

219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26246-2018
DECIDED ON:30.10.2025

O. P. MALIK

....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.K. Malik, Advocate for petitioner.

Mr. Rahul Dev Singh, Addl A.G., Haryana

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India praying for quashing of seniority list dated 09.08.2018 (Annexure P-11) to the extent it shows him at serial No. 80 below his alleged juniors, namely Sh. Suresh Kumar at serial No. 21, and further for directing the respondents to grant him promotion as Sub Divisional Engineer (SDE) w.e.f. 20.07.2011, i.e. from the date his alleged juniors were promoted, with all consequential benefits, as well as for issuance of directions to grant him look-after charge (LAC) of the post of Executive Engineer w.e.f. 12.06.2018.

2. Brief Facts

The petitioner was appointed as a Junior Engineer (Civil) in the

Public Health Engineering Department, Haryana, on 30.11.1980 on an ad hoc basis. His services were later regularised with effect from 01.11.1986 and subsequently confirmed. Two of his colleagues, Sh. Rohtash Singh Sangwan and Sh. Suresh Kumar Goel, were appointed on ad hoc basis on 01.01.1981 and 02.01.1981 respectively and were also regularised on the same date. The petitioner claims seniority over both on the basis of his earlier date of initial appointment.

While in service, the petitioner was proceeded against departmentally under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987. Vide order dated 10.03.2010, he was awarded the punishment of recovery of 30% of the loss to the State exchequer and stoppage of two annual increments with cumulative effect. The said punishment was subsequently modified by the Governor of Haryana on 20.07.2011, reducing it to stoppage of one increment without cumulative effect. Another chargesheet issued to the petitioner that resulted in a penalty of censure vide order dated 16.05.2012.

The petitioner was promoted to the post of Sub Divisional Engineer (SDE) vide order dated 14.05.2014, and on representation, he was granted deemed-date promotion w.e.f. 16.08.2013 to bring him at par with his junior, Sh. Panna Lal, who had been promoted on that date. The petitioner's grievance is that his juniors, including Sh. Suresh Kumar Goel and Sh. Rohtash Singh Sangwan, were promoted earlier while the petitioner was granted promotion at a later stage despite being senior. He further assails the seniority list dated 09.08.2018, wherein he is shown at serial number 80, whereas his juniors are placed higher, and he also seeks consideration for *look after charge* of the post of Executive Engineer, which

was granted to his junior Sh. Suresh Kumar Goel vide order dated 12.06.2018.

Hence, this petition.

3. **Contentions**

Learned counsel for the petitioner contended that the impugned seniority list dated 09.08.2018 (Annexure P-11) is patently illegal and arbitrary to the extent it shows the petitioner at serial number 80 while placing his juniors, namely Sh. Suresh Kumar Goel and Sh. Rohtash Singh Sangwan, much higher in seniority. It was urged that the petitioner had been appointed as Junior Engineer (Civil) on 30.12.1980 on ad hoc basis, whereas the said juniors were appointed subsequently on 01.01.1981 and 02.01.1981 respectively.

It was further argued that the order of regularization dated 23.12.1991 itself clearly stipulated that the *inter se* seniority was to be determined on the basis of the date of initial ad hoc appointment. Therefore, according to the petitioner, he was senior to both of them in the feeder cadre, and the subsequent placement of his name below them in the seniority list of Sub Divisional Engineers was contrary to the departmental instructions and settled service law.

Counsel for the petitioner also submitted that despite the petitioner being senior, his juniors were promoted as SDE *w.e.f.* 20.07.2011, whereas the petitioner was granted promotion only *vide* order dated 14.05.2014, and even his deemed date promotion was given later *w.e.f.* 16.08.2013. It was contended that there was no valid reason for denying promotion to the petitioner from the same date as his juniors since both the departmental proceedings initiated against him had been finally concluded much earlier. Learned counsel argued that the minor penalties of *censure* and *stoppage of one increment without cumulative effect* are

not a bar to promotion under the Government instructions dated 18.11.1971, which clearly provide that if an employee has been awarded only a minor penalty or warning, his case for promotion cannot be deferred. Thus, it was submitted that the respondents acted arbitrarily and discriminatorily in withholding the petitioner's promotion and in not granting him seniority and consequential benefits from 20.07.2011.

