

CWP-15283 of 1999 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15283 of 1999 (O&M)

Reserved on: 30.08.2024

Pronounced on: 17.09.2024

O.P. Juneja

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: - Mr. O.P. Juneja, petitioner-in-person, through V.C.
Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR, J

1. Petitioner has filed the instant writ petition under Article 226 of the Constitution of India, claiming the following reliefs: -

- (i) for setting aside the order dated 07.03.1999 (Annexure P-4) passed by the Financial Commissioner to the Government of Haryana, PWD, Public Health Department, vide which the petitioner was issued warning and a copy of the said order was ordered to be placed on his ACR file; and
- (ii) for grant of ante-dated promotion to the post of Chief Engineer w.e.f. 16.10.1998.

2. During the pendency of present writ petition, respondent-State of Haryana had issued order dated 14.02.2000 (Annexure P-7/A), whereby he was promoted as Chief Engineer in the scale of Rs.18400-22400 w.e.f. 17.10.1998 to 12.05.1999, the period during which the juniors of the petitioner, namely, Sh. A.S. Ahlawat and Sh. R.S. Sharma were promoted as Chief Engineers; Sh. A.S. Ahlawat retired as such from service on 28.02.1999 and Sh. R.S. Sharma was reverted as Superintending Engineer on 13.05.1999. Petitioner sought

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amendment of the instant writ petition, which was allowed vide order dated 09.03.2000 and amended writ petition was taken on record. In the amended writ petition, petitioner by way of impugning the orders dated 07.03.1999 and 14.02.2000 has sought the following reliefs: -

- “(i) To set aside the order of warning given to him; and*
- (ii) To grant him ante-dated promotion as Chief Engineer from 17.10.1998 till his superannuation on 31.03.2000.”*

3. Facts, as necessitated, for the disposal of the present petition are that petitioner was working as Superintending Engineer in Haryana PWD, Public Health Branch, since the year 1990. His seniority number was at serial no. 39 and was junior to Shri C.P. Taneja, who was at serial no. 38. Both were eligible for promotion to the next higher post of Chief Engineer in October, 1998 but they were ignored and their two juniors, namely, S/Sh. A. S. Ahlawat and R. S. Sharma, Superintending Engineers were promoted because of the pending charge sheets against them. Aggrieved by, the petitioner along with Sh. C.P. Taneja, approached this Court by filing CWP Nos. 17403-1998 and 17404-1998 for redressal of their grievance, respectively. Meanwhile, i.e. during the pendency of writ petition(s), as mentioned above, the respondent took a decision to withdraw the charge sheet, by awarding the lowest penalty of recorded warning to the petitioner, vide order dated 07.03.1999, which is impugned herein. Neither any enquiry as contemplated under rule-7 of the Haryana Civil Services(Punishment and Appeal) Rules, 1987 was conducted nor any show cause notice was issued to him. It has further been averred that

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warning imposed upon the petitioner comes at the lowest level of the minor penalties and, therefore, was not an impediment to the promotion of the concerned employee at the relevant point of time.

4. It has further been averred that in the absence of any statutory rule on the subject of promotion, the State Government has taken a policy decision vide circular dated 18.11.1971 (Annexure P-3) with regard to the procedure to be followed in cases where the turn of an official whose conduct is the subject matter of an enquiry comes for promotion to higher post and the relevant paras thereof are reproduced as under :-

“XX XX XX XX

xxxxx If he is ultimately exonerated of all the charges without the imposition of any penalty or is only administered a warning (whether with a copy on the personal file or not) then he should, if otherwise fit for promotion in every respect, be promoted with retrospective effect i.e. from the date on which he was due for promotion and an official junior to him was promoted. In case no vacancy was available for the period in question a temporary post should be created in consultation with the Finance Department and the junior most promoted official should be reverted, if necessary.

In the case of a government employee against whom action is proposed to be taken under Rule-8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 or any rule comparable thereto, the matter should be considered in the light of nature of allegation and the quantum of penalty that is proposed to be awarded. The criterion should be whether or not if the allegations were to be proved and the proposed penalty were to be imposed,

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then the promotion of the employee would still be justified on the basis of his entire record. In other words, promotion should not be withheld only because disciplinary action under Rule-8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 or any comparable Rule is contemplated or is pending against a Government employees and instead in such cases, the decision should be taken keeping in view the nature of allegation the quantum of the penalty proposed and the overall record. Furthermore, if promotion is withheld on that basis, but subsequently on the completion of the departmental proceedings the Government employee is exonerated without the imposition of a penalty or is only administered a warning (whether with a copy on the personal file or not) then he should if he is otherwise fit for promotion in every respect be promoted with retrospective effect that is from the date on which he was due for promotion and an official junior to him was promoted. Where no vacancy is available, a temporary post may be created for that purpose, in consultation with the Finance Department and the junior most promoted official should be reverted, if necessary.

