

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.NO.060/00433/2017

Orders pronounced on: 27.07.2018
(Orders reserved on: 13.7.2018)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

Paramjit Karwal S/o Sh. Gurdip Chand, Aged 55 years (Group 'A'),
working as Executive Engineer (HQ), O/o Chief Engineer, U.T.
Chandigarh.

Applicant

By: **Mr. Rohit Seth, Advocate.**

Versus

1. Union of India through the Secretary to the Government of India,
Ministry of Home Affairs, New Delhi.
2. Union Public Service Commission through its Secretary, Dholpur
House, Shahjahan Road, New Delhi.
3. Chandigarh Administration through its Administrator, Union
Territory, Secretariat, Sector-9, Chandigarh.
4. Union Territory, Chandigarh through its Advisor, Union Territory,
Secretariat, Sector-9, Chandigarh.
5. Home Secretary, Chandigarh Administration, Union Territory,
Secretariat, Sector-9, Chandigarh through Joint Secretary Home,
U.T., Chandigarh.
6. Finance Secretary-cum-Secretary Engineering Department, U.T.
Secretariat, Sector 9, U.T. Chandigarh.
7. Chief Engineer, Engineering Department, U.T Civil Secretariat,
Sector – 9, Chandigarh.

Respondents

By : **Mr. Aseem Rai, Advocate** for Respondents No.3 to 7.
None for other respondents.

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of impugned order dated 10.4.2017 (Annexure A-1), vide which his claim for treating the "notional period of promotion" as Executive Engineer (Electrical) as "actual experience", for the purpose of promotion as Superintending Engineer (Electrical) has been declined and for a declaration that even notional promotion has to be treated as "working as such" (actual work experience), for the purpose of promotion to higher post and grant him all consequential benefits from due date.

2. By and large, the facts of the case are not at all in dispute and can be summed up briefly. The applicant, while working as Sub Divisional Engineer (Electrical), was involved in a criminal case in FIR No. 3 dated 26.10.1998. A meeting of the Departmental Promotion Committee (DPC) was held on 30.1.2006, in which case of the applicant for promotion to the post of Executive Engineer (Electrical) was considered but was kept in 'sealed cover'. A charge sheet was also issued on 20.2.2007, in which he was exonerated on 21.8.2009. Though, he was found fit for promotion to the post of Executive Engineer (Electrical) by DPC in 2006, yet competent authority ordered to wait for the finalization of criminal case. He was acquitted in criminal case vide order dated 12.12.2013 by Additional Sessions Judge, Chandigarh. An appeal Crl. Misc. No. 14817 of 2014 in CRM-A-759-MA of 2014, against aforesaid order, is pending in Hon'ble Jurisdictional High Court but there is no stay. As per departmental guidelines, in such like cases, one is entitled to benefit of acquittal etc. Ultimately, he filed O.A. No. 060/00343/2015 which was disposed of on 23.4.2015, with a

direction to the respondents to take a decision on claim of the applicant and consequently, the respondents promoted him as Executive Engineer (Electrical) w.e.f. 31.1.2006 by passing an order in 2016.

3. The next promotion from the post of Executive Engineer (Electrical) is to the post of Superintendent Engineer (Electrical), which is governed by Punjab Service of Engineers (Electrical Wing), Department of Public Works (B&R Branch) Group 'A' Service Rules, 2005 (Annexure A-6). The qualification and experience for the post provided in the rules is as under :-

"From amongst the Executive Engineers, who possess a degree in Engineering in Electrical or a degree of AMIE from a recognized university or Institution and **who have an experience of working as such for a minimum period of 6 years**"

4. The applicant having been promoted as Executive Engineer (Electrical) w.e.f. 31.1.2006 (Annexure A-3), on notional basis, on opening of sealed cover, vide order dated 11.1.2016 (Annexure A-3), claims that his promotion from 31.1.2006, has to be treated as regular one for all purposes and he became eligible for promotion to the post of Superintending Engineer (Electrical), a long time back, as he is deemed to have the "experience of working as such for a minimum period of 6 years". His representation dated 30.5.2016 (Annexure A-4) for promotion as Superintending Engineer (E) since 31.3.2015, when a vacancy became available therefor, was rejected, vide impugned order, Annexure A-1. On the other hand additional charge of post has been given to his junior vide order dated 18.5.2015 (Annexure A-5). Hence, the O.A.

