

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

210

CWP-21405-2016

Date of Decision : September 03, 2025

KAMLESH BABU SHARMA

.....Petitioner

VERSUS

UNION OF INDIA AND ORS.

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present : Mr. R.S.Khosla, Sr. Advocate assisted by
Mr. Aman Sharma, Advocate for the petitioner.

Mr. Sudhir Nar, Senior Panel Counsel
for respondent No.1-UI.

Ms. Ruchi Sekhri, Addl. Standing Counsel
for respondent Nos. 2 and 3.

Ms. Alka Chatrath, Advocate and
Ms. Damanpreet Kaur, Advocate for respondent No.4-UPSC.

ASHWANI KUMAR MISHRA, J. (Oral)

1. By way of this writ petition, the petitioner assails an order passed by the Central Administrative Tribunal in OA No.60/01103/2014 dated 23.8.2016, whereby the claim of the petitioner for promotion to the post of Chief Engineer is declined.

2. Undisputed facts of the case are that the petitioner was appointed as Sub Divisional Engineer on 29.12.1976. He was promoted to the post of Executive Engineer w.e.f. 20.08.1986. He was given current duty charge of the post of Superintending Engineer w.e.f. 15.10.1992. The petitioner was also promoted as Superintending Engineer on regular basis w.e.f. 14.08.1995.

It transpires that on 19.06.1998, the petitioner was placed under suspension for remaining absent from duty from 08.06.1998 to 18.06.1998. The disciplinary proceedings in respect of such charge ultimately culminated in punishment order dated 29.05.1999, whereby two increments with cumulative effect were stopped. This order was challenged by the petitioner in CWP No.422 of 2000. This writ petition has been dismissed by this Court vide order dated 20.02.2025. An FIR No.1 of 1998 was also lodged against the petitioner under Sections 406, 409, 420, 120-B of IPC read with Sections 13(1)(b)(c)(d) and 13(2) of the Prevention of Corruption Act. The suspension of the petitioner was revoked on 07.03.2003. He was given the current duty charge of the post of Chief Engineer, on deputation on 27.09.2003.

3. The Departmental Promotion Committee met for considering the case for promotion of eligible Superintending Engineers to the post of Chief Engineer. Person junior to the petitioner was promoted on 25.05.2004. The case of the petitioner, however, was kept in a sealed cover due to the pendency of the criminal case. It appears that the petitioner filed OA No.770-CH of 2004 before the Central Administrative Tribunal, Chandigarh Bench challenging his non consideration for promotion vide order dated 25.05.2004. The OA was disposed of on 31.07.2008. The Union of India filed CWP No.15630 of 2009. It appears that during the pendency of the writ petition, the criminal proceeding initiated against the petitioner resulted in his acquittal on 27.07.2013. The representation was made seeking promotion to the post of Chief Engineer on 07.05.2014. The petitioner was, however, informed that his candidature has been kept in a sealed cover. Ultimately the respondents

considered the claim of the petitioner and found him unfit for promotion on one of the following grounds:-

“Having examined the character roll of Sh.K.B.Sharma for the year 2003-04 against whom vigilance case is pending, the Committee do not consider that he is yet fit for promotion to the grade of Chief Engineer (Group ‘A’) in the scale of pay of Rs.18600-22100 in the Chandigarh Administration for the year 2003-04.”

4. It is thereafter that the OA was filed before the Central Administrative Tribunal challenging the decision of the employer in overlooking the claim of the petitioner for promotion.

5. Learned Senior counsel for the petitioner has invited our attention to the proceedings of the DPC, wherein the assessment sheet of the petitioner is annexed. This would show that in the years 1994-95 and 1993-94, the entries of the petitioner were very good. Similar entry exists in the year 1990-91. In the years 1992-93 and 1991-1992, the entries of the petitioner are good. Entries of years 1994-95 to 1990-91 have to be looked into by the employer as the ACRs of the petitioner from the year 1995 onwards were not available. In terms of the policy decision of the department where the entries of the ACRs are not available for the relevant year, the department is entitled to look into available ACRs of previous years. It was this procedure, which has been followed by the employer for assessing the case of the petitioner for promotion.

