
(2002) 11 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Criminal M. No. 2030 of 2002

N.S. Chauhan and Another

APPELLANT

Vs

P.S.E.B and Others

RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151
Constitution of India, 1950 — Article 15(4), 16, 16(4A), 226
Punjab State Electricity Board Service of Engineers (Electrical/Civil) Recruitment Regulations, 1965 — Regulation 16

Citation : (2003) 2 ILR (P&H) 211

Hon'ble Judges : V.K. Bali, J; Amar Dutt, J

Bench : Division Bench

Advocate : P.S. Patwalia, Rajiv Atma Ram and Kamaljeet Bawa, in C.M No. 6576 of 2002, for the Appellant; H.L. Sibal V.K. Sibal, for Board and Govind Goel, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—A long drawn litigation between reserved category of Scheduled Caste/Scheduled Tribes in the matter of accelerated promotion, on the one hand and general category, on the other, culminated into a judgment of Hon"ble Apex Court in Ajit Singh and Ors. v. The State of Punjab and Ors. JT 1999(7) S.C. 153. The guidelines, styled in the written statement under the reservation policy framed by the Punjab Government (Annexure P-7), for the sake of implementation of the judgment of Hon"ble Supreme Court in Ajit Singh Janjua-II's case (supra), came into being on 22nd October, 1999. On the heels of guidelines. Annexure P-7, the Government of India, brought about the 85th amendment in the Constitution on 4th January, 2002, with effect from 7th June, 1995. This amendment, it appears, has once again opened flood gates for yet another round of litigation in the matter of accelerated seniority by general and reserved categories, the end of which does not appear to be in sight in near future. In the present writ, it is the reserved category which is aggrieved for non-

implementation of the 85th amendment of the Constitution, which, indeed, had come into force with effect from 17th June, 1995.

2. Sarvshri N.S. Chauhan and Darshan Kumar Kaler, Deputy Chief Engineers, Punjab State Electricity Board, through present petition filed by them under Article 226 of the Constitution of India, which was amended during its pendency, seek issuance of writ in the nature of mandamus directing the Punjab State Electricity Board, first Respondent herein, to grant them seniority in the cadre of Superintending Engineer with effect from the date they were actually promoted as such in light of Article 16(4A) of the Constitution of India as it now stands, similarly, it was being done by the Respondent Board prior to the judgment of the Supreme Court in *Ajit Singh Janjua-II* (supra). The Petitioners further pray that their seniority be restored and thereafter they be promoted to the post of Chief Engineer. They also pray for quashing Annexure P-8 by issuing a writ in the nature of certiorari, whereby the private Respondents have been promoted as Chief Engineer without considering their case.

3. Brief facts, on which the reliefs detailed above, as projected in the writ, are sought to rest, reveal that Petitioner No. 1 joined the service of the Board as Apprentice Engineer in July, 1972. His services were thereafter regularised as Assistant Engineer in January, 1973. Thereafter, he was promoted as Assistant Executive Engineer and then to Class-I service as Executive Engineer in October, 1983. He belongs to the reserved category of Scheduled Caste. He was promoted to the post of Executive Engineer against reserved point and was once again promoted as Superintending Engineer against the reserved roster point meant for the members of the Scheduled Castes,--vide orders dated 8th June, 1994 and he joined as such on 20th June, 1994. Petitioner No. 2, who also belongs to reserved category of Scheduled Caste, was appointed as Assistant Engineer in the Board on 22nd September, 1972. He was promoted as Assistant Executive Engineer and still further as Executive Engineer in September, 1984 against the reserved point. He was once again promoted as Superintending Engineer against reserved roster point,--vide office order dated 13th June, 1995 and he took over the charge of the post of Superintending Engineer on 15th June, 1995. It is further the case of Petitioners that gradation list of Engineer-in-Chief, General Manager, Chief Engineer, Superintending Engineers and Executive Engineers as on 30th September, 1995 was issued in which name of Petitioner No. 1 figured at Sr. No. 87 whereas name of Petitioner No. 2 figured at Sr. No. 107. It is stated that there was litigation pending in the Hon'ble Supreme Court between the members of Reserved and General Categories pertaining to seniority. The Constitution Bench of Hon'ble Supreme Court decided the matter in *Ajit Singh Janjua-II*'s case (supra). Insofar as the said judgment is relevant to the controversy in issue, it is the case of Petitioners that it was held by the Hon'ble Supreme Court that under Article 16 of the Constitution of India only benefit of promotion could be granted to a member of the reserved category and not consequential benefit of seniority. Resultantly, it was concluded that the member of reserved category, even if promoted earlier, would have to be pushed down in

