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

**CWP-25289-2018
Date of Decision: 11.11.2024**

Balbir Singh

..... Petitioner

Versus

Haryana Vidyut Prasaran Nigam Limited and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Raj Kapoor Malik, Advocate,
for the petitioner.

Mr. R.S. Budhwar, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for setting aside the impugned Memo No.Ch.27/ECP-2421 dated 20.09.2016 (Annexure P-3) passed by respondent No.3 whereby the claim of the petitioner for grant of 2nd ACP has been rejected illegally with a further prayer to issue writ in the nature of *mandamus* directing the respondents to consider the case of the petitioner for the grant of 2nd ACP w.e.f. 01.01.2006 after the completion of 18 years of regular and satisfactory service on the post of junior Engineer being fully eligible and entitled as per ACP Rules framed by the respondent-Department vide office order dated 27.02.2009 for revision of ACP rules w.e.f. 01.01.2006 (Annexure P-1) in view of the recommendation made by respondent No.3 vide Annexure P-2.



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2. Learned counsel for the petitioner submitted that the petitioner was promoted to the post of Junior Engineer on 10.09.1990 and retired on 31.05.2007 and thereafter vide order dated 06.06.2016, he was granted the deemed date of promotion as Junior Engineer w.e.f. 08.01.1987 because his junior, namely, Sh. Om Prakash was earlier promoted on the aforesaid post. He further submitted that the aforesaid deemed date of promotion was given to the petitioner and even the arrears of pay were also paid to the petitioner which is an undisputed position. He also submitted that even vide Annexure P-2 the grant of 2nd ACP to the petitioner was recommended by the Superintendent Engineer but the same was not granted to him by way of a rejection order passed by the Under Secretary with the approval of the Chief Engineer vide Annexure P-3. He further submitted that once the petitioner was given the deemed date of promotion w.e.f. 08.01.1987 and he had completed his 18 years prior to his retirement then he was entitled for 2nd ACP as well. He also referred to a judgment of a Co-ordinate Bench of this Court in **CWP-24313-2013** titled as “**Hans Raj Vs. State of Haryana and others**”, decided on 19.02.2016, which has been upheld in LPA and submitted that in the light of the aforesaid judgment, the petitioner is entitled for grant of 2nd ACP as well.

3. Learned counsel for the petitioner further submitted that when the aforesaid recommendation was considered by the office of Chief Engineer vide Annexure P-3, it was declined but there is no order passed by the Superintending Engineer and it was only conveyed by the Under Secretary. He submitted that the aforesaid order Annexure P-3 is absolutely cryptic and non-speaking order and the same does not give any reason at all



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and therefore, the order (Annexure P-3) is liable to be set aside.

4. On the other hand, Mr. R.S. Budhwar, learned counsel for the respondents submitted that the petitioner is not entitled for grant of 2nd ACP in view of the fact that he has already exhausted his functional promotion. He submitted that to the extent the aforesaid order (Annexure P-3) is a non-speaking order is concerned, the same is apparent from the aforesaid order and stated that he has no objection in case the concerned competent authority, who is to decide the grant or non-grant of the 2nd ACP to the petitioner, is permitted to pass a fresh order in accordance with law after hearing the petitioner.

5. A perusal of the impugned order (Annexure P-3) would show that it is absolutely cryptic and a non-speaking order especially in view of the fact that once the Superintending Engineer has recommended the case of the petitioner with regard to grant of 2nd ACP, it was a bounded duty of the competent authority/Chief Engineer to have passed the speaking order in this regard. It is a settled law that every order has to be backed by reason because the reasons are the soul of the order.

6. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated (Annexure P-3) is set aside. The respondent/competent authority is directed to pass a well reasoned speaking order in accordance with law after granting an adequate opportunity of hearing to the petitioner or his counsel within a period of four months from today and also by referring to the aforesaid judgment passed in ***Hans Raj's case (Supra)*** which has been relied upon by the learned counsel for the petitioner.

7. Needless to say that in case the petitioner is found to be entitled for the aforesaid benefit then the same shall be paid to him within a period of two months thereafter.

11.11.2024

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No