



CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Puneet Gupta, Advocate, for the petitioner(s)
in CWP-6084 and 14140 of 2017.

Mr. Prateek Pandit, Advocate, for the petitioner(s)
in CWP-6341, 6771 and 12848 of 2017.

Mr. Rahul Rampal, Addl. Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. By this common order, five writ petitions, the details of which have been given in the heading, are being disposed of as all these petitions involve the same question of law on similar facts.

2. In the present bunch of writ petitions, the claim of the petitioner(s) is that an employee junior to the petitioner(s) in the cadre of Sub Divisional Engineer namely Gurmeet Singh was granted promotion to the post of Executive Engineer w.e.f. 23.06.2016 i.e. the day on which he retired hence, the petitioner(s) who are senior to Gurmeet Singh, are also entitled for promotion to the post of Executive Engineer from the date Gurmeet Singh was promoted along with all consequential benefits as the petitioner(s) were in service as on 30.06.2016.

3. Learned counsel for the petitioner(s) submits that there were 43 posts which were available for promotion from the post of Sub Divisional Engineer to that of Executive Engineer. The Departmental Promotion Committee (DPC) meeting was held on 15.02.2016 for considering the claim of eligible employees and DPC made recommendations qua 42 employees on 15.02.2016 against 43 posts of Executive Engineer available.

4. Learned counsel for the petitioner(s) submits that as the respondents were not taking any action for implementation of the DPC's

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recommendation dated 15.02.2016, Gurmeet Singh, who was to attain the age of superannuation on 30.06.2016, filed a writ petition being CWP No.11080 of 2016, which was disposed of by the Coordinate Bench of this Court on 16.06.2016 directing that the recommendations of the DPC dated 15.02.2016 be finalized within a period of one week from the receipt of copy of this Court.

5. As the respondents did not comply with the said order, Gurmeet Singh filed a contempt petition being COCP No.1455 of 2016 and in order to come out of the contempt, Gurmeet Singh was promoted as Executive Engineer w.e.f. 23.06.2016.

5. The claim of the petitioner(s) in the present petitions is that in the seniority list, Gurmeet Singh was junior to the petitioner(s) but he was promoted in pursuance to the recommendations of DPC dated 15.02.2016 hence, the petitioner(s) who are senior could not have been ignored for promotion as on 30.06.2016 hence, they are entitled for promotion to the post of Executive Engineer from the date the junior Gurmeet Singh was promoted.

6. Learned counsel for the respondents, on the other hand, submits that the DPC recommendations dated 15.02.2016 was not accepted and by a note dated 31.03.2016, the DPC's recommendations dated 15.02.2016 were kept in abeyance/cancelled hence, the claim that the petitioner(s) should be promoted in pursuance to the DPC recommendation dated 15.02.2016 is incorrect.

7. Learned counsel for the respondents however, concedes that in case of Gurmeet Singh, whose name was also recommended by the DPC dated 15.02.2016 and keeping in view the order passed by the Coordinate

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Bench of this Court in CWP No.11080-2016 and in COCP No.1455 of 2016, he was promoted to the post of Executive Engineer w.e.f. 23.06.2016.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

9. It is a settled principle of law that no junior can be promoted in preference to the senior in case on the date when the junior is promoted, in case the senior employee is very much in service and fit for promotion. In the present case, all the petitioner(s) were very much in service as on 23.06.2016 either on extension or yet to attain the age of superannuation and were declared fit for promotion by the DPC on 15.02.2016.

10. Learned counsel for the respondents has not been able to dispute the said fact.

11. Once, on the basis of the same DPC recommendation dated 15.02.2016, Gurmeet Singh has been promoted though under contempt, the said DPC recommendations dated 15.02.2016 having been complied with by the respondents, the recommendation of DPC dated 15.02.2016 became operative. In case, the said recommendations dated 15.02.2016 of the DPC finding the petitioner(s) suitable along with Gurmeet Singh had been made operative qua Sh. Gurmeet Singh, it cannot be said that the said DPC recommendations cannot be made applicable in case of petitioner(s), when senior to Gurmeet Singh.

12. Further, the argument of the learned counsel for the respondents that the DPC dated 15.02.2016 were cancelled or kept in abeyance, has been dealt with by the contempt Court wherein, a finding has been recorded that no competent authority has passed such order keeping the DPC recommendation dated 15.02.2016 in abeyance. The said finding

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has not been proved to be incorrect even in these proceedings as no order keeping the DPC recommendations in abeyance passed by the competent authority, has been brought on record. Relevant portion of the order passed by the contempt Court qua the said fact is as under:-

“ Learned State Counsel referring to the file brought today by the officials of Respondent No.2 submitted that on 31.03.2016 a note was put up for reconstitution of the DPC. In as much as a decision had already been taken long prior to the date of the order passed by this Court on 16.06.2016 as regards the outcome of the DPC, no contempt would lie, it was urged by him.

I find that there was no specific reference in the reply filed by Respondent No.2 in the Writ Petition that there was any decision taken on 31.03.2016 to reconstitute the DPC that was held on 15.02.2016. Even otherwise, it is found that no authority had taken a decision on 31.03.2016 to reconstitute the DPC held on 15.02.2016. Learned Senior Counsel appearing for the writ petitioner on perusal of the note prepared by the Superintendent on 31.03.2016 brings to the notice of the Court that it was only a note prepared by the Superintendent and no authority had passed any order thereon that the DPC held on 15.02.2016 would be reconstituted.”

13. Keeping in view the totality of the circumstances when the recommendations of the DPC dated 15.02.2016 has been made applicable qua Gurmeet Singh, the same has to be made applicable qua all the employees, who were senior to Gurmeet Singh and their names have already been recommended by the DPC being fit for promotion to the post of Executive Engineer.

14. Keeping in view the totality of the circumstances, the respondents are directed to notionally promote the petitioner(s) as Executive

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Engineer with effect from the date Gurmeet Singh was promoted i.e. 23.06.2016. The petitioner(s) will not be entitled for any salary for the period of notional promotion as Executive Engineer, the pensionary benefits of the petitioner(s) will be revised by treating them as an Executive Engineer on the date of retirement by notionally calculating the pay which such petitioner(s) would have drawn after the grant of the promotion as Executive Engineer w.e.f. 23.06.2016. The revised pensionary benefits will be admissible to such petitioner(s) by recalculating the last pay drawn in the cadre of Executive Engineer keeping in view the order passed hereinbefore and the difference in the pensionary benefits which the petitioner(s) will get upon being promoted as Executive Engineer from 23.06.2016 including the higher pension after adjusting the amount already paid, will be released in favour of the petitioner(s) within a period of four months from the date of receipt of copy of this order.

15. No further argument was raised.
16. The present writ petitions are allowed in above terms.
17. Civil miscellaneous application pending if any, also stands disposed of.
18. A photocopy of this order be placed on the file of other connected cases.

July 28, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No