seniority below a member of the general category who was otherwise senior to him in the original cadre but lost out only on account of accelerated " promoted of the member of the reserved category. It is then pleaded that the seniority list of Superintending Engineer (Electrical) as on 30th September, 2000 was issued. Alongwith the seniority list aforesaid, a separate seniority of officers belonging to reserved category was also issued in which name of Petitioner No. 1 figured at Sr. No. 4 whereas name of Petitioner No. 2 figured at Sr. No. 6. On 19th July, 1969, Government of Punjab issued instructions with regard to fixation of seniority of those scheduled caste and backward class persons who were appointed on reserved points at the time of initial recruitment but, after the judgment of Hon''ble Supreme Court in Ajit Singh Janjua-II's case (supra), the Government issued instructions on 22nd October, 1999 (Annexure P-7),--vide which the earlier instructions issued by the State Government dated 19th July, 1969 were withdrawn. This led to the filing of present petition, which, as mentioned above, was amended when order, Annexure P-8 was passed whereby seven persons were promoted to the post of Chief Engineer. It is the case of Petitioners that they had submitted representations, Annexures P-4 and P-5 on 22nd January, 2002 and 23rd January, 2002 but the same were not considered and order, Annexure P-8 was passed.

4. On the brief facts, as stated above, it is the case of Petitioners that after the Constitution 85th Amendment, seniority of Petitioners as Superintending Engineers has to be reckoned with effect from the date they had joined as Superintending Engineers and they are entitled to the consequential seniority as a result of their promotion on the basis of reservation policy and further that the Board is under a legal obligation to implement the constitutional amendment and, thus, restore the seniority of Petitioners. The second limb of the case of the Petitioners pertains to interpretation of Regulation 16 of the Punjab State Electricity Board Service of Engineers (Electrical) Recruitment Regulations, 1965 (hereinafter referred to as the Regulations of 1965). It is the case of the Petitioners that seniority is to be determined by the length of service and, inasmuch as, on the post of Superintending Engineer they have more length of service, they should be promoted to the post of Chief Engineer in precedence to the promotion to the general category candidates. Some other ancillary points have also been raked up in the petition but, inasmuch as no endeavour has been made to succeed in the cause of Petitioners based thereon, there is no need to make any mention of the same.

5. Civil Misc. No. 6576 of 2002 under Order 1 Rule 10 of the CPC was filed on behalf of G.S. Sandhu and seven others, mentioned in the said application. Prayer in the said application was to implead the applicants as party-Respondents on the ground that as many as nine vacancies for the post of Chief Engineer are going to fall vacant on 31st May, 2002 and if the Petitioners might succeed in the present case, their cause shall be adversely affected. We would have certainly made the applicants as party-Respondents and asked them to file written statement but, after hearing arguments addressed on behalf of the

Petitioners, Respondent Board as also the counsel representing the applicants, we are of the view that no useful purpose shall be served in arraying the applicants as party-Respondents as, the cause of the applicants is adequately represented and in ultimate analysis, for the reasons that shall follow, we are of the view that this writ deserves to be dismissed.

6. Petitioners filed Civil Misc. No. 7142 of 2002 u/s 151 of the CPC with a prayer that the State of Punjab be impleaded as party-Respondent. In paragraph 3 of the said application, it has been pleaded that it is appropriate to know the stand of the Government, i.e., as to whether, after 85th amendment of the Constitution, the Government is likely to issue instructions in tune with the said amendment. While pressing Civil Misc. aforesaid, Mr. Patwalia, learned Counsel for the Petitioners, vehemently argued that the Government of Haryana has either already issued instructions or is likely to issue the same in couple of days. That being his positive stand, when the matter came up for hearing on 15th March, 2002, following order was passed in CM No. 7142 of 2002:

Notice to AG, Punjab.

