



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

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CWP-34525-2024
Date of Decision: 09.01.2025

Ajay Verma

.....Petitioner(s)

Versus

Haryana Vidyut Prasaran Nigam Ltd. and others

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Aditya Yadav, Advocate,
for the petitioner.

Ms. Nikita Goel, Advocate,
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. This is the second round of litigation. The petitioner through the present writ petition under Articles 226 and 227 of the Constitution of India is seeking setting aside of order dated 16.09.2024 (Annexure P-11) whereby his claim for re-fixation of basic pay has been rejected. By the impugned order, he has been further denied benefit of promotion from retrospective date.

2. The petitioner joined the respondent-Department on the post of Junior Engineer on 27.04.1993 and he was promoted to the post of Assistant Engineer/Electrical on 30.03.2010. The respondent-department issued a notification dated 18.04.2007 (Annexure P-1) with respect to Departmental Accounts Examination. The petitioner, as per the notification and applicable Regulations, was bound to clear the Departmental Accounts Examination within 8 attempts. The petitioner availed 8 chances but could not clear the Departmental

Accounts Examination. The respondent, on account of non-clearance of the
Shivani Gupta
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aforesaid exam, was reverted back. He preferred CWP-35898-2019 before this Court. The said petition was disposed of on 02.08.2023 because during the pendency of the said petition, the department granted one mercy chance to all the candidates who had exhausted 8 already granted opportunities. The petitioner appeared in the departmental exam held in March, 2023 and successfully cleared the exam. He started claiming that he should be given benefit of seniority and pay fixation with retrospective effect. He filed CWP-15583-2024 before this Court claiming promotion and other benefits from retrospective date. The said petition was disposed of vide order dated 10.07.2024 (Annexure P-10) with a direction to the respondent to decide the representation of the petitioner dated 03.06.2024 by passing a speaking order and release due benefits, if any.

3. In compliance of the aforesaid order, the respondent has passed the impugned order dated 16.09.2024 (Annexure P-11) whereby claim of the petitioner has been rejected. The relevant extracts of the impugned order are reproduced as above:-

“xi) Accordingly, Memorandum on the issue was placed before Board of Directors, HVPNL in its meeting held on 19.03.2020 for consideration & approval on the recommendations of MDs Coordination Committee of HPUs. The relevant portion of memorandum is reproduced hereunder:-

"The Chief Engineer/Admn., HVPNL apprised the recommendations of the Sub Committee of the Administration wing on the issue. The MDs Coordination Committee after detailed deliberations is of the opinion that exemption to clear the DAE Examination would forfeit the actual purpose of regulations governing the Departmental Accounts Examination and decided as under.-



i. One extended chance as one-time measure on humanitarian grounds be allowed to those affected employees who could not pass the Departmental Accounts Examination (DAE) in full in prescribed period even after availing extended chances by relaxing applicable rules. In case employee qualify the DAE in full, shall be entitled to all benefits i.e. increment, seniority, ACP/Cadre Specific ACP, prospectively. In case of failure, suo-moto, the existing Rules will be applicable for which, they may be asked to give acceptance in shape of an undertaking.

xxx

xxx

xxx”

xvi) The petitioner vide eMail dated 13.07.2022 submitted the requisite undertaking duly notarized, which is reproduced here as under-

"I Ajay Verma, AE S/o Late Sh. Kanwar Bhan Verma resident of House No. 351/4 Ram Nagar, Gurugram, Haryana 122001 posted as AE/TL, HVPNL, Badshapur, District Gurugram do hereby solemnly affirms and declare as under-

- 1. That the deponent has not passed the mandatory DAE in full even after availing all the permissible/extended chances.*
- 2. That the deponent is willing to avail the additional final chance which is to be granted on humanitarian grounds as one time measure in terms of office order No. 442/REG-35 dated 01.06.2020.*
- 3. That in case the deponent fails to pass the Departmental Accounts Examination (DAE) in full in this additional chance he would have no objection if action in terms of applicable Rules/Instructions be taken against him.*
- 4. That in case the deponent passes/qualifies the Departmental Accounts Examination (DAE) in full, the consequential benefits accruing will not be claimed retrospectively.*



5 That the deponent will withdraw CWP No. 35898 of 2019 titled as Ajay Verma Vs. HVPNL & Ors or Civil Suit etc. pending if any."

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xxx

5. It is a matter of fact that Shri Ajay Verma, AE did not pass the Departmental Accounts Examination in prescribed 4 chances as well as in 4 extended chances as already mentioned above in detail, he passed the Departmental Accounts Examination in 9th chance which was allowed in pursuance of the decision of Board of Directors, HVPNL dated 01.06.2020 & order dated 30.06.2020 and memo No. Ch-307/HPTI-375 dated 13.04.2022 and after furnishing of the requisite undertaking by the officer wherein he has undertaken that he will not claim the benefits Le increment, seniority, ACP/Cadre Specific ACP, retrospectively. Even other similar situated AEs who have cleared the Departmental Accounts Examination in a chance granted in pursuance of aforesaid Board of Directors decision, have also granted the benefit of increment, seniority etc. prospectively from the date of passing the Departmental Accounts Examination and not retrospectively. It is not a case of the petitioner wherein disparity have been made by the Authority amongst the AEs who have cleared the said Departmental Accounts Examination in said 9 chance. The said extended chance have been granted merely on the humanitarian ground after granting relaxation in Regulations.

