

Before Tejinder Singh Dhindsa, J.

AMRINDER SINGH VIRK AND OTHERS — Petitioners

versus

PUNJAB STATE POWER CORPORATION LTD. AND OTHERS
— Respondents

CWP No.22762 of 2016

November 19, 2020

Constitution of India, 1950—Art. 226— Punjab State Electricity Board Service of Engineers (Electrical) Regulations, 1965—Regl. 10.7 and 16—Proviso 6—Post of Assistant Engineer— Tentative seniority list—Determination of—Held, petitioners cannot be treated as junior to private respondents only on account of belated issuance of appointment letters—In view of judgment of Division Bench of Punjab and Haryana High Court in 2015 (4) SCT 578, action of Corporation treating petitioners as juniors to private respondents arbitrary and in violation of Articles 14 and 16 of Constitution of India—Therefore, seniority list liable to be quashed— Direction to Corporation to grant to petitioners a deemed date of appointment on post of Junior Engineer (Electrical) w.e.f. date first Junior Engineer (Electrical) appointed.

Held, that adverting back to the facts of the present case, petitioners are being treated as junior to the private respondents only on account of belated issuance of appointment letters inspite of (i) having secured a higher merit position at the stage of appointment to the post of Junior Engineer (Electrical); (ii) having been shown senior in the feeder cadre and each one of the petitioners actually being eligible in terms of possessing the requisite qualifications as also the three years experience on the lower post on the date they were promoted to the post of Assistant Engineers (Electrical). Following the dictum laid down in Prem Singh's case (*supra*) and for the reasons recorded herein above, the action of the Corporation treating the petitioners as juniors to the private respondents is held to be patently unjust, unfair, arbitrary and in violation of Articles 14 and 16 of the Constitution of India.

(Para 16)

D.S. Rawat, Advocate, *for the petitioners.*

Navdeep Chhabra, Advocate for PSPCL.

Ambika Bedi, AAG, Punjab.

TEJINDER SINGH DHINDSA, J. (ORAL).

(1) Petitioners are serving on the post of Assistant Engineer under the Punjab State Power Corporation Limited (hereinafter to be referred to as 'the Corporation').

(2) Challenge in the instant petition is to the order dated 05.07.2016 (Annexure P-8) vide which the tentative seniority list dated 03.03.2016 (Annexure P-6) of Degree Holder Technical Subordinates has been finalized and the petitioners have been shown junior to the private respondents. A writ of mandamus is sought for issuance of directions to the Corporation to grant to the petitioners a deemed date of appointment on the post of Junior Engineers (Electrical) w.e.f. the date the first Junior Engineer (Electrical) had been so appointed pursuant to a common selection process.

(3) Brief facts of the case are that the Corporation issued advertisement bearing No.264/2008 inviting applications for filling up 225 posts of Junior Engineers (Electrical). All the petitioners being Degree Holders in engineering and as such, being fully eligible, applied for the post and subjected themselves to the process of selection. The petitioners were duly selected and in the combined merit list of 225 selected candidates finalized by the Centralized Recruitment Committee of the Corporation, the merit position/rank of the petitioners was Sr. No.75, 27, 73, 86, and 122 respectively. Petitioners were issued appointment letters in the month of May, 2010 and they accordingly joined as Junior Engineers (Electrical). It would be apposite to take note that upon selection of the candidates, names were sent by the Centralized Selection Committee to different zones for facilitating the issuance of appointment letters. Names of the petitioners were sent to South Zone whereas names of certain candidates were sent to Central Zone, Patiala. Candidates, who were allotted Central Zone, Patiala were issued appointment letters first in point of time. Resultantly, private respondents herein, who otherwise were lower in merit were issued appointment letters prior in point of time to the petitioners. To be specific, petitioners were issued appointment letters only on 19.05.2010 whereas respondent No.4, Sh. Ravinder Pal Singh, who was ranked at Sr. No.119 in the merit list of the selected candidates i.e. lower in merit to petitioners No.1, 2, and 4, joined as Junior Engineers (Electrical) on

18.05.2010. Likewise, respondent No.17, Sh. Mandeep Singh, who was ranked at Sr. No.145 in the merit list i.e. lower in merit than all the petitioners, joined on the post on 18.05.2010. The Corporation, thereafter on 05.08.2013 issued seniority list of Junior Engineers (Electrical) at Annexure P-3, which was strictly in accordance with the merit position determined at the stage of recruitment. In such seniority list, the petitioners were reflected senior to the private respondents.

