



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-6284-2016 (O&M)

J.B. Mudgal

....Petitioner

Versus

State of Haryana and others

....Respondents

Reserved on: 09.12.2025

Pronounced on: 19.12.2025

Uploaded on: 19.12.2025

Whether only the operative part of the judgment is pronounced? **No**

Whether full judgment is pronounced? **Yes**

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sunil Kumar Nehra, Senior Advocate
with Mr. Viren Nehra, Advocate,
Mr. Rahil Mahajan, Advocate,
Mr. Arjun Dosanj, Advocate
Mr. Anuj Chauhan, Advocate, and
Ms. Meghna Nehra, Advocate
for the petitioner.

Mr. Piyush Khanna, Addl.A.G., Haryana.

Mr. Harsh Jain, Advocate
for respondents No.2 to 5.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been preferred under Article 226 of the Constitution of India seeking issuance of writ in the nature of *mandamus* directing the official respondents to appoint the petitioner on the post of Director from the date the post fell vacant and from the date other persons were appointed to this post i.e. 08.04.2015, or in the



alternative, promote him from the date his junior Naresh Sardana was appointed to the post of Director i.e. 19.03.2016.

2. Learned Senior counsel for the petitioner contended that the petitioner joined as a Chief Engineer on 02.07.2014 and is the senior-most on that post in all three utilities i.e. HVPN, UHBVNL and DHBVNL, after Subhash Deswal, who was placed under suspension w.e.f. 25.07.2014. In order to fill up the post of Director in the said utilities, the State Government issued a notification dated 10.02.2015 (Annexure P-1), which laid down the following criteria:

“The Governor of Haryana is further pleased to order that the Technical Directors as Whole Time Directors in the aforesaid four Haryana Power Utilities would be appointed as per the following procedure:

- i) The two posts of Technical Directors each in the three Haryana Power Utilities HVPNL, UHBVNL & DHBVNL will be filled up from amongst the eligible candidates on the basis of common seniority of the Chief Engineers in these three utilities.*
- ii) The two posts of Technical Directors as whole time directors in Haryana Power Generation Corporation Limited will be filled up on the basis of the seniority list of eligible chief Engineers maintained in the HPGCL.*
- iii) These appointments would be made on the basis of seniority-cum-merit principle.*
- iv) The tenure of Technical Directors as Whole Time Directors would be one year or the date of superannuation of the person concerned, whichever is later.*
- v) If any of the Power Utility feels the need to attract talent from the open market in any specified field like operations, Information Technology or any other field, one additional post of Director, with a tenure of two years may be created by the State Government from time to time.*



Detailed selection criteria will also be approved by the State Government separately as and when such a post is decided to be created for the Power Utility concerned.”

3. He has further submitted that in the month of April, 2015, six posts of Technical Directors fell vacant. Vide order dated 02.03.2015, the Additional Chief Secretary clarified that a committee of all four Managing Directors of the HPUs would evaluate 12 candidates i.e. twice the number of vacancies. It was further stated that amongst those found suitable, the senior most personnel would be selected. The petitioner was also considered amongst these 12 candidates and the case of 06 of the senior most Chief Engineers was considered again. However, the committee only recommended four persons for the post of Technical Directors. The case of the petitioner was not considered even though he was one of the 12 senior most candidates and two posts continuously remained vacant from 08.03.2015 to 09.04.2015.

4. Learned counsel for the petitioner further contended that the petitioner was issued a charge-sheet on 24.12.2015, which still remains pending, however, at the time of consideration for the said appointment i.e. April 2015, no departmental inquiry was pending against him. Subsequently, in January, 2016, the petitioner, Subhash Deswal, Ajmer Singh Gill and Naresh Sardana were considered against the vacant posts of Director. Notably, at the said time Subhash Deswal was under suspension while Naresh Sardana was junior to the petitioner.

The case of the petitioner was yet again not recommended only on



account of the charge-sheet dated 24.12.2015, pending against him. Consequently, Ajmer Singh Gill and Naresh Sardana were recommended. The prescribed selection procedure states that the principle of seniority-cum-merit ought to be followed. The pendency of the chargesheet cannot be a bar for appointment, especially since the same has not culminated in award of any punishment to the petitioner. Moreover, the petitioner ranks at Serial No.708 in the seniority list while Naresh Sardana is at serial No.714. The seniority list is also available at Annexure P-3.

5. *Per contra*, learned counsel for respondents No.2 to 5 submitted that the appointment to the post of Director was not a part of the Service Rules and thus, it cannot be claimed as a right. The petitioner was promoted to the post of Chief Engineer on 30.06.2014 and was not eligible to be considered for the post of Technical Director on 12.03.2015, as he had not completed one year tenure as Chief Engineer. The petitioner could not be considered for the two vacant posts of Director as it is a matter of record that departmental proceedings emanating from charge-sheet dated 24.12.2015 were pending against him. However, referring to the affidavit dated 16.02.2017 of Anurag Rastogi, Principal Secretary to Government of Haryana, he fairly conceded that notification dated 10.02.2015 ought to have been amended to add the condition of one year of service as a Chief Engineer to be considered for the post of Director.



6. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the petitioner was not considered for the post of Director as he had not completed one year of service as a Chief Engineer at the relevant time. However, this eligibility criterion was introduced by the Selection Committee in terms of order dated 02.03.2015 passed by the Additional Chief Secretary which recommended selection on merit-cum-seniority basis.

