

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

SWP no. 2298/2001
CMP no. 2513/2008

Date of Decision: **23.04.2009**

Major Singh v. State and Ors.

Coram:

MR. JUSTICE J.P.SINGH, JUDGE.

Appearing Counsel:

For Petitioner(s) : Mr. M.K.Raina, Advocate.

For Respondent(s) : Mrs. Seema Shekhar, AAG.

i)	Whether to be reported in Press/Journal/Media:	Yes
ii)	Whether to be reported in Digest/Journal :	Yes

Petitioner, a Draftsman in the Rural Development Department of the State Government, seeks consideration for appointment as Head Draftsman/Junior Engineer, retrospectively from the date he was appointed as Draftsman in the Rural Development Department vide Order no. 3962-66/DREJ dated 18.02.1984, And promotion to the post of Assistant Engineer (Store), retrospectively with effect from 1993, when one V.K.Khosla was appointed as Assistant Engineer, claiming parity with similarly situated persons like V.K.Khosla, Shakil Ahmad and J.A.Wangroo, and the benefit of Reservation allowable to persons like the petitioner who belong to the Reserved category of Scheduled Caste, under SRO 126 of 1994, besides seeking quashing of Government Order no. 449-Agri of 1999 dated 16.12.1999 whereby his representation seeking consideration, in terms of the directions, issued

in his earlier SWP no. 1933/98, was rejected by the State respondents.

Justifying issuance of the Government Order dated December 16, 1999 and urging that the petitioner was ineligible to seek consideration for promotion against the post of Assistant Engineer in the Rural Development Department, the respondents have disputed petitioner's claim of being similarly situated with the persons named in the writ petition.

Elaborating the case set up in their response to the writ petition, it is stated that the petitioner's claim for promotion as Assistant Engineer was untenable in the absence of any Rules on the subject, entitling persons working in the Rural Engineering Wing of the Rural Development Department, to promotion.

During the course of consideration of the writ petition, however, it was conceded by the State Counsel that pending finalization of the Draft Rules by the Government, the Rural Development Department has been considering members of the service working in its Rural Engineering Wing, for promotion to the next higher posts according to the provisions of the Jammu and Kashmir Engineering (Sub-ordinate Service Recruitment Rules), 1997.

Meeting the petitioner's plea of parity, it is stated that Shakil Ahmad's engagement being adhoc in nature was liable to be reversed on the availability of suitable incumbent for the post held by him and in such view of the matter, petitioner's claim for parity was untenable. J.A.Wangroo's promotion has, however, been

conceded as an aberration which, according to the respondents, cannot form precedent for repeating the mistake.

As regards the case of V.K.Khosla, respondent no.5, referred to by the petitioner, it is stated that he had been promoted as Head Draftsman vide Government Order no. 542-Agri of 1991 dated 08.08.1991 and his promotion was given retrospective effect w.e.f. 27.12.1972 vide Government Order no. 110-Agri of 1998 dated 17.03.1998. He is stated to have been adjusted as Assistant Engineer (Stores) in his own pay and grade vide Government Order no. 260-Agri of 1993 dated 30.04.1993. Petitioner's claim of being similarly situated with this respondent is denied on the ground that the respondent's case was not considered by the Departmental Promotion Committee for promotion to the post of Head Draftsman because of his involvement in the Corruption Case wherein an enquiry was held and the Anti-Corruption Commission had imposed penalties on him. The order of imposition of penalty on respondent no.5 was, however, set aside by this Court and accordingly he was considered for promotion against the post of Head Draftsman by upgrading the post of Draftsman but with a rider that the up-gradation shall last until such time the respondent would hold the post.

Grade attached to the post of Assistant Engineer is stated to have not been released in favour of the respondent.

According to the respondents, because of petitioner's placement in the Seniority List below that of respondent no.5, his case too shall be considered for promotion as Head Draftsman as and when the post became available in the Rural Engineering Wing of the Rural Development Department.

Petitioner's claim of consideration for promotion against the post of Assistant Engineer is strongly contested by the respondents on the plea that going by the Jammu and Kashmir Engineering (Sub-ordinate Services Recruitment Rules), 1997, the petitioner is not entitled to consideration for promotion as Assistant Engineer being ineligible therefor, in that, 10% of the available posts, required under the Rules aforementioned, to be filled up through Departmental Promotion Committee, can be so filled up only from the category of employees working as Draftsman/Work Supervisor and Shift Attendant/Field Workers/Field Supervisors **having obtained Degree/ AMIE Section (A&B), three years Diploma from Indian University/Government Recognized Institute in Civil/ Mechanical/ Electrical Engineering Disciplines applicable in the ratio 4 : 4 : 2 respectively with at least five years continuous service in their respective categories**, And the petitioner does not possess requisite qualification as indicated above.

I have considered the submissions of learned counsel for the parties.

During the consideration of the petition, when asked, as to whether the petitioner possessed the

requisite qualification of Three Years Diploma from a recognized Institution, in terms of the Rules, relied upon by the petitioner, his learned counsel was unable to refer to any such document on records on the basis whereof it may be said that the petitioner had the requisite qualification needed for seeking consideration for promotion as Assistant Engineer. The documents placed on records, on the other hand, indicate that the petitioner possesses Two Years Draftsman Course in Civil, from the State Board of Technical Education, which Certificate cannot be treated to be the requisite Diploma, in terms of the Rules, which may make him eligible to seek consideration for promotion as Assistant Engineer.

Petitioner's claim for promotion as Assistant Engineer is thus untenable because he is not eligible therefor under the Rules which have, for the time being, been adopted by the Rural Development Department.

Petitioner's claim of parity on the analogy of respondent no.5's promotion as Head Draftsman too is found unsustainable, in that, he is not similarly situated with V.K.Khosla who was admittedly senior to him and had been denied promotion as Head Draftsman because of the pendency of disciplinary proceedings and imposition of penalty on him which was, however, later quashed by this Court on respondent no.5's writ petition, paving way for his retrospective upgradation.

Petitioner's claim of parity on the analogy of the promotion of Mr. Wangroo, which is stated by the respondents to be an aberration, too is misconceived,

in that, any illegal promotion made by the respondents would not clothe the petitioner with any additional right to seek consideration for promotion against the post of Assistant Engineer, which he otherwise does not possess, to seek any direction of the Court to the respondents to repeat the illegality to consider him for promotion, despite his disentitlement thereto, being ineligible therefor under the Rules prevalent in the Department for consideration of persons working in the Rural Engineering Wing for promotion against the higher posts.

Rejection of petitioner's request by the State respondents for promotion against the post of Assistant Engineer, in view of his ineligibility, and at the same time assuring him consideration against the post of Head Draftsman, as and when it becomes available, which according to the respondents, he was eligible therefor, ordered vide Government Order No. 449-Agri of 1999 dated 16.12.1999, cannot thus be faulted.

Petitioner's claim for retrospective promotion as Head Draftsman w.e.f. February 1984, is found to be premature, in that, until the consideration of his promotion as Head Draftsman, his claim for retrospective promotion against the post, is highly misconceived.

That apart, post of Head Draftsman appears to be a promotional post and the petitioner may not, even otherwise be entitled to seek consideration for his retrospective adjustment against the post with effect from the date of his initial appointment as Draftsman

because such a position is not contemplated by the Rules in force.

For all what has been said above, I do not find any merit in this petition warranting issuance of directions against the respondents to consider petitioner's case for promotion as Assistant Engineer and retrospective appointment as Head Draftsman.

The Writ Petition is, accordingly, dismissed.

(J.P.Singh)
Judge

JAMMU:
23.04.2009
Pawan Chopra