5. On notice, the contesting respondents No. 3 to 7 entered appearance and contested the claim of the applicant by filing a reply. They plead that since the applicant has not actually worked on the post of Executive Engineer (Electrical) since 2006, and actually promoted

only in 2016, so he is not even eligible as he does not have six years of "experience of working", and as such they have prayed for dismissal of the O.A.

6. We have heard the learned counsel for the parties at length and examined the pleadings on the file.

7. Learned counsel for the applicant vehemently argued that since the applicant had been promoted in 2016, but retrospectively on notional basis since 2006, so his experience has to be counted for all purposes, including actual working experience, since 2006 itself, whereas learned counsel for the respondents argued that one can gain experience of a post only if he works and "notional promotion" cannot be treated as equivalent to "actual promotion/working" on a post.

8. We have given a thoughtful consideration to the entire matter and arguments advanced by learned counsel for both sides.

9. A conjunctive perusal of the pleadings of the parties would disclose that the recruitment rules for promotion to the post of Superintending Engineer (E), are very clear, that promotion is to be made from amongst the "Executive Engineers", who possess a degree in Engineering in Electrical or a degree of AMIE from a recognized university or Institution and who have "an experience of working as such (Executive Engineer) for a minimum period of 6 years. It is not in dispute that the applicant has been promoted as Executive Engineer in 2016, by opening sealed cover, but since 2006 itself, on notional basis. So, the short question to be answered by us is, as to whether the applicant can claim that his notional promotion would provide him eligibility of 6 years of working as such, on actual basis or not?.

10. The words used in the rules, extracted above, are that one ought to have "experience of working as such i.e. Executive Engineer for a

minimum period of 6 years". This issue is in fact no longer res-integra and stands settled. The question, as to whether notional promotion, can be compared to "experience of working" or actual working, has been set at rest and we are no longer required to delve over the issue. The Hon'ble Jurisdictional High Court in the case of **SHAMSHER SINGH VS. HIGH COURT OF PUNJAB AND HARYANA ETC.** 2010(2) SCT, 533, was seized of the similar issue and held as under :-

"In this case, the relevant rule talks about the "experience as such for a period of 3 years", but the such experience, he did not have and all that the office order issued pursuant to the direction of the Hon'ble Chief Justice was that he was entitled to the monetary benefits and was to be treated as period spent on duty for all purposes and intents. In the present context, it could be counted as service for the purpose of reckoning the pension but it cannot, by any stretch of imagination be understood as providing to the petitioner an experience which the rules required. Rejection of his representation, in my view, therefore, accords with the relevant rules and there is no scope for affording to the petitioner the relief which he seeks in the writ petition".

So, the term "experience as such" as used in the Recruitment Rules involved in this case was used word to word in that case also and the Hon'ble High Court held that working on notional basis, by any stretch of imagination, cannot be understood to mean an experience which the rules required.

11. The Hon'ble High Court relied upon decision of Hon'ble Supreme Court in the case of **UNION OF INDIA & OTHERS VS. M. BHASKAR & OTHERS**, 1996 (4) SCT 57, and has held as under :-

"The decision of the Hon'ble Supreme Court in the above case is instructive in one way, for it deals with the situation more akin to the position that obtains before us now. In the said judgment, the Court dealt with the case of eligibility for promotion to a higher post a condition of completion of two years experience in the next lower grade. The Court found that in a case where the rules provides for relevant experience in a lower grade but where he could not have gained experience prior to the date when he had joined pursuant to an order, the mere fact of his promotion in a lower grade that was made

notionally could not be taken to mean that he started gaining experience from that day, because for gaining experience, one has to work. Notional promotions, the Hon'ble Supreme Court held, were given to take care of some injustice inter alia because some juniors had come to be promoted earlier and a person who is promoted to a higher grade could not gain experience from the date of notional promotion."

12. Considering the observations of the Hon'ble Jurisdictional High Court in the case of Shamsheer Singh (supra) and view taken by Hon'ble Apex Court in the case of M. Bhaskar (supra), we have no hesitation in holding that the notional promotion of the applicant from 2006 as Executive Engineer (E), on opening of sealed cover procedure in 2016, would not afford him eligibility of having working as such, on that post, and, therefore, his claim has rightly been rejected by the respondents vide, Annexure A-1, which is in accordance with the rule formulation.