Mr. J.S. Narang, Deputy Advocate General, Punjab, who is present in court, accepts notice of the Civil Misc. on the asking of the Court. He has been specifically asked to apprise the Court if the Government has issued instructions providing seniority of accelerated promotion pursuant to 85th Amendment to the Constitution of India. Adjourned to 20th March, 2002.

(7) Pursuant to directions contained in our order dated 15th March, 2002, Government has brought on record a communication addressed to the Advocate General by the Special Secretary, Personnel, relevant part whereof reads thus:

Subject: CWP No. 2030 of 2002 N.S. Chauhan v. Punjab State Electricity Board and Ors.

The matter with regard to issue of instructions in the light of 85th amendment of the Constitution of India is under consideration of the State Government and the decision in the matter is yet to be finalised.

8. Yet another communication, copy whereof has been endorsed to Shri J.S. Brar, Deputy Advocate General, Punjab by Shri J.R. Kundal, I.A.S., Department of Social Security and Women and Child Development, has also been placed on record, relevant part whereof also reads thus:

Subject: CWP No. 2030 of 2002 N.S. Chauhan v. P.S.E.B. and Ors.

I would like to inform your goodself that no instructions have been issued by the department of personnel regarding providing seniority on accelerated promotions pursuant to 85th amendment of the Constitution of India. This may kindly be brought to the notice of Shri J.S. Brar, Deputy Advocate General, Punjab, so that the Hon'ble Punjab and Haryana High Court could be informed on the next date of hearing i.e., 20th March, 2002.

9. The cause of Petitioners has been seriously opposed on the dint of two separate but indential written statements, one filed on behalf of the official Respondents 1 and 2 and the other by private Respondents 3 to 9. It has, inter-alia, been pleaded in the written statement filed on behalf of Respondents 1 and 2 that the Respondent Board follows the reservation policy framed by the Punjab Government, Annexure P-7. Article 16(4A) of the Constitution, as amended by 85th Amendment, is an enabling piece of legislation, which empowers the State to provide for reservation in the matters of promotion with consequential seniority to any class or classes of posts in favour of Scheduled Cast and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in services under the State. This gives an option to the Government to make or not to make a provision for reservation and if a provision for reservation is made, provide for the benefit of seniority in respect of any class or classes of posts under it in favour of such Scheduled Castes and Scheduled Tribes, which, in its opinion, are not adequately represented in service under it. Article 16(4-A) does not confer any fundamental right of reservation. After the enactment of 85th Amendment to the Constitution, State of Punjab has not framed a policy and, therefore, writ is premature. It is then pleaded that General Categories Welfare Federation, Punjab has filed CWP No. 61 of 2002 in the Hon"ble Supreme Court where 85th amendment to the Constitution has been challenged as ultravires the Constitution. The writ was admitted, even though an application for stay was dismissed as withdrawn with liberty to the Petitioners to move for interim relief in the event they are sought to be demoted or otherwise affected by the amendment under challenge. It requies to be mentioned here that perhaps, by mistake, it has been mentioned in the written statement that writ petition has been dismissed as withdrawn. Order that has been produced on record as Annexure R-1 would show that writ was admitted and only application for stay was dismissed as withdrawn, in the manner as mentioned above. The present writ, it is the case of official Respondents, deserves to be dismissed as no right of the Petitioners has been affected by any order of the Respondent Board under any reservation policy framed by the State Government in light of 85th Amendment to the Constitution. It is then pleaded that challenge to Article 16(4-A) of the Constitution inserted by the 77th (Amendment) Act, 1995 before its further amendment by 85th Amendment is already subjudice and its constitutionality stands referred to the larger bench by a five member Bench of the Hon"ble Supreme Court to a larger bench,--vide order dated 17th January, 2002 in the case of Non-Scheduled Caste/ST Telecom v. Union of India and Ors. A copy of order dated 17th January, 2002 passed by the Hon"ble Supreme Court has been annexed with the written statement as Annexure R-2.

