



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

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CWP-1091-2021
Date of Decision: 14.01.2025

SATISH KUMAR

... Petitioner

VERSUS

BHAKRA BEAS MANAGEMENT BOARD AND ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sangram Singh Saron, Advocate
for the petitioner.

Mr. Anil Kumar Sharma, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Impugning the letter/order dated 07.08.2019 (Annexure P-6) as well as the reply dated 15.10.2020 (Annexure P-8) to the legal notice dated 14.09.2020, the petitioner has approached this Court alleging that he has wrongfully been non-suited for promotion from Work Mistry to Junior Engineer despite possessing the necessary qualification of Matriculation from a recognized Board as well as an ITI Trade Certificate.

Learned counsel for the petitioner contends that the petitioner was appointed as Work Mistry with the respondent-Bhakra Beas Management Board. He had passed his Matriculation in 1979 from the Government High School Nangal Town, which was affiliated with the Punjab School Education Board and thereafter also obtained ITI Trade Certificate in Stenography (Punjabi) in July, 1983. He further contends that the petitioner joined

respondent-Bhakra Beas Management Board as a Work Mistry on 18.11.1991. His services were regularized on 27.12.1992. He continued to serve as Work Mistry under the Superintendent, Procurement Constructions/Stores & Disposal Division, BBMB, Nangal Township. He contends that the respondents framed the Service Regulations in the year 1994 and the same were amended from time to time. The educational qualification prescribed in the schedule for promotion as Junior Engineer from Work Mistry is Matriculation alongwith ITI Trade Certificate.

The respondent-Bhakra Beas Management Board initiated process for promotion to the post of Junior Engineer and service details of the eligible employees were submitted by the Superintending Engineer, Nangal Mechanical Circle, Nangal Township on 01/03.03.2017. The name of the petitioner figured at Sr. No.9 of the said list. However, vide office order dated 14.07.2017 passed by the Chief Engineer, Bhakra Dam, Nangal, 22 employees were promoted as Junior Engineer but the petitioner was left out despite being eligible and qualified and also being senior to others. A detailed representation was accordingly submitted by the petitioner on 17.07.2017 for redressal of his grievance about not being promoted as Junior Engineer despite being duly qualified. The same was forwarded to the office of the Chief Engineer, but instead of taking a sympathetic consideration thereupon in terms of the applicable Rules, the Special Secretary, Bhakra Beas Management Board, vide impugned communication dated 07.08.2019, observed that ITI Stenography (Punjabi) fell in the category of the non-engineering trade and thus the petitioner was not eligible to be promoted in terms of Punjab Industrial Training (Class-III) Rules, 2001.

Learned counsel for the petitioner contends that the communication sent to the petitioner was based upon an erroneous interpretation and application of the Service Rules. The services of the petitioner are governed by the Bhakra Beas Management Board, Class-III and Class-IV Employees (Recruitment & Conditions of Service) Regulations, 1994, as amended from time to time and applicable to the employees of the Bhakra Beas Management Board, however, the eligibility of the petitioner is being tested by the respondents on the Rules applicable to the Punjab Industrial Training Department. Such supplanting of Rules is impermissible. The eligibility of the petitioner has to be seen and determined in terms of the applicable Rules only. Accordingly, a legal notice dated 14.09.2020 was sent by the petitioner calling upon the respondents to consider the genuine and bonafide claim of the petitioner for promotion to which a reply dated 15.10.2020 was sent denying the claim of the petitioner for promotion to the post of Junior Engineer. Hence, the present petition.

Counsel for the respondents, on the other hand, refers to the written statement and contends that the claim of the petitioner has been rejected for promotion to the post of Junior Engineer on the ground that the petitioner did not possess the qualification of ITI Engineering Trade as stipulated under the Bhakra Beas Management Board, Class-III and Class-IV Employees (Recruitment & Conditions of Service) Regulations, 1994 as amended vide office order dated 03.01.2017. He contends that the case of the petitioner was not considered for promotion since the petitioner did not have any ITI Diploma in any Engineering Trade and infact, possessed a Diploma in Stenography (Punjabi), which is a non-engineering Trade. It was thus rightly held that he was

not eligible under the applicable Rules for being promoted. It is further submitted that the Bhakra Beas Management Board has, at no point of time, promoted anyone from non-engineering Trade to the post of Junior Engineer and that the submissions made herein by the petitioner for staking his entitlement to the post of Junior Engineer is misconceived. The expression 'ITI Trade' as used in the Rules for promotion from amongst the Work Mistry has to be inherently considered as an Engineering Trade to make an employee eligible for promotion to the post of Junior Engineer, which is a technical post.

Learned counsel for the respondents also contends that they had sought an opinion and that upon consideration of the totality of the circumstances, they did not find that the case of the petitioner for promotion to the post of Junior Engineer could be considered in view of the qualification of ITI Stenography (Punjabi) held by him.

He, however, is not in a position to dispute that so far as the decision of the Special Secretary, Bhakra Beas Management Board declining the claim of the petitioner for promotion to the post of Junior Engineer is concerned, the same is based upon a reference to the Punjab Industrial Training (Class-III) Rules, 2001 and that in the reply dated 15.10.2020 to the legal notice served by the petitioner, the stand taken by the respondents is at a variance. He is further also not able to dispute that the Punjab Industrial Training (Class-III) Rules, 2001 could not have been taken into consideration for declining the claim of the petitioner. He is also not in a position to dispute that the discrepancy in the stand of the respondents to decline the claim of petitioner itself leads to an inference that there is no proper application of mind by the respondents. Besides, reply to the legal notice and the reasons given thereunder

were not the actual reason that weighed with the authority at the time of ignoring the petitioner for promotion.

Under the given circumstances, the issue is not required to be examined any further lest it may prejudice the decision of the respondents.

The instant writ petition is accordingly disposed of by setting aside the letter/order dated 07.08.2019 (Annexure P-6) rejecting the representation of the petitioner for promotion by making a reference to the Punjab Industrial Training (Class-III) Technical Service Rules, 2001 alongwith the reply dated 15.10.2020 (Annexure P-8) to the legal notice dated 14.09.2020 in view of the inherent contradictory stand(s) taken by the respondents in both the impugned documents. The matter is remanded to the respondents to pass an order afresh, in accordance with law.

Let the needful be done within a period of three months of the receipt of certified copy of this order.

Disposed of accordingly.

JANUARY 14, 2025.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No