6. Learned Senior counsel for the petitioner submits that the assessment of the petitioner's candidature by the DPC is flawed inasmuch as for the years 1990, 1991 and 1992, the entries of 'good' awarded to the

petitioner were upgraded to 'very good' by the reviewing authority on 08.10.1993, which fact has been omitted from consideration. It is, therefore, submitted that the decision of the DPC was based upon incorrect facts, which was liable to be interfered. Learned Senior counsel for the petitioner also submits that the only reason assigned for overlooking the case of the petitioner is that he is not yet fit for promotion. This was on the basis of vigilance enquiry. The vigilance enquiry has otherwise resulted in petitioner's exoneration. It is, therefore, submitted that there exists no adverse material against the petitioner on the strength of which he has been overlooked for promotion to the post of Chief Engineer.

7. Learned counsel for the respondent-UOI has invited our attention to the office memorandum issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training on 10.04.1989, which lays down the criteria for considering the claim of promotion by the DPC. Para 6.2.1 of this circular deals with confidential reports. Clauses(e) and (f) of the aforesaid Clause are relevant and are reproduced hereinunder:-

“(e) The DPC should not be guided. merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that some times the overall grading in in a CR may be inconsistent with the grading under various parameters or attributes.

(f) If the Reviewing authority or the authority as the case the case may be has over-ruled the Reporting Officer or the Reviewing as the case may be,

the remarks of the latter authority should be taken as the final remarks for the purposes of relevant entries that the higher authority has come to a different assessment consciously after due application of mind. If the remarks of the Reporting Officer, Reviewing authority and Accepting authority are complementary to each other and one does not have the effect of over-ruling the other, then the remarks should be read together and the final assessment made by the DPC.”

8. On the strength of the above circular, it is sought to be contended that the DPC is not to be guided merely by the overall grading, if any, recorded in the confidential reports but the DPC should make its own assessment on the basis of the entries in the ACRs. Learned counsel for the respondent has further highlighted the fact that the consideration for promotion was to be made in the year 2004 and, therefore, the entries of the last 5 years were relevant to adjudge the suitability for promotion. The entries for the last 5 years admittedly were not available and it is for this reason the previous years' entries were looked into.

9. It is pointed out that in the year 1999, an order of punishment was passed against the petitioner imposing punishment of withholding of increments of 2 years with cumulative effect. This order of punishment has attained finality. It is, therefore, submitted that for the years 2000 and 2001, the petitioner had not been granted any annual increment. It has been submitted that the service record of the petitioner for the last 5 years preceding the year 2004 could not be said to have been satisfactory which was the pre-condition for

considering the claim of the petitioner. It is, therefore, submitted that the respondent has not erred in rejecting the claim of the petitioner.

10. From the respective submissions advanced on behalf of the parties, the moot question that falls for our determination is as to whether the petitioner was entitled to promotion to the post of Chief Engineer in the year 2004. The vacancy against which the petitioner was being considered was of the year 2003-04. The pre-condition for promotion to the higher post is the satisfactory service of the employee during the last 5 years. The relevant period for consideration, therefore, would be the period of 4 years prior to the year 2003-04. This would extend and would include the working upto the year 1999-2000. It is undisputed that the order of punishment was passed against the petitioner of stoppage of 2 increments with cumulative effect on 29.05.1999. This order of punishment has attained finality. As a result 2 annual increments for the years falling due in the month of July 2000 and 2001 were not admissible to the petitioner. Once that be so, it cannot be said that the services of the petitioner were satisfactory during the last 5 years.

11. So far as the instructions relevant for consideration by the DPC is concerned, we find that the said Sub-clause (e) of Clause 6.2.1 does indicate that the DPC is not to be guided merely by the overall grading recorded in the ACRs but should make its own assessment on the basis of the entries in the ACRs. We are, therefore, of the considered view that while considering the claim of promotion, the DPC was well within its right to have examined material that existed

on record for assessing the suitability of the petitioner for promotion to the post of Chief Engineer.

12. Though we find substance in the contention of the learned Senior counsel for the petitioner that the entry for the years 1990-91 and 92 could not have been treated as good once such entry was upgraded to very good by the reviewing authority yet on such ground alone, the writ petition cannot succeed inasmuch as the adverse material in the form of punishment imposed on the petitioner vide order dated 29.05.1999 was a material sufficient to form an opinion against the petitioner. It is otherwise observed that the petitioner has superannuated in the year 2007 and much water has flown ever since then. In view of the fact that for the relevant period of working, there existed an order of punishment imposed upon the petitioner, it cannot be said otherwise that the petitioner's services were entirely satisfactory. That being the requirement in law for favourable consideration of claim of promotion, we do not find any occasion to interfere in the impugned order.

13. In that view of the matter, the present writ petition is dismissed.

(ASHWANI KUMAR MISHRA)
JUDGE

(ROHIT KAPOOR)
JUDGE

September 03, 2025

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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No