

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...  
**ORIGINAL APPLICATION NO.060/00998/2018**

**Chandigarh, this the 17<sup>th</sup> day of December, 2018  
(Reserved on: 04.12.2018)**

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

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Shamsher Singh Hooda, aged 55 years, son of Sh. Amar Singh Hooda, presently working as Assistant Engineer (Group B) Post, RAC Division and currently holding the Current Duty Charge (CDC) of Hospital Engineer, Department of Hospital Engineering & Planning, PGIMER, Sector 12, Chandigarh, resident of # 53, Sector 12-A, Panchkula – 134109.

**....Applicant**

**(Present: Mr. Vikas Chatrath, Advocate)**

**Versus**

1. Post Graduate Institute of Medical Education and Research, Sector 12, Chandigarh through its Director- 160012.
2. Superintending Hospital Engineer, Deptt. Of Hospital Engineering and Planning, PGIMER, Chandigarh – 160012.
3. Sanjeev Sharma, presently working as Assistant Engineer, RAC Division, Department of Hospital Engineering & Planning, PGIMER, Sector 12, Chandigarh – 160012.

**.... Respondents**

**(Present: Mr. Amit Jhanji, Advocate for Resp. No. 1 & 2  
Mr. D.R. Sharma, Advocate, for Resp. No. 3)**

**ORDER**

**SANJEEV KAUSHIK, MEMBER (J)**

1. The applicant assails the order dated 16.08.2018, issued by the respondents, whereby they have withdrawn the current duty charge of the post of Hospital Engineer (RAC) from him and given it to Respondent No. 3 with immediate effect, in addition to his own duties. He has also sought issuance of a direction to the respondents to consider his claim for regular promotion to the post of Hospital Engineer (RAC), with all consequential benefits, with effect from the date when he was given current duty charge of the

said post, being senior most available fit candidate in the feeder cadre of Assistant Engineer.

2. Before us, there is no material dispute to the facts narration. The applicant initially joined the respondent department Post Graduate Institute of Medical Education & Research (for brevity, PGIMER) as Junior Engineer, Refrigeration and Air Conditioning (in short RAC) on 13.07.1989 on regular basis. He was promoted to the post of Assistant Engineer w.e.f. 21.06.2010. The next promotional post is of Hospital Engineer (RAC), and as per the Recruitment Rules, governing the PGIMER Chandigarh, an Assistant Engineer having seven years of service in the grade with Bench mark 'Good' is eligible for that post. It is the case of the applicant that despite their being availability of eligible candidates, the respondents are not making regular promotion to the post of Hospital Engineer (RAC) and are giving only current duty charge of the post. Vide order dated 09.03.2016, the applicant had been given current duty charge w.e.f. 10.03.2016 and he continued to hold that charge, but unfortunately vide order dated 16.08.2018, the same was withdrawn from him and has been given to Respondent No.3, who is next junior to him. Against that order, the applicant is before this Court.

3. Applicant has taken various grounds to challenge the validity of the impugned order withdrawing current duty charge, firstly that it is in violation of the principle of natural justice as the same has been passed without putting him on notice. Secondly, that if there is anything against the applicant, then before passing the impugned order, he should have been given an opportunity to explain himself. Thirdly, that no efforts have ever been made by

the respondents to fill up the post on regular basis, and therefore, it is liable to be set aside.

4. In support of the above pleas, Mr. Vikas Chatrath, learned counsel for the applicant submitted that in terms of law laid down by the Hon'ble Jurisdictional High Court in the case of **Shingara Chand and Others Vs. Punjab Water Supply & Sewerage Board and Others** 2002 (2) SCT 195, the impugned order is liable to be set aside, as the respondents have given the current duty charge to the Respondent No. 3, ignoring the right of the applicant, who is senior most in the cadre. He has also placed reliance, in this behalf, on the judgments passed by the Jurisdictional High Court in the cases of **Anand Parkash Vs. State of Punjab and Others**, 2005 (3) SCT 531 and **Tarjit Singh and Others Vs. State of Punjab and Others**, 2006 (1) SCT 86. He further alleged that the action of the respondents in passing the impugned order without putting the applicant on notice is in violation of principle of natural justice.