7. On 17.12.2016, the following order was passed:

“Heard.

Let the Additional Chief Secretary, Power Department, Haryana file an affidavit explaining his decision dated 02.03.2015 and as to how he introduced the principle of ‘merit-cum-seniority’ for appointment of Technical Directors in the three HPUs. He would also explain why he failed to notice and deal with notification dated 10.02.2015 issued by him earlier where in Clause (iii), two posts of Technical Directors in each of the three HPUs was to be made on the principle of ‘seniority-cum-merit’.

The question arising is; whether the Additional Chief Secretary could by an executive order passed by him override the notification issued by the Government and change the principle of appointment from ‘senioritycum-merit’ to ‘merit-cum-seniority’ which is a paradigm shift. The petitioner is before the Court supporting the decision dated 02.03.2015, which the petitioner asserts has not been complied with in toto by the Coordination Committee constituted by the Government to appoint six Technical Directors in the three HPUs.

In the affidavit, it would also be explained as to how the criteria of one year service as Chief Engineer was introduced as a condition of eligibility, when the executive action cannot prima facie be traced to legislative sanction; and still further was the volte face ever approved by the



State Government. He would also explain whether he was exercising delegated powers of the State and was sub-delegating his powers to the Coordination Committee and whether this is legally permissible.

Let the affidavit be filed within three weeks.

List again on 07.02.2017.

Mr. Sunil Nehra states that his client is due to superannuate on 31.12.2016 and by reason of retirement, he should not be deprived of his legitimate and retrospective rights, in case the petition succeeds and retirement should not be an impediment in the future and on the present litigation.

Apart from the above, the Additional Chief Secretary would also disclose in the affidavit, whether final seniority lists of Chief Engineers have been issued in the three HPUs before the appointment process was initiated.

Order dasti.”

8. An affidavit dated 16.02.2017 of Anurag Rastogi, Principal Secretary to Government of Haryana, was filed in pursuance of the above-said order, wherein it has been conceded that the petitioner deserved consideration for appointment. The relevant part is reproduced below:

*“6. That as regards introduction of eligibility criteria of one year service as Chief Engineer by the selection committee of four Managing Directors of Haryana Power Utilities as constituted by the then Additional Chief Secretary/Power, **the selection/eligibility criteria ought to have been got approved from the Government before proceeding further in the matter.** Perusal of the record shows that the selection committee introduced this selection/eligibility criteria in compliance of the order dated 02.03.2015 to the then Additional Chief Secretary/Power to recommend selection on “Merit-cum-*



*Seniority” basis. However, the criteria evolved, stood ipso facto approved while considering the recommendations of the Selection Committee by the State Government. **On the issue of delegation, apparently Additional Chief Secretary/Power, has not delegated the powers of making selection or framing criteria.** Infact, the Selection Committee of four Managing Director of Haryana Power Utilities were required to recommend names to the Government for consideration.”*

9. The Hon’ble Supreme Court in ***K. Manjushree vs. State of Andhra Pradesh and another (2008) 3 SCC 512***, has conclusively held that new criteria cannot be introduced amidst an ongoing selection process. Once a procedure has been prescribed, no deviation can be permitted from it except in accordance with law. Admittedly, the condition of one year of experience as a Chief Engineer was introduced without carrying out the amendment as required. Thus, the contention that the change in principle of appointment from Seniority-cum-Merit to Merit-cum-Seniority will be deemed to have obtained *ipso facto* approval solely because the ultimate appointment was to be made post-approval of the Government, deserves to be rejected.

10. However, in affidavit dated 13.01.2017 of Ms. Vibha Midha, Joint Secretary to Government of Haryana, it has been stated that while making the recommendation for appointment to the post of Technical Director, the principle of seniority-cum-merit was followed and that the petitioner did not come in the zone of consideration for appointment.



11. Be that as it may, a considerably similar matter was addressed by a Co-ordinate Bench of this Court in **CWP-1690-2017** titled as ***Bhim Sain Pahuja vs. State of Haryana and others***, decided on **05.07.2017**, wherein the following conclusion was drawn:

“Thus official respondents have not followed one of the criteria of merit-cum-seniority principle while appointing 6th respondent to the post of Technical Director. Supreme Court in a reported decision viz. (2015) 10 SCC 241 held that where statute prescribed manner in which action is to be performed it must be carried out strictly in consonance thereto. Since appointment of 6th respondent to the post of Technical Director is declared as void with reference to records made available that later procedure laid down has not been adhered, the official respondents are directed to fill up such number of vacancies of Technical Directors with reference to 10.02.2015 notification as on 23.02.2017 and thereafter to fill up vacancies which were existed as on 24.02.2017 in terms of 24.02.2017 notification while considering names of the petitioner and respondents no.6 and 7 and other eligible Chief Engineers, if any, within a period of one month from today.”

12. Further still, during the pendency of this petition, the petitioner retired from service, rendering the discussion around this issue a mere academic exercise. Thus, this Court deems it appropriate to dispose of the present case with a direction to the official respondents to assess the case of the petitioner strictly in terms of the applicable criteria, discounting the condition of 01 year of service as a Chief

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Engineer, and release all admissible benefits, if the petitioner is found suitable for appointment at the relevant time. The needful shall be done within a period of 03 months from the date of receipt of certified copy of this order.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

19.12.2025
yakub

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