(4) Promotion from the post of Junior Engineers (Electrical) is to the post of Assistant Engineers (Electrical) and is governed by the Punjab State Electricity Board Service of Engineers (Electrical) Regulations, 1965 (hereinafter to be referred to as 'the 1965 Regulations'). Regulations 7 and 10 would be relevant and the relevant Extract thereof is reproduced here under:

“RECRUITMENT TO SERVICE.

REGULATION-7. - Recruitment to the Service shall be made by the Appointing Authority by any of the methods indicated below as may be determined in each case:-

(a) In case of posts of Assistant Engineers

(I) By direct appointment as provided in Regulation-9

(II) By promotion as provided in Regulation-10.

(III) By transfer of any officer already in service of

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**REGULATION-10-QUALIFICATIONFOR
APPOINTMENT BY PROMOTION**

(1) TO (6) xxx xxx

(7) 14% of the Cadre Post of A.Es. Shall be reserved for the departmental employee (Technical Subordinate and Drawing Staff) possessing AMIE/Degree in Electrical/Electronics and Communication/ Mechanical/ Instrumentation Control/ Computer Science Engineering and who have completed three years of service in that capacity.

Note: Persons promoted against the above reservation will remain on probation for a period of one year in promoted

rank.”

(5) As per Regulations, 14% posts of Assistant Engineers (Electrical) stand reserved for the departmental employees (Technical, Subordinate and Drawing Staff) possessing AMIE/Degree in Electrical/Electronics and Communication/Mechanical/Instrumentation Control/Computer Science Engineering and who have completed three years of service in that capacity. Being eligible for promotion to the post of Assistant Engineer under the 14% Degree Holders Technical Subordinates quota, the petitioners as also some of the private respondents were promoted to the post of Assistant Engineers (Electrical) vide order dated 29.10.2013 (Annexure P-4). Some of the private respondents were promoted as Assistant Engineers (Electrical) on a subsequent date i.e. vide order dated 30.06.2014 (Annexure P-5). It was after a period of two years of promotion of the petitioners on the post of Assistant Engineers (Electrical) that a tentative seniority list dated 03.03.2016 was issued reflecting such candidates as senior, who had joined the Corporation earlier in point of time on the feeder cadre post and as such had completed three years of service on the post of Junior Engineers (Electrical) prior in point of time. Petitioners immediately filed detailed objections to the tentative seniority list. However, vide impugned order dated 05.07.2016 (Annexure P-8), the seniority list stands finalized ranking the petitioners as junior to the private respondents.

(6) Counsel representing the petitioners has argued that the seniority list dated 05.07.2016 (Annexure P-8) cannot sustain inasmuch as the private respondents have been shown senior to the petitioners despite securing a lower merit position in the merit determined by the Corporation at the stage of selection and appointment to the post of Junior Engineers (Electrical). Further argued that the Corporation had promoted the petitioners as Assistant Engineers (Electrical) over and above the private respondents on the basis of earlier seniority list dated 05.08.2013 (Annexure P-3) relating to the cadre of Junior Engineers (Electrical) in which the petitioners had been shown to be senior as per merit position. The seniority position in the feeder cadre as also promotion of the petitioners to the post of Assistant Engineers (Electrical) have never been challenged by the private respondents and as such determination of seniority in the promoted cadre showing the petitioners to be junior is, illegal and arbitrary.

