

256

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-29482-2018 (O&M)
Date of decision: 06.03.2024

Rakesh Kumar Garg

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. D.S. Patwalia, Sr. Advocate with
Mr. Kannan Malik, Advocate and
Ms. Rishu Bajaj, Advocate for the petitioner.

Ms. Neha Sonawane, DAG, Punjab.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of mandamus directing the respondent to open the sealed cover with respect to recommendations of the Departmental Promotion Committee dated 10.12.2015 (Annexure P-6) and to consider the candidature of the petitioner for promotion to the post of Superintending Engineer w.e.f. 22.12.2015 in view of the fact that vide judgment dated 14.03.2018 (Annexure P-8) passed by the Additional Sessions Judge, Sri Muktsar Sahib, the petitioner has been acquitted in FIR No.126 dated dated 17.06.2003. Further prayer has been made for directing the respondent Department to consider the petitioner's

candidature for further promotion to the post of Chief Engineer w.e.f. 30.04.2018 i.e. the date from which his juniors have been promoted to the said post.

2. Learned Senior Counsel for the petitioner has submitted that the petitioner was appointed as a Sub Divisional Officer/Engineer on 22.09.1982 and has referred to the Appointment Letter (Annexure P-1) to buttress the same. It is further submitted that while working as a Sub Divisional Officer, an FIR No.126 dated 17.06.2003 under Sections 406, 409, 120-B of IPC and Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 came to be registered against the petitioner as well as other employees of the respondent Department at Police Station Sadar Malout. It is also submitted that during the pendency of the said FIR, the petitioner became eligible for promotion to the post of Executive Engineer and since challan had not been filed, the petitioner was promoted as Executive Engineer vide order dated 26.04.2007 (Annexure P-2). It is submitted that the challan/report under Section 173 Cr.P.C. was filed on 17.12.2013 and thereafter, the respondent authorities decided to fill up 25 vacant posts of Superintending Engineer by way of promotion and for the said purpose, a Departmental Promotion Committee was proposed to be constituted. It is contended that the post of Superintending Engineer was governed by the Punjab Irrigation Department (Group-A) Service Rules, 2004 (hereinafter to be referred as “The Service Rules, 2004”) and reference has been made to Appendix ‘B’ of the said Rules annexed as Annexure P-4 (at page 56 of the paper book) to highlight the fact that for the purpose of Superintending Engineer, 100% post(s) are to be filled up by way of

promotion from amongst the Executive Engineer(s). It is submitted that as per these Rules, the Executive Engineers became eligible for promotion to the post of Superintending Engineer after possessing a minimum of six years of experience as such and consideration for promotion was on seniority-cum-merit basis. It is also submitted that as per the Agenda for the meeting of the Departmental Promotion Committee, which has been annexed as Annexure P-5 with the paper book, the petitioner was shown to be at Serial No.9 and several persons including Harminder Singh and Ashwani Kumar were shown to be juniors to the petitioner. It is also submitted that in the said document (Annexure P-5), reference was made with respect to the fact that an FIR against the petitioner was pending and that challan/report under Section 173 Cr.P.C. had been presented.

3. Learned Senior Counsel for the petitioner has further submitted that as per the minutes of the meeting of the Departmental Promotion Committee dated 10.12.2015, the petitioner was shown at Sr. No.10 and against the name of the petitioner, the factum with respect to an FIR having been registered and the report/challan under Section 173 Cr.P.C. having been presented was noticed and thus, it was observed that the Committee had recommended to keep its recommendation(s) in a sealed cover whereas the persons junior to the petitioner including Harminder Singh and Ashwani Kumar at Sr. Nos.12 and 13 were shown to be eligible for promotion and vide order dated 22.12.2015, a large number of Executive Engineers including the persons junior to the petitioner were promoted as Superintending Engineers, whereas the name of the petitioner was kept in a sealed cover. It is further contended that vide order dated 14.03.2018, the

Additional Sessions Judge, Sri Muktsar Sahib acquitted the petitioner along with the other accused persons and the petitioner immediately after acquittal, vide representation dated 15.03.2018 (Annexure P-9) requested the authorities to issue promotion orders to the petitioner to the post of Superintending Engineer w.e.f. 22.12.2015 i.e., the date on which his juniors were promoted. Thereafter, several representations were given but however, no immediate action was taken by the respondent authorities. It is submitted that in the meantime, the authorities had started the process of considering the promotion of Superintending Engineers to the post of Chief Engineers. It is also submitted that the name of the petitioner did not find mention in the letter dated 19.04.2018, although the name of Harminder Singh and Ashwani Kumar who were juniors to the petitioner in the seniority list of the Executive Engineers had been mentioned in the letter dated 19.04.2018, a copy of which is annexed as Annexure P-10 with the paper book. It is argued that the post of Chief Engineer in respondent Department was also to be governed by the Service Rules, 2004, as per which, the Superintending Engineers having a minimum two years of experience were eligible to be promoted to the post of Chief Engineers. It is contended that since the name of the petitioner was not considered for promotion, he gave a representation dated 23.04.2018 (Annexure P-11) with a prayer for being promoted to the post of Superintending Engineer w.e.f. 22.12.2015 and also to consider his case for promotion to the post of Chief Engineer along with his juniors. It is further submitted that the Departmental Promotion Committee meeting was held on 26.04.2018 wherein they considered the candidature of four Superintending Engineers