XX XX XX XX”

5. Since respondent had issued recorded warning only in terms of impugned order 07.03.1999 (Annexure P-4), the petitioner sought leave of this Court to withdraw the writ petition no. 17403-1999 and the same was granted vide order dated 19.03.1999. However, the writ petition filed by C.P. Taneja, was allowed by this Court on 30.03.1999 and the charge sheet served on him as well as promotion order (Annexure P-2) to the petition were set aside and the Government was directed to consider him for promotion to the post of Chief

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Engineer from the same date. Even SLP No. 9380-99 filed against the said order was dismissed on 6.8.1999. The petitioner sent numerous representations for redressal of his grievance but to no avail. Hence, this petition.

6. Pursuant to notice of motion, the State of Haryana filed written statement dated 24.03.2000 and contested the petition on merits. It has been stated that the promotion to the post of Chief Engineer is a selection post and the promotion to the post shall be made by selection on the basis of merit and suitability and the member of service shall not have any claim to such promotion as a matter of right or mere seniority. It has been further stated that after issuance of charge-sheet to the petitioner, his case was considered and although he was found to be negligent in the performance of official duties and supervisory responsibilities yet after taking lenient view in the matter, the punishment of ‘warning with a copy in his ACR file’ was awarded. The seniority list of Superintending Engineers at the time of promotion has been shown as under :-

<u>Sr. No.</u>	<u>Name of Officer(s)</u>	<u>Serial Number in the seniority list</u>
1.	C. P. Taneja	38
2.	O. P. Juneja	39
3.	R. S. Sharma	40

41 to 43 have already retired from service

4.	A. S. Ahlawat	44
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7. The case of the petitioner along with Sh. C. P. Taneja was considered at the time of promotion to the post of Chief Engineer, but

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due to pendency of charge-sheets against them, they were not promoted and their juniors Sh. A. S. Ahlawat and Sh. R. S. Sharma, were given promotion as Chief Engineer. Sh. A. S. Ahlawat, has already been retired from service on 28.2.1999 whereas Sh. R. S. Sharma was also reverted vide orders dated 13.5.1999 and he has also retired from service on attaining the age of superannuation on 31.12.1999 as Superintending Engineer. In compliance with the directions given in CWP No. 17404-1998, Sh. C.P. Taneja was promoted as Chief Engineer vide orders dated 17.12.1999 with effect from 01.11.1999 as one post of Chief Engineer fell vacant due to retirement of Sh. B. R. Batra. No person junior to the petitioner has been promoted as Chief Engineer with effect from 13.05.1999.

8. Petitioner filed replication to the written statement filed by the respondent and controverted the contents of the same. It has been stated that impugned order dated 14.02.2000 implies his deemed reversion to the post of Superintending Engineer with effect from 13.5.1999.

9. Thereafter State of Haryana filed additional reply dated 30.05.2000, wherein it has been stated that no right of promotion exists to the petitioner without seniority and merit and no junior to him has been given promotion except Sh. R. S. Sharma during the period in which the petitioner was also duly promoted by creating a supernumerary/temporary post. The petitioner did not challenge the punishment of warning awarded to him. He was given promotion to the post of Chief Engineer with effect from 17.10.1998 to 12.5.1999 i.e.

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during the period his junior remained promoted as Chief Engineer. No post of Chief Engineer was lying vacant in the department against which petitioner could be promoted as Chief Engineer and further reiterated the contents of written statement. A status report dated 18.03.2019 has also been filed by the State of Haryana wherein the contentions raised in the written statement have been reiterated and prayed for dismissal of the writ petition on merits.