(7) Upon notice having been issued, a joint reply on behalf of respondents No.1 to 3 has been filed. Counsel for the Corporation has

submitted that seniority as also promotion under the 14% AMIE/B.Tech. Degree Holder quota has to be determined in strict compliance of office order dated 01.07.1992 which was issued to amend Regulation 10.7 of the 1965 Regulations. The Corporation has sought to justify issuance of the impugned seniority list on the strength of Regulation 10.7 and the 6th proviso to Regulation 16 and the same are extracted herein below:

“REGULATION 10.7 - 14% of the Cadre post of A.Es. Shall be served for departmental employees (Technical Subordinates and Drawing Staff) possessing AMIE/Degree in Electrical/Electronics and Communications/Mechanical Instrumentations and Control/Computer Science Engineering and who have completed three years service in that capacity.

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SIXTH PROVISIO – Provided Sixthly that in case two or more members of different categories become eligible for promotion to the rank of AE, on fulfilling the requisite conditions against 14% reservation provided in the said Regulation 10.7, their seniority for and on appointment as AE shall be determined as under:-

a. In order of their acquiring prescribed qualification of AMIE/Degree in engineering, the subordinates who clear the final examination in earlier batch and complete a minimum of three years service will be placed above those fulfilling the two conditions subsequently. **The seniority list on these basis shall be framed as and when the subordinates fulfill these conditions and maintained upto-date.**

b. In case of persons passing the examination in the same batch, in order of their status and scale of pay, the higher paid and of higher status being placed senior.

c. In case of subordinates enjoying equal status, according to their relative seniority in the seniority in the subordinate class to which they belong to and;

d. In case of persons fixed in identical scales of pay, but belonging to different classes, in the order of continuous

length of service in identical scale and if the date of appointment is the same, in order of their age, the older being placed above the younger.”

(8) Counsel for the Corporation would contend that a technical subordinate acquires eligibility for promotion under the 14% quota to the post of Assistant Engineer (Electrical) not only upon acquiring the requisite qualifications i.e. AMIE/ B.Tech. Degree but also upon completion of three years of service on the post previously held by him. It is reckoned that since the private respondents completed such condition of three years on the post of Junior Engineer (Electrical) prior in point of time to the petitioners, they are now being treated as senior in the cadre of Assistant Engineers (Electrical).

(9) Private respondents even though having been served chose not to contest the instant petition and accordingly, vide order dated 24.04.2018, they were proceeded against *ex-parte*.

(10) Counsel for the petitioners and the Corporation have been heard at length and pleadings on record have been perused.

(11) Facts of the case are not in dispute. Petitioners and private respondents herein participated in a common selection process for appointment to the post of Junior Engineers (Electrical) initiated vide advertisement No.264/2008. Petitioners secured a higher merit position as compared to the private respondents. Appointment letters, however, were issued on different dates. This was on account of names of selected candidates having been sent to different zones. Names of the petitioners were sent to South Zone whereas private respondents were allocated to Central Zone, Patiala, where from the appointment letters were issued prior in point of time.

(12) Be that as it may, Condition No.11 was inserted in the appointment letters of all the selected candidates including the petitioners and private respondents herein and which was worded as follows:

“Condition No.11- Seniority of those candidates, whose seniority is yet to be determined, will not be entitled for seniority on account of earlier joining. You will not be entitled seniority on the basis of earlier joining. Your seniority and seniority of other candidates will be decided by the Powercom/ Transcom on the basis of merit decided by Powercom/ Transcom.”

(13) It was in terms of Condition No.11 and the well settled principle of law that seniority of direct recruits is to be prepared as per merit position determined by the Recruiting Agency irrespective of the date of issuance of the appointment letters that the seniority list of Junior Engineers (Electrical) was issued on 05.08.2013 (Annexure P-3) reflecting the petitioners as senior. Petitioners being eligible on account of possessing the requisite qualifications as also the three years experience and acting upon the seniority determined in the feeder cadre, petitioners were promoted as Assistant Engineers (Electrical) vide order dated 29.10.2013. Some of the private respondents were promoted along with the petitioners whereas some were promoted on a subsequent date.