It was also contended that the respondents have further acted unfairly in granting *look after charge* of the post of Executive Engineer to Sh. Suresh Kumar Goel, who is admittedly junior to the petitioner, vide order dated 12.06.2018, whereas the petitioner was ignored altogether. It was submitted that such action is violative of Articles 14, 16, and 21 of the Constitution of India, besides being contrary to the principles of natural justice. Learned counsel therefore prayed that the seniority list dated 09.08.2018 be quashed to the extent it places the petitioner below his juniors and that a direction be issued to promote the petitioner retrospectively from 20.07.2011 with all consequential benefits, including seniority and consideration for LAC of Executive Engineer.

Per contra, learned State counsel appearing for the respondents opposed the writ petition and submitted that the petitioner was rightly placed in the seniority list and that no illegality or arbitrariness was committed by the department. It was contended that the petitioner was awarded a punishment of recovery and stoppage of increments with cumulative effect vide order dated 10.03.2010, and though the punishment was later modified by the Governor on 20.07.2011, the fact remains that at the time when the juniors were promoted (in 2010–2011), a disciplinary proceeding was pending against the petitioner, and

hence he was not eligible to be considered for promotion at that time. Counsel further clarified that Sh. Suresh Kumar Goel was in fact promoted as SDE on 16.09.2010, not on 20.07.2011 as claimed by the petitioner, and therefore the petitioner's entire foundation of claim was based on an incorrect factual assumption.

The learned State counsel also submitted that after the conclusion of departmental proceedings and upon completion of the currency of punishment, the petitioner was duly considered for promotion and granted deemed date promotion as SDE w.e.f. 16.08.2013, the same date on which his junior Sh. Panna Lal was promoted. Thus, there was no discrimination or denial of legitimate service benefits. It was also emphasized that the seniority list dated 09.08.2018 was prepared strictly in accordance with the rules and as per the date of entry into the Group-B cadre. Since the petitioner entered the cadre on 16.08.2013, whereas his juniors had entered earlier, his placement at serial number 80 was factually and legally correct.

Regarding the petitioner's claim for *look after charge* of Executive Engineer, learned State counsel argued that such an assignment is purely temporary and administrative in nature, and does not confer any right upon an officer. The charge is given only to those found suitable and fit in all respects as per departmental exigencies. It was therefore submitted that no legal right of the petitioner had been violated and the petition deserved dismissal being devoid of merit.

Heard learned counsel for both parties.

4. Analysis

Having heard the counsel for the parties at length and after proper perusal of the material placed on record, this Court finds that the factual matrix is largely undisputed. The petitioner was awarded a major penalty *vide* order dated **10.03.2010**, which, though later modified by the Governor on **20.07.2011**, remained operative during the period when promotions of his juniors were under consideration. It is well settled that during the currency of a punishment or while disciplinary proceedings are pending, an employee has no vested right to be promoted. The respondents, therefore, acted within the bounds of service law in not considering the petitioner for promotion in 2010–2011 when his juniors were promoted.

The subsequent modification of punishment on 20.07.2011 could not automatically confer on the petitioner a right to claim promotion from an earlier date, as the promotion process of that period had already been concluded. The record further shows that after completion of the punishment period and clearance of the disciplinary matter, the petitioner was duly considered by the Departmental Promotion Committee and was granted deemed-date promotion as Sub-Divisional Engineer w.e.f. 16.08.2013, the very date on which his junior Sh. Panna Lal was promoted. The petitioner, therefore, has not been subjected to any continuing prejudice or discrimination.

The contention that minor penalties such as *censure* or stoppage of one increment cannot operate as a bar to promotion also does not aid the petitioner. The earlier penalty imposed on him was not merely a warning but involved recovery of loss and stoppage of increments with cumulative effect,

which is recognised as a bar to promotion. Only after modification by the Governor did the penalty become minor, and the petitioner was then promptly considered. Hence, there was no violation of the Government instructions dated 18.11.1971. Guidance may be drawn upon the judgment of this court in “***State Bank Of India vs. Suteekshan Mird LPA-1284-2024 (O&M)***” wherein it was held that:

“However, we are of firm view that a person cannot earn a promotion during the pendency of a punishment order. If a person has been punished with stopping of increments for a particular period, he cannot be granted promotion during that period, because on promotion, he would be entitled for increment. Both the things cannot go together.”