5. The official respondents have filed written statements, contesting the claim of the applicant. They have also moved an application for vacation of stay granted by this Court. The respondents have not disputed the fact that the applicant is senior to Respondent No. 3. They, however, submitted that at the first instance, the current duty charge of the post in question was given to the applicant, vide order dated 09.03.2016, but immediately thereafter, they received various complaints about the work and conduct of the applicant holding that post, therefore, it was decided by the Competent Authority that since the applicant had been irresponsible and negligent in performing his duties, got

delayed the assigned projects and failed in discharging his duties efficiently, and could not improve himself, despite issuance of warning, it would be in the public interest to withdraw the current duty charge from him. Then the current duty charge of the post was given to Respondent No. 3, who is second senior most in the feeder cadre. On the basis of the above, it is submitted that the plea of the applicant that current duty charge has to be granted to the junior instead of senior most person is not tenable. No law mandates that an inefficient senior most person has to be given the current duty charge. It is further submitted that even the claim of the applicant for promotion from due date when he was given current duty charge is also against the rules, because at that point of time, he was not eligible for the promotional post in terms of the Recruitment Rules, thus, this prayer deserves to be disallowed. It is further elaborated that the applicant was promoted as Assistant Engineer w.e.f. 21.06.2010 and he became eligible for next promotion w.e.f. June, 2017 whereas he was given current duty charge w.e.f. 09.03.2016, therefore, it cannot be said that the applicant was eligible for promotion at the time when he was given current duty charge of the post of Hospital Engineer (RAC). With regard to his claim of regular promotion, it is submitted that as and when the DPC meeting is conducted, the case of the applicant will be considered for regular promotion, in terms of the relevant rules.

6. The private respondent has also filed written statement, on the same line of defence.

7. Heard learned counsel for the parties.

8. Learned counsel for the argued what is pleaded in his O.A.

9. Mr. Amit Jhajhi, learned counsel for the official respondents vehemently argued that the present O.A. deserves to be dismissed being devoid of any merit and submitted that the applicant misled this Court to obtain the interim order in his favour. It is, therefore, prayed that since the applicant has not come to this Court with clean hands, therefore, the O.A. be dismissed with costs.

10. Similar arguments have been advanced by Mr. D.R. Sharma, learned counsel for the private respondent.

11. We have given thoughtful consideration to the entire matter and perused the pleadings on record.

12. A conjunctive perusal of the pleadings leaves no manner of doubt that the applicant is the senior most Assistant Engineer (RAC) in the respondent organization. It is also not in dispute that, at the first instance, vide order dated 09.03.2016, the applicant has been given the current duty charge of the post of Hospital Engineer (RAC). After having received various complaints regarding work and conduct of the applicant and finding him negligent attitude towards work and unsatisfactory performance, delayed assignments, the Competent Authority has to take decision in the public interest to withdraw the current duty charge from him, in terms of O.M. dated 16.04.2015 clarifying FR-49 and give the same to Respondent No. 3, the next senior most person in the feeder cadre. Thus, it cannot be said, as alleged by the applicant, that current duty charge can never be given to once his work has been evaluated by the department that he was not performing his duties diligently, therefore, we do not find any fault with the action of the respondents in giving current duty charge to Respondent No. 3, pending filling up the promotional post on regular basis. Since

the applicant has become eligible for the promotional post w.e.f. June, 2017 and prior to that the respondents have already held DPC meeting and for that reason it could not be materialized, therefore, we deem it appropriate, at this stage, to direct the official respondents to expedite the matter with regard to filling up the promotional post of Hospital Engineer (RAC) and consider all the eligible persons for promotion in terms of relevant rule formulation.

13. The O.A. is disposed of in the above terms.

**(P. GOPINATH)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**Dated: 17.12.2018**

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