for promotion to the vacant post of Chief Engineers and in pursuance of the said meeting, four officers were promoted as Chief Engineers vide order dated 30.04.2018. It is also submitted that the two Superintending Engineers who were junior to the petitioner i.e., Harminder Singh and Ashwani Kumar had also been appointed as Chief Engineers and that the petitioner had filed an RTI application seeking information from the Department of Prosecution and Litigation, Punjab on the aspect as to whether any appeal against the judgment dated 14.03.2018 had been filed and in response to the said RTI application, vide letter dated 23.05.2018, the Assistant District Attorney-cum-Assistant Public Information Officer had informed the petitioner that the Department had decided not to file any appeal against the said judgment. It is contended that thereafter, several representations were given by the petitioner including representations at (Annexures P-14 and P-15 collectively) but no action was taken by the respondent authorities.

4. Learned Senior Counsel for the petitioner has submitted that in light of the said facts and circumstances, the petitioner should be entitled to be promoted to the post of Superintending Engineer w.e.f. 22.12.2015 i.e. the date on which his juniors were promoted and is also entitled to the grant of actual salary/arrears in addition to the other notional benefits. It is further submitted that the petitioner is also entitled to be considered for promotion to the post of Chief Engineer w.e.f. 30.04.2018 i.e. the date from which his juniors have been promoted to the said post. In support of his arguments, learned Senior Counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court of India in **Union of India Vs. K.V. Jankiraman** reported as **1991(4) SCC 109** and also upon the judgment of

the Hon'ble Supreme Court of India in **Delhi Jal Board Vs. Mahinder Singh** reported as **JT 2000 (10) SC 158**.

5. Learned State Counsel on the other hand, has opposed the present writ petition and has submitted that the petitioner was acquitted vide judgment dated 14.03.2018 and after opening the sealed cover, was promoted on 20.12.2018 and it is only after acquittal and opening of the sealed cover that promotion was to be given to the petitioner and he is not entitled for promotion w.e.f. 22.12.2015 and on the said aspect, has relied upon the judgment dated 27.07.2017 passed by the Coordinate Bench of this Court in case titled as **Gian Chand Vs. Municipal Corporation, Chandigarh and others** reported as **2018(1) SCT 532**. With respect to the prayer of the petitioner of being granted the benefit of salary of a higher post, it is submitted that even as per paragraph 26 of the judgment in the case of ***K.V. Jankiraman*** (Supra) cited on behalf of the petitioner, the grant of the said benefit is dependent upon several circumstances, regarding which, the concerned authority has a right to take a decision. With respect to the third prayer made on behalf of the petitioner, learned State Counsel has submitted that since the petitioner does not have the actual experience of working for the period of two years as a Superintending Engineer, which is the minimum period required for being promoted to the post of Chief Engineer, thus, the same cannot also be considered.

6. Learned Senior Counsel for the petitioner, in rebuttal, has submitted that the facts and circumstances of the present case would entitle the petitioner to the payment of salary/arrears of salary and also to be considered for promoted as Chief Engineer. It is submitted that it is a matter

of settled law that once the claim of the petitioner for being promoted to the post of Superintending Engineer was allowed w.e.f. 22.12.2015 and the petitioner was not permitted to work as Superintending Engineer without any fault of his, it would not lie in the mouth of the respondent-State to deny him promotion to the post of Chief Engineer solely on the ground of not having actual experience as a Superintending Engineer. It is also submitted that once the petitioner had been acquitted in the FIR, the right of the petitioner of being promoted as a Superintending Engineer stood crystallized w.e.f. 22.12.2015 i.e., the date on which the juniors of the petitioner were promoted and once that be so, the experience even notionally would be counted for the purpose of eligibility to be promoted as a Chief Engineer. It is contended that at any rate, the petitioner be permitted to give a detailed representation specifying the details of the facts and circumstances to show that the petitioner is entitled to promotion as a Chief Engineer and entitled to actual salary and also arrears of salary and that the respondent-authorities be directed to consider the said aspects in accordance with law in a time bound manner and in case, the pleas raised by the petitioner are found to be meritorious, then, to grant necessary relief, in accordance with law and in case, the same are found to be not meritorious, then, a speaking order be passed on the said two aspects.