10. It is further the case of Respondents that Petitioner No. 1 was promoted as Superintending Engineer against the reserved roster point for members of the Scheduled Caste,--vide order dated 8th June, 1994 whereas Petitioner No. 2 was promoted as Superintending Engineer against the reserved point,--vide order dated 13th June, 1995. 85th Amendment of the Constitution came into force on

17th June, 1995. Both the Petitioners had been promoted as Superintending Engineers before coming into force of 85th Amendment of the Constitution and can claim no benefit of consequential seniority in respect of their promotions as Superintending Engineers, according to the reservation policy of the State Government currently followed by the Board on the basis of that amendment. Instructions Annexure P-7, it is the case of Respondents, incorporate reservation policy of Punjab Government and the said instructions are in force. This policy clearly stipulates that roster point promotees (reserved category) can not claim seniority in the promoted category from the date of their continuous officiation in the promoted post vis-a-vis the general candidates, who were senior to them in the lower category and were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level, later than his juniors, promoted on the basis of reservation but before the further promotion of reserved category candidate, he would have to be treated as senior at the promotion level to reserved candidate, even if the reserved candidate was earlier promoted to that level. It is then pleaded that as per the reservation policy in force, there is 14% reservation for Scheduled Castes at the level of Chief Engineer in the Board and the reserved posts of Chief Engineer are currently occupied by Scheduled Caste Officers. The quota is, therefore, exhausted and, there is no scope under law for any further promotion of Scheduled Caste Officers to the level of Chief Engineer in the Board until a fresh vacancy in the Scheduled Caste quota becomes available. The Petitioners, therefore, have no right for promotion as Chief Engineer on the basis of reservation.

11. Insofar as plea of the Petitioners based upon interpretation of Regulation 16 the Regulations of 1965 is concerned, it is the case of the Respondents that the Petitioners are not senior to the private Respondents as inter-se seniority of the Petitioners and private Respondents is determined with reference to the order of seniority determined at the time of their initial selection as Assistant Engineer and not from the date of joining as Superintending Engineer as per Regulation 16 of the Regulations of 1965. It is then pleaded that the provisions contained in Regulation 16 of the Regulations of 1965 are to be read with its proviso and Clause 16(b). Petitioners 1 and 2, it is further stated, were initially selected as apprentice Engineer/Assistant Engineer on 3rd July, 1972 and 22nd September, 1973, respectively whereas the private Respondents were initially selected as such in the year 1968 and are 4 to 5 years senior to the Petitioners in service. A copy of two lists containing the above particulars of the Petitioners and private Respondents, which clearly bring out their inter-se-seniority, has been attached with the written statement as Annexure R-8. It is then pleaded that the Petitioners have deliberately omitted to include the proviso and Clause 16(b) of the Regulations of 1965 in the writ petition to create a misleading impression on the Court. In the light of clear provisions in the above Service Regulations, the relative dates on which persons are appointed to the post of Superintending Engineer on the basis of reservation are of no consequence in respect of their

inter-se seniority in the Board.

12. The two fold contentions raised by Mr. Patwalia, learned Counsel representing the Petitioners, is that the Board is bound to implement the 85th amendment in the Constitution and in consequence thereof to restore seniority to the Petitioners. After the 85th constitutional amendment, seniority of the Petitioners as Superintending Engineer has to be reckoned with effect from the date of their joining as such and that they are entitled to consequential benefits of seniority as a result of their promotion on the basis of reservation. It is then contended that implementation of the 85th amendment in the Constitution apart, the impugned order, Annexure P-8, is also liable to be quashed on the ground that promotions of the private Respondents have been ordered without considering the cases of the Petitioners. The Petitioners joined as Superintending Engineer on 20th June, 1994 and 15th June, 1995, respectively, whereas private Respondents have joined on the following dates:

