs. It is also not in dispute that the petitioner is otherwise eligible for appointment to the said post. If there is no impediment the petitioner be granted the required consequential relief. The direction as issued by this Court be complied with within a period of two months from today.

The writ petition is allowed in the above terms.”

Consequently, Sh. Dilpreet Singh was offered appointment vide Memo dated 02.09.2011. Aggrieved against the said judgment, the petitioner filed a Review application being Review Application No.312 of 2011 which was dismissed vide order dated 13.01.2014 and thereafter, he filed LPA No.63 of 2014 titled as ‘Maninderjit Singh Vs. Punjab State Power Corporation Ltd. and another’, impugning the judgment dated 30.05.2011, in which the following order was passed on 17.01.2014 :-

“Notice of motion in the main appeal and also in application for condonation of delay for 24.02.2014.

In the meanwhile, it is directed that respondent No.1 shall allow the appellant and also respondent No.2 to



continue in service till further orders.”

Consequently, the present petitioner and Sh. Dilpreet Singh were allowed to continue in service. Thereafter, the said LPA was admitted on 18.05.2015 and is still pending adjudication before the Division Bench. In the meanwhile, seniority list dated 16.10.2017 of Assistant Executive Engineers was issued by the respondent-Corporation, wherein the name of the petitioner has been placed at Sr. No.4442 and Dilpreet Singh has been placed at Sr. No.4493-A, however, Dilpreet Singh has been promoted to the post of Assistant Executive Engineer vide order dated 14.12.2020 (Annexure P-1) w.e.f. 30.06.2014. The petitioner submitted representation on 24.06.2020 claiming promotion to the post of Assistant Executive Engineer w.e.f. the date person junior to him has been promoted. However, the said claim has been withheld by the Board of Directors in its 85th Meeting held on 16.12.2020 (Annexure P-4) by stating that the matter being sub judice as such no decision can be taken. Hence, the present petition.

3. On issuance of notice of motion, written statement on behalf of the respondents has been filed in the Registry which is taken on record. In the said written statement, it has not been disputed that person junior to the petitioner has been promoted to the post of Assistant Executive Engineer/Senior Executive Engineer and only reason given for not promoting the petitioner is that the LPA No.63 of 2014 is pending before this Court.

4. I have heard learned counsel for the parties and have perused the relevant documents.



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5. Admittedly, Dilpreet Singh, who is at Sr. No.4493-A in the seniority list and junior to the petitioner, has already been promoted to the post of Assistant Executive Engineer vide order dated 14.12.2020 w.e.f. 30.06.2014 and thereafter, as Senior Executive Engineer w.e.f. 08.04.2021 (during the pendency of writ petition). Pendency of LPA cannot debar the claim of the petitioner for promotion to the next higher post. The petitioner cannot be discriminated as Dilpreet Singh, who is junior to the petitioner and also party in LPA No.63 of 2014, has already been promoted to the post of Assistant Executive Engineer and Senior Executive Engineer.

6. As per settled law, promotion is not a fundamental right, however, consideration for promotion is a fundamental right. The Hon'ble Supreme Court in its judgment ***Ajit Singh Vs. State of Punjab : 1999 (4) S.C.T. 1*** has held as under :-

“27. In our opinion, the above view expressed in Ashok Kumar Gupta, and followed in Jagdish Lal and other cases, if it is intended to lay down that the right guaranteed to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated that the right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta, right from 1950.”



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7. To the similar effect is the judgment passed by Hon'ble Supreme Court in ***Union of India and others Vs. Sangram Keshari Nayak : 2007(3) S.C.T. 512***. The relevant portion of the said judgment reads thus :-

“7. Promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Suitability or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the rules applicable therefor. Indisputably, the DPC recommended the case of the respondent for promotion. On the day on which, it is accepted at the bar, the DPC held its meeting, no vigilance enquiry was pending. No decision was also taken by the employer that a departmental proceeding should be initiated against him.”

8. Further, in ***Union of India and another Vs. Hemraj Singh Chauhan and others : 2010 (2) S.C.T. 421*** Hon'ble Supreme Court has held as under :-

“38. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.”

9. In view of the above factual position and settled principles of law, the instant petition is disposed of with a direction to the respondents to consider the claim of the petitioner for promotion to the



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post of Assistant Executive Engineer w.e.f. 30.06.2014 and then to the post of Senior Executive Engineer w.e.f. 08.04.2021, the date Dilpreet Singh, who is junior to the petitioner, has been promoted, subject to the decision of LPA No.63 of 2014. The necessary consideration shall taken place within a period of 03 months from the date of receipt of certified copy of this order.

16.05.2024

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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No