7. Learned State Counsel has submitted that as far as the aspect of payment of salary/arrears of salary and also the aspect of claim of the petitioner to be promoted as a Chief Engineer is concerned, the petitioner may give a representation which would be considered independently and in accordance with law by the respondent authorities.

8. This Court has heard learned counsel for the parties and has perused the paper book.

9. The first issue which this Court has been called upon to decide is as to whether the petitioner is entitled to be promoted to the post of Superintending Engineer w.e.f. 22.12.2015 as claimed by the petitioner or w.e.f. 20.12.2018 as is the stand of the respondent authorities. To adjudicate the said issue, it would be necessary to mention the undisputed facts. Admittedly, in the Departmental Promotion Committee meeting held on 10.12.2015 (Annexure P-6), the petitioner along with his juniors and other employees were considered for being promoted as a Superintending Engineer. In the said minutes, it was specifically recorded that the persons including the petitioner who were being considered had experience of six years as Executive Engineers, as was required under the Service Rules, 2004 and after considering all the aspects, recommendations as detailed in the Chart (at page 69 of the paper book) were made. The case of the petitioner was mentioned at Sr. No.10 in the said Chart and the fact that FIR No.126 dated 17.06.2003 was registered against the petitioner and challan had been presented in the case and the fact that the Committee had recommended to keep the recommendations in a sealed cover, was duly noticed. It would be relevant to note that the cases in which the Committee had found an employee not eligible for promotion were specifically noticed as was done in the case of Ashwani Kumar Sharma who was at Sr. No.17 in the said list. It is also not in dispute that vide order dated 22.12.2015 (Annexure P-7), on the basis of the recommendations made by the Departmental Promotion Committee in its meeting held on 10.12.2015,

several persons including the persons junior to the petitioner were promoted as Superintending Engineer from the post of Executive Engineer. The sole reason given for not promoting the petitioner was the pendency of FIR No.126 dated 17.06.2003, in which, challan had been presented on account of which the recommendations had been kept in a sealed cover. It is further not in dispute that vide judgment dated 14.03.2018 (Annexure P-8), the Additional Sessions Judge, Sri Muktsar Sahib, acquitted the petitioner along with other accused in FIR No.126 dated 17.06.2003 and that the said judgment has attained finality owing to the admitted stand of the parties, which is also reflected from the RTI application and its reply (Annexure P-13) vide which the Department had decided not to file any appeal against the said judgment. The petitioner vide representation dated 15.03.2018 (Annexure P-9), had immediately informed the authorities about the said judgment having been passed and had prayed to the authorities for promoting the petitioner to the post of Superintending Engineer w.e.f. 22.12.2015. It is the stand of the respondent authorities that in pursuance of the recommendations of the Departmental Promotion Committee held on 10.12.2015, the petitioner has been promoted but has been promoted w.e.f. 20.12.2018 i.e., after his acquittal and after the sealed cover had been opened.

10. The stand of the State to the effect that the petitioner deserves to be promoted from 20.12.2018 and not from 22.12.2015 is illegal and against law and thus, deserves to be rejected and the plea of the petitioner on the said aspect deserves to be accepted. The sealed cover procedure permits the question of promotion of an employee to be kept in abeyance till

the result of the disciplinary inquiry/criminal proceedings and once the disciplinary inquiry or criminal proceedings have resulted in exonerating the petitioner, then the promotion has to be given effect to, from the date the petitioner was to be promoted, in case no such inquiry or criminal proceedings were there.

11. Hon'ble Supreme Court in the case of ***K.V. Jankiraman*** (Supra), had observed that on exoneration of an employee, promotion is to be given to the employee from which date he would have normally been promoted but for the disciplinary/criminal proceedings. Relevant portion of the said judgment is reproduced hereinbelow:-

“xxx xxx.

8. *The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are:--(1) what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be, adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date?' The,'sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over'. Hence. the relevance and importance of the questions.*

Xxx xxx

16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings **or a chargesheet in a criminal prosecution is issued** to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/chargesheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full

Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2).....

(3).....

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before .