Sr. No. Name of Respondent Date of joining as SE

1. Er. Stanam Singh Sangha 14-10-97
2. Er. Amrik Singh Ubee 13-1-98
3. Er. Dalip Singh Gosal 24-12-97
4. Er. Manpreet Singh Chahal 24-12-97
5. Er. Thandi Ram Jindal 30-12-97
6. Er. Gurparkash Singh 30-1-98
7. Er. Harish Chander Sood 30-4-98

13. As per Regulation 16 of the Regulations of 1965, seniority is to be determined by the length of service. Relevant part of Regulation 16 of the Regulations of 1965 reads thus:

16. The seniority inter-se of members of the service in a particular class of post viz Assistant Engineers/Assistant Executive Engineers, Executive Engineers, Superintending Engineers and Chief Engineers shall be determined by the date of their continuous appointments in that class.

14. Provisions of Regulation 16 of the Regulations of 1965, as reproduced above, would entitle the Petitioners to be promoted to the post of Chief Engineers prior to the private Respondents, as they have been holding the post of Superintending Engineer for longer time, is the further contention of learned Counsel representing the Petitioners.

15. Before we may proceed to determine the two points canvassed by learned Counsel, as noted above, it would be appropriate to note the change/amendment brought about in Article 16(4-A) of the Constitution of India. Article 16(4-A) of the Constitution of India, as it originally stood and as it came into being after the

85th amendment of the Constitution, reads as follows:

ARTICLE 16(4-A)

(Prior to 85th Amendment)

Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion of any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes which, in the opinion of the State are not adequately represented in the services under the State.

(After 85th Amendment)

Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion with consequential seniority to any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State.

16. A perusal of Article 16(4A) as stood before amendment and thereafter would reveal that the Parliament has permitted the State Governments to make provision for reservation in the matter of promotion with consequential seniority to any class or classes of the posts in the services under the State in favour of Scheduled Castes/ Scheduled Tribes which in the opinion of the State are not adequately represented in the services under it. The only difference between the amended and unamended Article 16(4A) is that whereas consequential seniority was not dealt with in the unamended provisions, same has been mentioned in the amended provisions. In interpreting Article 16(4A) pertaining to the same being enabling provisions or to contain a mandate, addition of words "consequential seniority", in our view would not make any difference whatsoever. If, therefore, Article 16(4A) has been interpreted to be only enabling provision, the same would hold the field irrespective of addition of words "consequential seniority" in the amended Article 16(4A) of the Constitution of India. There is no need for us, at all, to return a finding on the aforesaid aspect of the case, as the matter is no more res-integra and in fact stand clinched by a number of judgments of Hon''ble Supreme Court. Hon''ble Supreme Court in Constitution Bench judgment in *Ajit Singh and Others Vs. The State of Punjab and Others*, relying upon its earlier judgments in *M.R. Balaji and Others Vs. State of Mysore*, and *C.A. Rajendran Vs. Union of India (UOI) and Others*, culled out the entire legal position. This principle was reiterated in *P & T SC/ST Employees Welfare Association v. Union of India (1998) 4 S.C.C. 147* and *State Bank of India Scheduled Caste/Tribe Employees Welfare Association and another Vs. State Bank of India and others*, . In *M.R. Balaji's case (supra)*, Constitution Bench said the same thing in connection with Articles 15(4) and 16(4), i.e., that the same were enabling provisions. Pertinent observations of Hon''ble Supreme Court read thus:

In this connection it is necessary to emphasise that Article 15(4) like Article 16(4) is an enabling provision; it does not impose an obligation, but merely leaves it to the discretion of the appropriate Government to take suitable action, if necessary.

