

**In the High Court of Punjab and Haryana, at Chandigarh**

**Regular Second Appeal No. 643 of 1993 (O&M)**

**Reserved On: 10.01.2024  
Pronounced On: 31.01.2024**

Punjab State Electricity Board  
... Appellant(s)  
  
Versus  
  
Jaswant Singh and Others  
... Respondent(s)

**CORAM: Hon'ble Mr. Justice Anil Kshetarpal.**

Present: Mr. Amrit Singh Kang, Advocate  
for the appellant(s).  
  
Mr. Vikas Singh and Mr. A.S.Pannu, Advocates  
for the respondent No.1.

**Anil Kshetarpal, J.**

1. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.
2. In this regular second appeal, the Punjab State Electricity Board (defendant) calls in question the correctness of the judgment passed by the First Appellate Court which, in turn, reversed the judgment and decree passed by the trial Court.
3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The respondent No.1

(plaintiff-Jaswant Singh) filed a suit on 08.02.1988 for the grant of decree of declaration to the effect that he is entitled to be promoted as an Assistant Engineer w.e.f. 08.08.1984 on which date his juniors were promoted as Assistant Engineers. He is entitled to be deemed to be serving in the appellant-Board as an Assistant Engineer since 08.08.1984 and is also entitled to be paid the arrears of salary and other allowances on that account accordingly with interest @ 12% per annum.

4. By claiming that on 11.12.1956, the plaintiff was appointed as Line Man-II in the Punjab Works Department and later on absorbed in the Board and promoted as Line Superintendent-II w.e.f. 11.08.1960, it is claimed that subsequently, he was promoted as Junior Engineer Grade-I. While claiming that no adverse remark had ever been conveyed against him, the plaintiff claimed that he has been wrongly ignored for promotion as an Assistant Engineer on 08.08.1984 whereas his juniors had been promoted.

5. The defendants, while contesting the suit, claimed that the disciplinary proceedings were pending against the plaintiff and his service record was not above average. Hence, he was not promoted.

6. The trial Court dismissed the suit while relying upon Regulation 10(i)(a) of Punjab State Electricity Board, Service of Engineers (Electrical) Regulations, 1965 (hereinafter referred to as “the 1965 Regulations”). However, the First Appellate Court reversed the judgment and decree passed by the trial Court primarily on the ground that the adverse reports have not been communicated to the respondent, therefore, it cannot be relied upon. The First Appellate Court has placed reliance on the

judgment of the Supreme Court in ***Brij Mohan Singh Chopra v. State of***

*Punjab (1987) 2 SCC 188.*

7. This appeal was admitted for regular hearing on 30.07.1993 and the operation of the judgment and decree was stayed. It has now come up for hearing after a period of 30 years. In the meantime, the respondent was promoted to the post of Assistant Engineer on 28.12.1990, he retired on attaining the age of superannuation on 31.08.1995 and has died on 14.01.2005.

8. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with the requisitioned record.

9. The learned counsel representing the appellant contends that the First Appellate Court erred in reversing the judgment of the trial Court as the plaintiff's suit was filed beyond the period of limitation. He submits that the suit could have been filed within a period of three years from 08.08.1984, whereas the suit was filed beyond the period of three years. While relying upon the Regulation 10(i)(a) of the 1965 Regulations, the Junior Engineers having above average record possessing minimum qualification with not less than 15 years of experience were eligible to be promoted to the post of Assistant Engineer, whereas the respondent's record was just average and not above average for many years.

10. On the other hand, the learned counsel representing the respondent submits that the charge sheet dated 07.10.1981 was not pending against the respondent as the same was decided on 26.09.1984. By this order, the respondent was punished with stoppage of one increment without future effect which was also set aside by the appellant-Board on 20.07.1990.

It is further submitted that the pendency of the show cause notices dated 23.04.1969 and 17.09.1974 could not be a factor for ignoring him particularly when he was promoted as Junior Engineer Grade-I on 13.06.1975.

11. This Court has considered the submissions of the learned counsel representing the parties.

12. A suit for the grant of decree of declaration is required to be filed within a period of three years from the date when the right to sue first accrued as per Article 58 of the Schedule attached to the Limitation Act, 1963. The plaintiff, while filing the suit, had claimed that on 08.08.1984 he was wrongly ignored for promotion and he filed an appeal on 17.09.1974 but it was never decided.

13. It shall be noted here that the defendant, while filing the written statement, has claimed that the respondent's name was considered by the Departmental Promotion Committee, but he was not found suitable. No statutory appeal was maintainable, Hence, the cause of action to file the suit for the first time accrued on 08.08.1984, whereas the suit was filed on 08.02.1984. Furthermore, the judgment passed in ***Brij Mohan Singh Chopra's case (supra)*** has been overruled by the Supreme Court in ***Badrinath v. Government of Tamil Nadu and Others (2000) 8 SCC 395***.

Moreover, it has come on record that as per the 1965 Regulation, the Junior Engineers with above average record were found eligible to be promoted, whereas the Annual Confidential Reports of the respondent were average.

These reports were not adverse. However, the respondent failed to fulfill the minimum benchmark. Furthermore, the service record of the respondent was

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also not good. The following proceedings/orders were passed against him:-

- “a) SCN No.454 dt. 17.06.1980 decided by issuing a letter of advice vide memo no. 24462 dt. 19.11.1980.
- b) Charge Sheet no. 1178 dt. 07.10.1981, decided vide o/o 690 dt. 26.09.1983 whereby 1 annual general increment was stopped without future effect. Appeal filed by respondent was allowed and was issued warning vide o/o dt. 20.07.1990.
- c) SCN no. C-1032 dt. 23.04.1969 stands decided by issuing letter of advice.
- d) Charge Sheet no.3895 dt.09.03.1976 decided vide issuing warning letter vide memo no 14636 dt.06.09.1984.
- e) SCN no.641 dt. 17.09.1974 was pending- mentioned in writ that this was not be issued to him.”

14. Keeping in view the aforesaid facts, it is evident that the decision of the Departmental Promotion Committee while ignoring him for promotion by giving preference to another candidate was neither arbitrary nor malafide. It is well settled that the Departmental Promotion Committee should not be interfered with unless it is patently illegal.

15. Keeping in view the aforesaid facts and discussion, this court is left with no choice but to set aside the judgment passed by the First Appellate Court while restoring that of the trial Court. The present appeal is allowed, accordingly.

16. The miscellaneous application(s) pending, if any, shall stand disposed of.

**(Anil Kshetarpal)**  
**Judge**

**January 31, 2024**

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No