10. Petitioner, in person, submitted that vide impugned order dated 14.02.2000, he has been given deemed promotion to the next higher post of Chief Engineer, albeit, for the period 17.10.1998 to 12.05.1999 instead of dated 31.03.2000 i.e. the date of superannuation of the petitioner. He has further submitted that no disciplinary inquiry had been initiated against the petitioner after filing of reply to the charge sheet issued to him under Rule 7 of the Punishment and Appeal Rules, 1952 and punishment of warning was awarded to him without adhering to the principles of natural justice. He has further submitted that vide impugned order dated 14.02.2000, the promotion of the petitioner has impliedly been terminated which is not only without any justification rather the same is procedurally also untenable and the same is illegal and discriminatory qua his juniors in the matter of Pensionary benefits. Lastly, he has submitted that the promotion granted to him as Chief Engineer be extended till the date of his superannuation i.e. 31.03.2000, along with all consequential benefits accrued therefrom.

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11. *Per contra*, Learned State Counsel fervently and vehemently opposed the prayer made in the petition and contested the same on merits. He has submitted that the date of superannuation of the petitioner was 31.03.2000 and till the date of his retirement, both the posts of Chief Engineers had been occupied by Sh. J. C. Yadav (Seniority No. 33) and Sh. C. P. Taneja (Seniority No. 38) and upto the date of superannuation of the petitioner, no post of Chief Engineer was vacant, no question of granting promotion to the petitioner as Chief Engineer till his superannuation arises.

12. I have heard learned counsel for the parties and given by thoughtful consideration to the matter in hand and perused the record.

13. The petition pertains to the year 1999 and is pending adjudication post admission on 06.12.2001.

14. In order to understand the controversy in question, it would be appropriate to chalk out the service details of the petitioner along with concerned officials in a tabular form, as derived from the record, which is given as under :-

Seni ority No.	Name S/Sh.	Date of promotion as S.E.	Date of promotion as C.E.	Date of joining on Deputation	Date of repatriation in Department	Date of promotion as EIC	Additional Charge	Date of Retirement on the post
33	J.C. Yadav	31/07/1982	22/12/1997	24/09/1998	05/05/1999	03/10/2000	13/05/1999 to 22/05/2000	30/11/2000 as EIC
34	B.R. Batra	05/11/1985	01/05/1998	-	-	-	-	31/10/1999 as CE
38	C. P. Taneja	10/01/1990	01/11/1999	-	-	-	-	30/04/2000 as CE
39	O. P. Juneja	10/01/1990	17/10/1998 to 12/05/1999	08/12/1994	16/06/1997	-	-	31/03/2000 as SE
40	R. S. Sharma	10/01/1990	17/10/1998 to 12/05/1999	16/06/1997	-	-	-	31/12/1999 as SE
Seniority Nos. 41 to 43 have already retired from Government Service								
44	A. S. Ahlawat	10/01/1990	17/10/1998	-	-	-	-	28/02/1999 as C.E.

15. It is not in dispute that at the relevant point of time in Public Health Engineering Department, there were two posts of Chief

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Engineer. The petitioner was placed at seniority no.39. Sh. J. C. Yadav and Sh. B. R. Batra were having the seniority position of 33 and 34. Shri J. C. Yadav(seniority No. 33) was promoted as Chief Engineer on 22.12.1997. His date of superannuation is 30.11.2000. Sh. B. R. Batra(seniority no. 34) was promoted as Chief Engineer on 01.05.1998 and his date of superannuation is 31.10.1999. The next person who was entitled for promotion as Chief Engineer was Sh. C. P. Taneja only after the superannuation of Sh. B. R. Batra on 31.10.1999. On 24.9.1998, Sh. J. C. Yadav, Chief Engineer was sent on deputation with Haryana State Pollution Control Board meaning thereby one post of Chief Engineer was vacant and accordingly entitling the next person, i.e. Sh. C.P. Taneja, to be considered for promotion to the post of Chief Engineer who was placed at seniority no.38. Since a charge –sheet was issued against Sh. C.P. Taneja, he was not promoted as Chief Engineer. Thereafter, the name of the petitioner (seniority no. 39) was considered who had also facing disciplinary proceedings and had been served with charge sheet at the relevant point of time. In such circumstances, the State had considered the person next in line i.e. Sh. R. S. Sharma (seniority no. 40) to fill the post of Chief Engineer. He was on deputation in Environment Department on 16.6.1997 (as discernible from the tabular chart) and was working there, accordingly, the next person placed in the seniority list i.e. Sh. A. S. Ahlawat (seniority no. 44) was considered and promoted as Chief Engineer as he was found eligible and suitable and fit to be promoted. Thereafter, he was promoted as Chief Engineer on 17.10.1998 by giving proforma