17. In view of the authoritative pronouncements of Supreme Court on the issue in hand, it has to be held that Article 16(4A) even as amended by the 85th constitutional Amendment is only an enabling provision. Much stress has been laid on the statement of objects and reasons culminating into the 85th amendment of the Constitution by learned Counsel for the Petitioners. In his endeavour to show that Article 16A as now stands contains the mandate in the matter of consequential seniority, it is urged that the very purpose of bringing about amendment in Article 16(4A) of the Constitution was to do away with the judgments of Hon"ble Supreme Court in *Union of India and others etc. Vs. Virpal Singh Chauhan etc.*, and *Ajit Singh Januja and others Vs. State of Punjab and others*, so as to have proper representation of the reserved category in the promotional posts. The statement of objects and reasons culminating into 85th Constitutional amendment, in our view, shall not make the least difference in interpreting Article 16(4A) in the matter of it being an enabling provision or containing a mandate. The first contention of learned Counsel based upon 85th Constitutional amendment and in consequence thereof to direct the State to promote the Petitioners on the post of Chief Engineer has to be repelled.

18. The second contention of learned Counsel based upon Regulation 16 of the Regulations of 1965 is equally devoid of any merit. Regulation 16 of the Regulations of 1965 has since already been reproduced in the earlier part of the judgment. 5th proviso to Regulation 16 of the Regulations of 1965 reads thus:

Provided, fifthly, that if a member of the service is promoted temporarily to a post earlier than his senior, for reason other than the inefficiency of the senior person or his ineligibility for promotion they will rank interse according to their relative seniority in the class from which they were promoted.

19. Further, Clause (b) to the 2nd proviso to Regulation 16 of the Regulations of 1965, reads thus:

(b) In the case of members of the service appointed as Asstt. Engineers and above by promotion according to their relative seniority in the lower class from which they were promoted unless a member of a lower class is promoted earlier than another member of the lower class who is senior to him and the latter has been passed over on the score of unsuitability or ineligibility (other than passing the DAE) for promotion in which case the member of the lower class first promoted shall take rank in the higher class above such other members of the lower class, if and when the latter is promoted as Asstt. Engineer and or

20. A combined reading of Regulation 16 and Clause (b) of 2nd proviso as also the 5th proviso would make it abundantly clear that the Petitioners are not senior to the private Respondents, as interse seniority of the Petitioners and the private

Respondents is determined with reference to the order of seniority determined at the time of their initial selection as Assistant Engineer and not from the date of joining as Superintending Engineer as per Regulation 16 of the Regulations of 1965. The main provisions contained in Regulation 16 has to be read with its proviso. It may be reiterated that whereas the Petitioners 1 and 2 were initially selected as Apprentice Engineer/Assistant Engineer on 3rd July, 1972 and 22nd September, 1973, respectively, the private Respondents were initially selected as such in the year 1968 and are 4 to 5 years senior to the Petitioners. The Petitioners scored over the private Respondents in the matter of promotion only on account of reserved points meant for promotion of reserved category candidates irrespective of their seniority vis-a-vis general category candidates. It is not even the case of the Petitioners that the private Respondents were not promoted as they were unsuitable or ineligible or for that matter were inefficient. Respondents 1 and 2 appear to be correct in making an averment in the written statement filed on their behalf that the Petitioners have deliberately not chosen to reproduce Clause (b) and 5th proviso to Regulation 16 of the Regulations of 1965.

21. Inasmuch as, the two fold contentions of learned Counsel for the Petitioners as mentioned above, have no substance, this Petitioners deserves to be dismissed. Before we may, however, part with this judgment, we would like to mention that it is the positive case of the Respondents that 14% quota of reservation has been provided to the members of reserved category candidates (SC) on the post of Chief Engineer in the Board and that being so, members of the reserved category are adequately being represented in the service under the State. It is further the case of the Respondents that in the service of the Board itself in the cadre of Chief Engineer out of 29 sanctioned posts, already 4 posts are manned by the members of Scheduled Caste against their 14% quota. We are only mentioning these facts as pleaded in the written statment to note the contention of the Respondents that there is already an adquate representation of the Scheduled Caste candidates on the highest post of Chief Engineer. It is not for us to comment upon as to whether members of reserved category have been represented adequately or not, as it is always up to the State to have facts and figures before it and determine that a proper representation of the reserved category candidates in the matter of service or promotion, as the case may be, has been made.

22. Finding no merit in this writ petition, the same is dismissed, leaving, however, the parties to bear their own costs.