



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

210

CWP-3062-2025

Date of Decision: **February 27, 2026**

Subhash Sharma

.....Petitioner

VERSUS

Haryana Vidyut Prasaran Nigam Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Adiya Yadav with Ms. Hemlata, Advocates for the petitioner.

Mr. Sanjeev Kaushik with Ms. Manreet Kaur, Advocate for the respondents-HVPNL.

HARPREET SINGH BRAR, J. (Oral)

1. The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari seeking quashing of the impugned order dated 30.12.2024 (Annexure P-9) vide which the claim of the petitioner for refixation of his seniority has been rejected, and for quashing the Final Seniority list dated 28.06.2024 (Annexure P-6) to the extent the petitioner's seniority has been reduced from Sr. No. 556 to Sr. No. 611.



2. Learned counsel for the petitioner *inter alia* contends that the petitioner was selected as Assistant Engineer/Electrical on the basis of GATE-2017 and joined the respondent-department on 15.06.2018. His service conditions are governed by the PSEB Service of Engineers (Electrical) Recruitment Regulations, 1965 (as applicable to the Nigam). As per the said Regulations, an Assistant Engineer is required to pass the Departmental Accounts Examination (DAE) for Engineering Officers and the Safety Code Test for grant of seniority and promotion. Further, the petitioner passed the DAE in his 3rd chance on 18.04.2022, well within the prescribed four chances. However, with respect to the Safety Code Test, the petitioner faced considerable difficulty as the respondent-department failed to conduct the test regularly despite his repeated requests.

2.1 The counsel further submits that the petitioner was initially posted at 220KV S/Stn A-5, Faridabad. The first Safety Code Test after his joining was conducted on 19.06.2019, but no intimation was given to the office of SE/TS Circle, Faridabad, due to which no employees posted there could appear. The petitioner made a request on 04.03.2020 to be allowed to appear in the test scheduled for 12.03.2020, but he was not called. Further requests were made on 09.11.2020, but due to the COVID-19 pandemic, the test was not conducted. Despite subsequent requests on 22.10.2021 and 25.10.2021, the petitioner was again not called. The CE/TS, HVPNL, Hisar considered conducting the test in January 2022, but no test was held. The petitioner again requested on 23.06.2022, and a test was finally conducted on 06.07.2022, which the petitioner failed. After further requests on



06.02.2023, 09.02.2023, 12.05.2023, and 26.05.2023, a test was held on 24.07.2023, which the petitioner cleared in full.

2.2 In the tentative seniority list of Assistant Engineers/Electrical issued on 29.12.2023 (Annexure P-5), the petitioner was shown at Sr. No. 556. However the final seniority list dated 28.06.2024 (Annexure P-6) re-fixed his seniority at Sr. No. 611, relegating him below his juniors. The reason cited was that the petitioner "lost his seniority due to late passing the Safety Code Test in terms of office order No. 281/REG-35/L dated 27.10.2014."

2.3 Learned counsel for the petitioner submits that the office order dated 27.10.2014 (Annexure P-2) applies only to officers who avail extended chances (5th to 8th chances) to clear the DAE. The petitioner cleared the DAE in his 3rd chance and the Safety Code Test in his 2nd chance, without availing any extended chances whatsoever. Therefore, the said office order is wholly inapplicable to him. He further contends that the delay in passing the Safety Code Test was entirely attributable to the respondent-department. As per the amended instructions dated 16.02.2009 (Annexure P-3), the Safety Code Test is required to be conducted twice a year and eligible candidates are to be notified in advance. The respondents failed to adhere to these instructions. The petitioner made repeated follow-ups, but the department conducted only two tests between his joining in 2018 and his passing the test in 2023, with a gap of two years during COVID when no tests were organized. For a delay of merely 36 days beyond his 5-year service completion, the petitioner cannot be made to



suffer the grave consequence of losing his seniority. Additionally, co-employees of the petitioner namely Er. Sushma Kumari (Sr. No. 551), Er. Arun Yadav (Sr. No. 543), and various other officers who cleared their Safety Code Test in 2021 and 2022 have retained their original seniority numbers. This discriminatory treatment violates Articles 14 and 16 of the Constitution of India.