17. *There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. **The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.***

18. *We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal.*

Xxx xxx

26. *We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not 'found blameworthy in the least and is not visited with the penalty even of censure, **he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he***

would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases' where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore however, such circumstances when they exist and lay down' an inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz.. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and

circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.
Xxx xxx"

A perusal of the abovesaid judgment would show that one of the issues which was for consideration before the Hon'ble Supreme Court was with respect to the fact as to what benefits an employee who is completely or partially exonerated, is entitled to and from which date an employee would be entitled to the same. The aspect of "sealed cover procedure" was also considered in detail in the said judgment. After considering all the aspects, Hon'ble the Supreme Court came to the conclusion that once an employee is exonerated, then he has to be given the benefit of the salary of the higher post along with other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. On the aspect of actual payment of salary, several aspects were required to be considered for which the concerned authorities were required to take a specific decision. However, with respect to the aspect as regards the date from which the employee was to be promoted, the Apex Court held that it would be the date on which he would have normally been promoted had there been no proceeding initiated against him, which in the present case would be the date on which the juniors of the petitioner were considered in the same Departmental Promotion Committee as the petitioner.

12. Hon'ble the Supreme Court even in the case of ***Delhi Jal Board*** (Supra), had observed that in case the disciplinary inquiry had ended

in favour of an employee, then the employee was to be given the benefit as if the said officer was never subjected to any disciplinary inquiry and that sealed cover procedure was envisaged to give the benefit of the assessment made by the Departmental Promotion Committee in favour of such officer, if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry, which was pending at the time when the Departmental Promotion Committee met. Hon'ble the Supreme Court had further observed that even in case, at the time the disciplinary proceedings in the first inquiry had ended and by the time the sealed cover was opened, another Departmental Enquiry had been started by the Department, it would not come in the way of an employee in getting the benefit of the assessment by the first Departmental Promotion Committee in his favour with respect to the anterior selection. Relevant portion of the said judgment is reproduced hereinbelow:-

“xxx xxx

5. The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under [Article 16](#) of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the Disciplinary Inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any Disciplinary Enquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the

Departmental Promotion Committee in favour of such an officer, if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when the DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection. There is, therefore, no question of referring the matter to a larger Bench.

Xxx xxx”

It would also be relevant to note that in the present case, no departmental proceedings were initiated against the petitioner and the law laid down by the Hon'ble Supreme Court in ***Delhi Jal Board's case*** (Supra) while considering the benefit of assessment by the DPC, after the employee therein was exonerated in the disciplinary proceedings, would equally apply in cases where the employee had been acquitted in a criminal case particularly when the sole reason for keeping the recommendations of the Departmental Promotion Committee in a sealed cover, was pendency of the said criminal case.

13. From the law laid down in the abovesaid judgment, it is apparent that the petitioner would be entitled to be promoted as a Superintending Engineer w.e.f. 22.12.2015, from which date the persons who are admittedly juniors to him, were promoted in pursuance of the Departmental Promotion Committee meeting held on 10.12.2015, where the case of the said juniors was considered and recommended. There is no

dispute that the petitioner would at least be entitled to notional benefits from 22.12.2015. The judgment referred to in ***Gian Chand's case*** (Supra), relied upon by learned State Counsel would not apply to the facts of the present case as in the said case, no sealed cover procedure was involved and in the said case, the respondent authorities were not considering the case of the petitioner therein for promotion only on the ground that after the acquittal of the petitioner therein in the criminal proceedings, an appeal had been filed by the respondent authorities against the said acquittal and it was in the said circumstances that the plea of the petitioner therein to the effect that, once an acquittal order had been recorded by the criminal Court and no departmental proceedings had been initiated for any misconduct, the petitioner was entitled to be considered for promotion from the date of his acquittal. In the said case, there was no prior recommendation kept in a sealed cover and there was no issue as to whether the petitioner therein is to be granted promotion w.e.f. an earlier date as is the question in the present case. The primary question in the said case was as to whether after acquittal, the State could delay the consideration of the employee on the ground that an appeal against the order of acquittal had been filed by the State.

14. Keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition is partly allowed and the petitioner would be treated as notionally promoted as a Superintending Engineer w.e.f. 22.12.2015 along with all notional benefits. With respect to the prayer of the petitioner of being granted actual salary w.e.f. 22.12.2015, from which date the petitioner should have been promoted to the post of Superintending Engineer and also the prayer of the petitioner for being considered for

promotion as a Chief Engineer, as has been prayed, it would be open to the petitioner to move a detailed representation bringing out all the facts on the basis of which as per the petitioner, he should be granted the said two reliefs and in case of the petitioner doing so, the respondent authorities are directed to consider the said pleas within a period of two months from the date of receipt of said representation and after considering the said two pleas, in case, the respondent authorities find the said pleas to be meritorious then grant necessary relief including holding of a review Departmental Promotion Committee, if necessary, to the petitioner immediately thereafter and in case the said pleas are found to be not meritorious then to reject the same by passing a speaking order within the aforesaid period.

15. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

06.03.2024

Pawan

(VIKAS BAHL)
JUDGE

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