13. Secondly, the Rules are very clear and have to be interpreted in the same manner and purpose for which these have been framed. There is no challenge to the words "working as such" used in the rules, as the term would mean actual working of an individual on a post. In that eventuality, even otherwise, the applicant has no case at all.

14. Now we proceed to deal with the decisions relied upon by Learned counsel for the applicant. He placed reliance on decision of Hon'ble Apex Court in the case of **UNION OF INDIA VS. K.V. JANKIRAMAN**, 1991(3) SCT, 317 and Hon'ble Punjab and Haryana decision in CWP No. 1328 of 2011 - **INSPECTOR BALJEET SINGH VS. STATE OF HARYANA & OTHERS**, CWP No.1328 of 2011 decided on 1.8.2013, to argue that when an employee is completely exonerated, meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the

salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary / criminal proceedings and as such, on opening of sealed cover, one would be entitled to promotion also from the date of promotion of his junior etc. Similarly, in **UNION OF INDIA & ANOTHER VS. J. SANTHANAKRISHNAN & OTHERS**, C.A. No. 1655 of 1997 decided on 27.2.2003, it has been held that by virtue of such notional date of promotion, the promotees will not be entitled to any arrears of salary but for other purposes, including seniority, it would be counted. Similarly, Hon'ble Kerala High Court in **VALSALA KUMARI DEVI VS. STATE OF KERALA & OTHERS**, 2016 (2) KLT 163, has held that "when the petitioner is deemed to be in service from 01.08.2000, the same can be counted for reckoning 6 years minimum service".

15. He presses into service decision of Hon'ble Punjab & Haryana High Court in **STATE OF PUNJAB ETC. VS. A.P. SHARMA & OTHERS**, LPA No. 352 of 2014 etc. decided on 31.8.2016, in which it was held that "where the decision – making authority consciously decides not to give effect to a decision retrospectively but if it is bound to affect the antecedents of such decision, it is held to have 'retroactive effect' but where the competent authority itself decides to give effect to its decision from a back date, such decision becomes 'retrospective'".

16. He went to cite decision of Hon'ble Apex Court in **UNION OF INDIA & OTHERS VS. M. BHASKAR AND OTHERS**, 1996 SCC (L&S), 967, has held that "The mere fact that his promotion in Grade II was notionally made effective from 11-10-1988 cannot be taken to mean that he started gaining experience from that day, because to gain experience one has to work. Notional promotions are given to take care of some injustice, inter alia, because some junior has come to be

promoted earlier. But we entertain no doubt that the person promoted to higher grade cannot gain experience from the date of the notional promotion; it has to be from the date of the actual promotion". To say the least, this decision does not help the applicant and in fact goes against him.

17. He also relied upon decision of Hon'ble Punjab and Haryana High Court in **SHAMSHER SINGH** (supra) in which it was held that "On a plea for re-consideration of the decision, by the order of the then Hon'ble the Chief Justice, the order of compulsory retirement was recalled by order dated 24.04.2006 and he was permitted to rejoin the establishment. By a subsequent proceeding on 22.02.2007, it was ordered that the intervening period from 05.10.2003 when he was compulsory retired to 25.04.2006, when he actually re-joined the service pursuant to the order made by the Court, the whole period would be treated as "period spent on duty for all purposes and intents and that he would be paid full pay and allowances" for the said period. He has also cited decision of Hon'ble Punjab and Haryana High Court in **BHAGAT RAM & ANOTHER VS. BHARAT SANCHAR NIGAM LIMITED & OTHERS**, CWP No. 16527 of 2004 (O&M) decided on 3.2.2016, in which question was whether the period of notional promotion should be treated as regular service for grant of Lateral Advancement Benefit. It was held that "By no stretch of imagination, it can be concluded that the period of notional promotion is to be treated as actual regular service of an employee". The decisions and extraction thereof relied upon by learned counsel for the applicant, do not touch upon the bone of contention involved between the parties and as such are clearly distinguishable on facts and law, more so in view of the

decision of the Hon'ble Jurisdictional High Court in the case of Shamsheer Singh (supra).

18. In the background of aforesaid discussion, this O.A. is found to be bereft of any merit and is dismissed accordingly. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place : Chandigarh.
Dated: 27.07.2018

HC*