3. *Per contra* learned counsel for the respondents-Nigam submits that in terms of the PSEB Service of Engineers (Electrical) Recruitment Regulation-1965 read with Office Order No. 281/REG-35/L dated 27.10.2014 (Annexure P-2), an Assistant Engineer must pass both the DAE and the Safety Code Test. The said office order clearly stipulates that seniority would be fixed on the date of passing of DAE and Safety Code Test, whichever is later. The petitioner passed the DAE on 18.04.2022 and the Safety Code Test on 24.07.2023. Accordingly, his seniority was rightly fixed on the later date, i.e., 24.07.2023. Representations from other officers like Sh. Sunil Kumar and Sh. Rohit Kumar Jangid were received against the tentative seniority list, and after thorough examination, the seniority of all similarly situated officers was re-assigned based on their date of passing both examinations. The petitioner has been assigned seniority No. 611 in the final seniority list issued vide memo dated 28.06.2024 (Annexure P-6).

3.1 Learned counsel further submits that the petitioner's representation was considered in compliance with the directions of this Court in CWP No. 22281 of 2024, and a detailed speaking order was passed on 30.12.2024 (Annexure P-9) rejecting his claim. The respondents contend



that the twin conditions of passing DAE and Safety Code Test cannot be read in isolation, and the petitioner cannot claim seniority from a date prior to fulfilling both conditions.

4. I have heard learned counsel for the parties and perused the record with their able assistance.

5. It transpires that the instructions dated 16.02.2009 (Annexure P-3) mandate that the Safety Code Test be conducted twice a year. Between 2018 and 2023, the respondents conducted only a handful of tests, with long gaps, and failed to ensure that all eligible candidates were notified and given opportunity. The COVID-19 pandemic may explain some delay, but it cannot explain the complete failure to conduct tests in 2020, 2021, and most of 2022. Admittedly the petitioner made repeated follow-ups, but the department conducted only two tests between his joining in 2018 and his passing the test in 2023.

6. The core issue for determination is whether an employee can be penalized with loss of seniority for delay in passing a mandatory test when the said delay is attributable to the employer's failure to conduct the test in a timely manner.

7. At this juncture, a reference may be made to the judgment rendered by a two-Judge bench of the Hon'ble Supreme Court in ***A.P. Showkath Ali vs. State of Kerala (2018)11 SCC 688*** wherein, speaking through Justice Kurian Joseph, the following observations were made:

“12. Close to the facts, a situation where the Government had not conducted the tests, had arisen for consideration before the Kerala High Court in Sherafuddin v. State of Kerala, 2004 (2) KLT 731,



where at paragraph-9, it was held that (paragraph numbers are given as they appear in. :

"9. The Government having never conducted the examination, it will be unjust and inequitable to deny the service benefits to the incumbents if they are otherwise fit for such benefits. In fact the very purpose of the rule is to tide over such situations. There is no point in requiring the incumbents to perform an impossibility. They are required to pass the examination if only it is held. Admittedly it was never held. Therefore, the invocation of Rule 39 in such circumstances is justifiable in terms of justice and equity. The purpose of the rule is to use the principles of justice to supplement law in a fair and reasonable manner and for a just and equitable 2 2004 (2) KLT 731 cause. The action/inaction of the Government shall not prejudice an incumbent who is otherwise fit for service benefits and hence the order is perfectly justifiable."

and at paragraph-13, it has been further held:

"13..... When there is failure of justice resulting in inequity and injustice, Rule 39 of the General Rules is to be invoked in the interests of equity and justice. Such power can be exercised even with retrospective effect for doing complete equity....."

