
Before S. S. Nijjar, J

ANAND PARKASH,—*Petitioner*

versus

STATE OF PUNJAB,—*Respondent*

C.W.P. No. 10959 of 1994

The 18th May, 2005

Constitution of India, 1950—Arts.226—Appointment of petitioner to the post of Chief Engineer by giving him Current Duty Charge—Regularisation of promotion of petitioner from the date he took current duty charge on the post of Chief Engineer—Respondents changing date of promotion with effect from the date of issue of order of his regular promotion without affording an opportunity of hearing—Principles of natural justice—High Court directing respondents to pass fresh order after complying with principles of natural justice—Respondents taking the plea that it was wrongly mentioned by mistake that petitioner had been promoted as Chief Engineer from the date he took over Current Duty Charge—Whether the competent authority can correct the date of appointment or promotion given by mistake or against the rules—Held, yes—On complying with the rules of natural justice the mistake can be corrected—In the written statement respondents failing to controvert the plea of petitioner that some similarly situated persons were granted benefit of promotion from the date they were given Current Duty Charge—clear vacancy of Chief Engineer available at the time of giving him Current Duty Charge—Action of respondents violates Arts. 14 and 16 of the Constitution—Petitioner held to be entitled to the salary of the post of Chief Engineer from the date he took over Current Duty Charge of that post.

Held, that appointments or promotions given by mistake or against the rules can be corrected by the Competent Authority. The only condition for rectifying an error is that before the error is corrected and any adverse order is passed against the Government employee, he should be given a show cause notice. His explanation should be sought. If necessary, an opportunity of hearing should also be given. on complying with the rules of natural justice, the mistake can always be corrected.

(Para 9)

Further held, that employees similarly situated cannot be given differential treatment. Such action would lead to violation of Articles 14 and 16 of the Constitution of India. Failure of the respondent to distinguish the case of the petitioner from the case of G. R. Kalra impels me to hold that the petitioner has been discriminated against. Therefore, the action of the respondent is in clear violation of Articles 14 and 16 of the Constitution of India. Even otherwise, the petitioner is clearly entitled to be promoted on the post of Chief Engineer from 17th July, 1991, the day he was given the Current Duty Charge. There was a clear vacancy available against which the petitioner could have been promoted. He was denied the promotion without any justification.

(Paras 13 and 14)

K. K. Jagia, Advocate, for the petitioner.

Mrs. Charu Tuli, Sr. D.A.G., Pujnab, for the respondent.

JUDGMENT

S. S. NIJJAR, J. (ORAL)

(1) In this writ petition under Articles 226/227 of the Constitution of India, the petitioner seeks the issuance of a writ in the nature of Certiorari quashing the notice dated 3rd January, 1994 (Annexure P-5) and the order dated 14th June, 1994 (Annexure P-7) which the petitioner has been informed that his date of promotion as Chief Engineer will remain 24th February, 1992. The petitioner also seeks the issuance of a writ in the nature of Mandamus directing the respondent to grant the pay scale of Chief Engineer with effect from 18th July, 1991 togetherwith interest at the rate of 18% p.a on the amounts that may become due.

(2) The petitioner was initially recruited as a Temporary Engineer with the erstwhile State of Punjab on 4th December, 1957. On re-organisation of the State, his services were permanently allocated to the successor State of Punjab. In due course of time, he was promoted as Executive Engineer on 21st May, 1970/8th December, 1970 and as Superintending Engineer on 14th May, 1985. The petitioner claims that it has been a normal practice in the respondent-department to grant promotion by way of Current Duty