6. The Hon'ble Punjab & Haryana High Court, Chandigarh vide its order dated 25.03.2015 in CWP No. 18874 of 2001 titled P.S. Saini V/s HVPNL & Others has held that the relevant regulations specifically laid down that the passing of the Departmental Accounts Examination is a condition precedent for promotions and petitioner/employee can only be considered for grant of promotion to the post of Assistant



Executive Engineer from the date of passing of DAE and has no right to claim the promotion from the date his junior was promoted to the post of AEE being earlier passed the Departmental Accounts Examination. The same view was also upheld by the Hon'ble Punjab & Haryana High Court, Chandigarh vide order dated 15.09.2022 in CR No. 7834 of 2015 titled B.N. Gupta V/s HSEB.

7. In view of facts mentioned above, it appears that the claim of the petitioner for grant all the benefits retrospectively is not found feasible for acceptance being same is beyond the decision of Board of Directors, HVPNL which permits the petitioner to appear in 9th chance and also beyond the undertaking dated 13.07.2022 furnished by him. The law of estoppel would be applicable if he claims anything beyond his undertaking due to which an opportunity was provided to him to appear in the Departmental Accounts Examination as mentioned above. The petitioner cannot blow hot and cold. However, with respect to the claim of petitioner for granting HRA and medical allowance from 2010 to 2022, the record reveals that he did not submit the requisite performas in the office, even though he was requested to supply the requisite performas from time to time. Nevertheless, direction has been issued to the concerned office to release the said benefit within a period of two weeks as and when the petitioner fulfill the requisite formalities.”

4. Mr. Aditya Yadav, learned counsel for the petitioner submits that the respondent-department has wrongly rejected claim of the petitioner. The petitioner cleared Departmental Accounts Examination in 9th attempt whereas another candidate cleared Departmental Accounts Examination in 11th attempt still he was granted benefits from retrospective date. The act of the respondent-department amounts to discrimination and violation of Article 14 of the



5. Notice of motion.

6. Ms. Nikita Goel, Advocate, who on advance notice, puts in appearance on behalf of the respondents, filed her Power of Attorney and waives service.

7. With consent of learned counsel for the parties, the case is taken up for final disposal.

8. Ms. Nikita Goel, counsel for the respondents submits that the petitioner, at the time of appearing in Departmental Accounts Examination, filed undertaking wherein he specifically undertook that he will not claim seniority, promotion and other benefits from retrospective date. The petitioner is entitled to all these benefits from the date of clearing departmental exam. As per applicable Regulations, he was entitled to 8 attempts. However, the competent authority, taking a lenient view, extended to all unsuccessful candidates mercy chance i.e. 9th attempt. The petitioner could clear the exam in 9th attempt and in view of his undertaking, he is not entitled to the said benefits from retrospective date.

9. Faced with this, Mr. Yadav submits that the petitioner has not even been granted benefits from prospective date. He has been further shown below similarly situated candidates in the seniority list.

10. I have heard the arguments and perused the record.

11. From a perusal of the impugned order, it is evident that as per Regulations, the petitioner was bound to clear the Departmental Accounts Examination within 8 attempts. However, the Board of Directors, in its meeting held on 19.03.2020, decided to give one mercy chance to all the unsuccessful candidates. In the resolution of Board of Directors, it was specifically made clear that in case an employee qualifies the Departmental Accounts Examination,



The petitioner, pursuant to the Resolution of the Board of Directors, availed 9th opportunity to clear the Departmental Accounts Examination. At the time of availing the opportunity, he vide mail dated 13.07.2022, submitted an undertaking wherein, he specifically deposed that if he qualifies the Departmental Accounts Examination, consequential benefits accruing will not be claimed retrospectively. The undertaking of the petitioner was unambiguous. He cannot travel beyond his undertaking and belie his undertaking. He is bound by that undertaking. As per Regulations, he was entitled to 8 attempts whereas, the Board of Directors, taking lenient view, granted one additional chance to all the unsuccessful candidates. In any case, he cannot claim promotion or seniority over and above those candidates who had cleared exam within 8 attempts and prior to result of the petitioner.

12. Counsel for the respondent-department, during the course of arguments, conceded that the petitioner as per Resolution of Board of Directors is entitled to all the benefits prospectively and he shall not be denied benefits prospectively. If there is any infirmity in the benefits, he can point out to the Department and the competent authority would resolve the matter within 2 months from the date of filing the application.

13. With respect to seniority amongst the candidates who had cleared exam in 9th attempt, the claim of the petitioner would be considered in accordance with law. He cannot be shown at last serial number despite being senior to those candidates who had cleared exam in 9th attempt. The respondents shall reconsider claim of the petitioner with respect to seniority qua those candidates who are similarly situated with respect to date of clearance of exam.

It is further made clear that if the benefit of promotion or seniority or increment has been extended to any similarly situated candidate who had cleared



benefit.

14. Writ petition stands disposed of with the aforesaid observations.

09.01.2025
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(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	Yes