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promotion to Sh. R. S. Sharma as well who was serving in Environment Department on deputation. On 17.10.1998, Two posts of Chief Engineer in the present department were occupied by Sh. B. R. Batra (seniority no. 34) and Sh. A. S. Ahlawat (seniority no. 44). Aggrieved by, both Sh. O. P. Juneja and Sh. C. P. Taneja had preferred C.W.P. No. 17403 of 1998 and C.W.P. No. 17404 of 1998 before this Court respectively thereby laying challenge to the initiation of the departmental inquiry against them and for granting them all service benefits including the consideration for promotion from the date Sh. R. S. Sharma and Sh. A. S. Ahlawat were so promoted. The departmental inquiry was finalized vide order dated 07.03.1999 wherein by taking a lenient view, a warning had been given to the petitioner with a copy on his ACR file(Annexure P-4). Thereafter, the petitioner had withdrawn C.W.P. No. 17403 of 1998 vide order dated 19.03.1999. Whereas writ petition filed by Sh. C. P. Taneja came to be allowed vide judgment and decree dated 30.03.1999 with the directions to the respondents to re-consider his case for promotion as Chief Engineer without taking into consideration the enquiry initiated against him. The State of Haryana assailed the said judgment and order by filing SLP(C) No. 9780 of 1999 which was dismissed on 06.08.1999. The petitioner submitted a representation dated 30.08.1999 and requested for granting him the ante-dated promotion as Chief Engineer with effect from the date from which his juniors Sh. A. S. Ahlawat and Sh. R. S. Sharma had been promoted as Chief Engineer by specifically mentioning that the charge sheet served upon him stood decided on 07.03.1990 by

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recording warning. On 05.05.1999, Sh. J. C. Yadav who was working on deputation in Haryana Pollution Control Board, Haryana, stood repatriated in his parent department and accordingly, Sh. R. S. Sharma (seniority no. 40) was reverted as Superintending Engineer on 12.05.1999. On 12.5.1999, both the posts of Chief Engineer were occupied by Sh. J. C. Yadav and Sh. B. R. Batra. Sh. B. R. Batra was superannuated on 31/10/1999 and accordingly one post of Chief Engineer had fallen vacant and since Sh. C. P. Taneja (seniority no. 38) was available for being promoted after the decision rendered in the writ petition filed by him, he was promoted as Chief Engineer on 01.11.1999. On 01.11.1999, two posts of Chief Engineers had been occupied by Sh. J. C. Yadav (seniority no. 33) and Sh. C. P. Taneja (seniority no. 38). So far as the contention raised by the petitioner in respect of Sh. J. C. Yadav, who would not have legally held two posts, one in the parent department and another on deputation with Haryana State Pollution Control Board as Administrator, no pleadings to this effect in the entire petition have been given by him and the same has been addressed in year 2019 after lapse of period of 20 years, merely by placing on record certain documents. Sh. C. P. Taneja and the petitioner were not given promotion from the date, their juniors Sh. R. S. Sharma and Sh. A. S. Ahlawat, were promoted, Sh. C. P. Taneja, filed COCP No. 1345 of 1999 and similarly the petitioner also filed representation (Annexure P-6) for same cause of action and accordingly the matter was considered by the State and both of them have been given the promotion as Chief Engineer from 17.10.1998 to 12.05.1999

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i.e. the period for which junior to both of them i.e. Sh. R. S. Sharma occupied the post of Chief Engineer. The date of superannuation of the petitioner is 31.03.2000 and till the date of his retirement, both the posts of Chief Engineers had been occupied by Sh. J. C. Yadav (seniority no. 33) and Sh. C. P. Taneja (seniority no. 38) who had retired from service on 30.11.2000 and 30.04.2000 respectively. As no post of Chief Engineer was vacant till the date of superannuation of the petitioner, therefore, promotion was not granted to the petitioner as Chief Engineer till his superannuation. Owing to the facts and circumstances of the case, the petitioner was granted promotion as Chief Engineer i.e. 17.10.1998 to 12.05.1999, therefore, the prayer made by the petitioner qua setting aside of punishment of warning has been rendered infructuous as the petitioner has already been granted promotion for the period, his juniors remained promoted as Chief Engineer.

16. For the foregoing discussions, the claim of the petitioner for extending his promotion as Chief Engineer from 12.05.1999 till the date of his superannuation i.e. 31.03.2000 cannot be countenanced with. The present petition is bereft of merits and is, accordingly, dismissed with no order as to costs.

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

17.09.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No