As regards the challenge to the seniority list dated 09.08.2018, the same has been prepared strictly in accordance with the rule that seniority in the promotional cadre is determined by the date of entry into that cadre. The petitioner entered the Group-B cadre on 16.08.2013, whereas his juniors were promoted earlier. Consequently, his placement at serial number 80 cannot be termed illegal or arbitrary. The plea for alteration of seniority based on the order of initial ad-hoc appointment in the feeder post is misconceived, since once promotion is made from a lower cadre to a higher one, seniority in the higher cadre is governed by the date of promotion, not by earlier ad-hoc service. Reliance may be drawn upon the apex court judgment in “***State of Bihar v. Sri Akhouri Sachindra Nath 1991 (2) SCT 603***, wherein it was held that:

“12. In the instant case, the promotee respondents Nos. 6 to 23 were not born in the cadre of Assistant Engineer in the Bihar Engineering Service, Class II at the time when the respondents Nos. 1 to 5 were directly recruited to the post of Assistant Engineer and as such they cannot be given seniority in the service of Assistant Engineers over the respondents Nos. 1 to 5. It is well settled that no person can be promoted with retrospective effect from a date when he was not borne in the cadre so as to adversely affect others. It is well settled by several decisions of this Court that amongst members of the same grade seniority is

reckoned from the date of their initial entry into the service. In other words, seniority inter se amongst the Assistant Engineers in Bihar Engineering Service, Class II will be considered from the date of the length of service rendered as Assistant Engineers. This being the position in law the respondents Nos. 6 to 23 cannot be made senior to the respondents Nos. 1 to 5 by the impugned Government orders as they entered into the said service by promotion after the respondents Nos. 1 to 5 were directly recruited in the quota of direct recruits. The judgment of the High Court quashing the impugned Government orders made in annexures 8, 9 and 10 is unexceptionable.”

Further reaffirmed in the recent judgment of the Supreme court in

“***Ganga Vishan Gujrati v. State of Rajasthan 2019 (4) SCT 332***”, the relevant is as follows:

*“Conferment of a deemed seniority may result in a situation where a candidate secures seniority with effect from an anterior date on which **he or she was neither borne on the cadre nor was qualified**. Such a consequence would be impermissible, at least in the absence of an express statutory provision to that effect.*

31. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra, (1990) 2 SCC 715. The principle was reiterated by this Court in State of Bihar v. Akhouri Sachindra Nath, 1991(2) S.C.T 603 : 1991 Supp (1) SCC 334 and State of Uttaranchal v. Dinesh Kumar Sharma, 2007(1) S.C.T. 393 : (2007) 1 SCC 683. In Pawan Pratap Singh v. Reeven Singh, 2011(2) S.C.T. 689 : (2011) 3 SCC 267, this Court revisited the precedents on the subject and observed:

"45. ... (i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be

given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime."

The argument seeking *look-after charge* of the post of Executive Engineer is also untenable. Such charge is a purely administrative and temporary arrangement, conferring no legal or substantive right upon an employee. The selection of officers for look-after charge depends on administrative exigency and suitability, and cannot be claimed as a matter of seniority or right. The Court cannot issue a writ to compel the Government to grant a temporary charge post.

Viewed cumulatively, the petitioner has failed to establish violation of any statutory rule, administrative instruction, or constitutional guarantee under Articles 14 or 16. The action of the respondents appears reasoned, consistent with the service record, and free from malice or arbitrariness. The petitioner has already been accorded deemed-date promotion to remove any possible disadvantage. No further direction can be issued to grant him retrospective promotion or revision of seniority on notional basis.

5. **Relief**

In the light of facts and circumstances discussed hereinabove, the present petition stands dismissed being devoid of merits.

30.10.2025
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(SANDEEP MOUDGIL)
JUDGE

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