(14) Only on the basis that private respondents have completed three years of service on the post of Junior Engineer (Electrical) prior to the petitioners that the impugned seniority list dated 05.07.2016 (Annexure P-8) has been issued treating them to be senior to the petitioners. In the considered view of this Court, it was only due to the fortuitous circumstance of the names of the petitioners having been allocated to a different zone that the issuance of appointment letters was delayed. It is the Corporation which has to blame for such situation. In any event, it was not the fault of the petitioners as they otherwise had secured a higher merit position. The Corporation under such circumstances ought to have granted a deemed date of appointment to all the candidates on the post of Junior Engineers (Electrical) and who had participated in the same selection process. Corporation for reasons best known to it, has chosen not to do so. Under such circumstances, Rule 10.7 as also the 6th proviso to Regulation 16 of the 1965 Regulations cannot operate to the prejudice of the petitioners while determining seniority.

(15) A similar issue came to be dealt with by a Division Bench of this Court in *Prem Singh and others versus State of Haryana*¹ in such matter, the Haryana Staff Selection Commission had invited applications from eligible candidates for recruitment to the post of Clerks in different departments under the State of Haryana. The advertisement had been issued in the year 1989. A large number of candidates were duly selected and thereafter allotted to different departments. Certain candidates, who otherwise had secured a higher merit position were allotted to certain departments, where there were no

¹ 2015 (4) SCT 578

vacancies and resultantly, their appointments got delayed. On the other hand, candidates, who were lower in order of merit were appointed on a prior date. Under such situation, the candidates, who were higher in merit had approached the writ Court seeking relief and to be treated as senior or at par with other candidates, who even though having been appointed much earlier, but had secured a lower merit position. The writ petition was allowed. LPA having been filed, the Division Bench in *Prem Singh's* case (supra) while affirming the view taken by the learned Single Judge held as follows:

“12. It is undisputed that appellants and private respondents were candidates to the post of Clerk in pursuance to the advertisement issued by the Commission in the year 1989, both appellants and private respondents were in the merit list and the private respondents were more merited than the appellants, they were allotted to different departments. In so far as private respondents are concerned, even though they were allotted to a different department, unfortunately vacancies were not available to accommodate them in the allotted department. Consequently, their appointment process was got delayed at the behest of official respondents. At this juncture, it is to be noted that for no fault of the private respondents, their appointment process was got delayed. In other words, due to communication gap between the Commission and the Departments), the Commission committed a serious error in allotting the private respondents to a Department where vacancies of Clerks were not available, for which the private respondents should not be penalised.

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15. The contention of the appellants that they were appointed earlier to the private respondents, their seniority was settled and they were promoted to the next higher cadre, namely, Accountant/Kanungo (Sales) and there is inordinate delay and latches on part of private respondents, seeking relief in respect of seniority is concerned, is without any merits, firstly, at the instance of department/Government, the private respondents were denied appointment on par with the appellants. Due to fault of the department/Government, the private respondents should not be penalised in denying the service conditions on

par with those who are lessor merited than the private respondents.”

(16) Adverting back to the facts of the present case, petitioners are being treated as junior to the private respondents only on account of belated issuance of appointment letters inspite of (i) having secured a higher merit position at the stage of appointment to the post of Junior Engineer (Electrical); (ii) having been shown senior in the feeder cadre and each one of the petitioners actually being eligible in terms of possessing the requisite qualifications as also the three years experience on the lower post on the date they were promoted to the post of Assistant Engineers (Electrical). Following the dictum laid down in *Prem Singh's* case (supra) and for the reasons recorded herein above, the action of the Corporation treating the petitioners as juniors to the private respondents is held to be patently unjust, unfair, arbitrary and in violation of Articles 14 and 16 of the Constitution of India.

(17) The impugned seniority list dated 05.07.2016 (Annexure P-8) qua the petitioners and private respondents is quashed. Corporation is directed to grant to the petitioners a deemed date of appointment on the post of Junior Engineer (Electrical) w.e.f. the date the first Junior Engineer (Electrical) had been so appointed pursuant to the same very selection process initiated vide advertisement No.264/2008. Fresh seniority list in the cadre of Assistant Engineers (Electrical) be prepared thereafter and issued within a period of six weeks from the date of receipt of a certified copy of this judgment.

(18) Writ petition is allowed in the aforesaid terms.

Ritambhra Rishi