13. We respectfully endorse the views expressed by the Kerala High Court."

(emphasis added)

8. Additionally, it is trite law that employees must not be deprived of the lawful benefits accrued to them or suffer adverse consequences due to omissions made by the employer. It would be against the principle of equity and fairness to burden employees with the financial and career-impacting consequences of administrative or technical lapses, solely caused by the negligence of the employer. Reliance in this regard can be placed on the judgment rendered by a two judge bench of the Hon'ble Supreme Court in ***Calcutta State Transport Corporation vs. Ashit Chakraborty 2023 SCC Online SC 594***, speaking through Justice Rajesh Bindal opined as follows:

"11. It is not in dispute that the respondent no.1 had exercised his right to receive pension under the 1990 Regulations in the year 1991. Thereafter, it was the duty of the Corporation to have given effect to



*the same. Merely because there were some wrong deductions from his salary and he was treated as a member of the CPF Scheme, cannot be permitted to be raised as a ground to defeat his rightful claim. The pension was to start after the retirement of the respondent. When the same was not released to him, immediately representation was made by him. As no response was received from the appellant, the writ petition was filed. The argument that there are a number of similarly situated employees who will also stake their claims, will not deter this Court in granting the relief to the respondent, which is legitimately due to him. **Rather this argument shows that the Corporation was at fault in implementing the 1990 Regulations in the cases of number of employees though these were notified on 4.1.1991 and were given retrospective effect from 1.4.1984. Technical objections are sought to be raised, which are not tenable. For any fault on the part of the Corporation, the employees cannot be made to suffer.***

(emphasis added)

9. Learned counsel for the respondent-Nigam has been unable to controvert that the Safety Code test was not conducted as per the instructions dated 16.09.2009 (Annexure P-3). The failure of which can only be attributed to the respondent - Nigam. The test cannot occur once in a blue moon subject to the whims and fancies of the authority, especially considering its relevance. The employees must be given a reasonable opportunity to appear in the same by not only notifying them beforehand but also holding it regularly, at least twice a year. It would be against the principle of equity and fairness to burden the employees with financial and career-impacting consequences of administrative or technical lapses, solely caused by the negligence of the employer. Reliance in this regard may also



be placed on the judgement rendered by this court in ***Chander Parkash vs. HVPNL and others CWP-380-2014***.

10. Further, a bare perusal of the office order dated 27.10.2014 (Annexure P-2) reveals that it deals with extended chances (5th to 8th chances) for appearing in the DAE. The condition of losing seniority is specifically linked to the grant of extended chances. The petitioner admittedly passed the DAE in his 3rd chance, within the normal four chances. The Safety Code Test does not have a concept of "chances" in the same manner. The petitioner cleared it in his 2nd attempt. Therefore, the rigour of the office order dated 27.10.2014 cannot be invoked against the petitioner.

11. In view of the above, the finding of the respondents that the petitioner was "late" in passing the Safety Code Test, without appreciating that the entire delay was solely attributable to their own inaction, is wholly illogical, perverse, and vitiated by the vice of irrationality, and therefore unsustainable in the eyes of law.

11.1 Furthermore, the petitioner cleared the Safety Code Test well within the prescribed four chances, i.e., two chances in each year, which were required to be afforded to him but were, in fact, not duly provided by the respondents. In such circumstances, the respondents cannot, under any pretext, treat the attempts made by the petitioner as availing of extended or additional chances. The action of the respondents, therefore, is arbitrary, unjustified, and legally untenable.



12. In view of the above the present writ petition is allowed. The impugned order dated 30.12.2024 (Annexure P-9) is hereby quashed and set aside. The final seniority list dated 28.06.2024 (Annexure P-6) is also quashed to the extent it re-fixes the petitioner's seniority at Sr. No. 611.

13. The respondents are directed to restore the petitioner's seniority to Sr. No. 556, as reflected in the tentative seniority list dated 29.12.2023 (Annexure P-5), and to grant him all consequential benefits, including promotion and financial upgradation, within a period of three months from the date of receipt of a certified copy of this order. Any further delay in compliance shall entail interest at the rate of 6% per annum on the arrears.

14. Pending miscellaneous applications, if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

February 27, 2026

P.C

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