

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
(Virtual mode)**

Pronounced on : 05.02.2025

Case:WP (C) 3915/2019

Rajesh Singh, Aged 46 years,
S/o Sh. Maryad Singh,
R/o C-8/1102 SRS Residency
Sector-88,
Faridabad (Haryana).

.....Petitioner(s)

Through: Mr.Rahul Pant, Sr. Advocate with
Mr. Anirudh Sharma, Advocate.
Vs

1. National Hydro Electric
Power Corporation Ltd. (NHPC),
Corporate Office,
NHPC Complex, Secotr-33,
Faridabad (Haryana)
Through its Chairman-Cum-Managing
Director.
2. Executive Director,
National Hydro Electric
Power Corporation Ltd.
Regional Office,
Rail Head Complex, Jammu.

..... Respondent(s)

Through: Mr. A.P.Singh, Advocate with
Mr. Nikhil Verma, Advocate.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE
JUDGMENT

1. The petitioner through the medium of the present writ petition seeks consideration of his case by the respondents for promotion to the post of Manager (Elect) and also as Senior Manager (Elect) with the respondent-Corporation from the date his juniors were promoted to those posts in the year 2011 and 2015 respectively. The petitioner also seeks consideration for promotion to the post of Deputy General Manager (Elect).
2. The grievance of the petitioner, in short, is that he is being denied the promotion to the aforesaid posts only for the reason that the FIR has

been lodged against him and the challan arising out of the same is pending disposal before the court of law. The pendency of the challan for the last more than ten years should not come in the way of the respondents to consider the case of the petitioner for promotion.

3. The objections to the writ petition have been filed by the respondents wherein it is submitted that the challan is pending against the accused before the Special Judge (Anti-Corruption), Jammu. The petitioner has been accorded adhoc promotion vide order dated 21.08.2020 from the post of Assistant Manager (Electrical) to the post of Deputy Manager (Electrical) w.e.f. 01.04.2011 in terms of Clause 17 of the Policy of the respondents. It is further submitted that the case of the petitioner is covered by Clause 18 of the Rules whereby the petitioner cannot be considered for further promotion. In nut-shell, the submission is that the pendency of the criminal proceedings against the accused do not warrant further promotion of the petitioner.
4. Mr. Rahul Pant, learned Senior Counsel appearing for the petitioner has argued that the petitioner cannot be kept away from the zone of consideration for further promotion due to the pendency of the criminal proceedings against the petitioner. The criminal case may further take number of years to conclude and for that the petitioner cannot be blamed and, therefore, is not required to suffer. It is also submitted that the office memorandum issued by the Ministry of Personnel, Public Grievances and Pensions Department of Personnel & Training vide dated 14.09.1992 does not debar the respondents from considering the case of the petitioner for further promotion when the criminal proceedings against the government servant is not concluded within a period of two years.
5. Mr. A.P.Singh, learned counsel appearing for the respondents, has argued that the petitioner has been given one promotion during the pendency of the writ petition in terms of the Rules applicable to the employees of the respondent-Corporation. The Rules envisage that further promotion cannot be granted in view of the pendency of

criminal proceedings to the petitioner. The office memorandum on which the petitioner has relied upon shall have no application to the employees of the Corporation as the Corporation has its own Rules and Regulations.

6. The controversy in the present case lies in narrow compass. The petitioner is facing criminal charges and the challan has been produced in the court of law is not in dispute. The petitioner has been accorded one promotion vide order dated 21.08.2020 to the post of Deputy Manager (Electrical) during the pendency of the writ petition w.e.f 01.04.2011. The grievance of the petitioner is as such partially addressed by the respondents during the pendency of the writ petition.
7. The respondent-Corporation is having its own Rules and Regulations qua the promotion Policy of the employees working with the Corporation. The argument of the learned senior counsel for the petitioner that the aforesaid office memorandum dated 14.09.1992 shall apply to the Corporation cannot be sustained. It is not in dispute that the Corporation has its own Policy framed for promotion of the employees. The Corporation being an independent entity has every power to frame its Rules and Regulations for its working. The office memorandum referred to by the petitioner cannot override the Policy making decision of the respondent-Corporation which is an independent identity. Having held so, the court is only required to look into the Rules and Regulations governing the Policy regarding promotion of the employees of the Corporation. The respondents in their objections have specifically mentioned of Rule 17 and 18 of the Promotion Policy made applicable for the Corporation employees. The respondents have banked upon Rule 17 read with Rule 18.7 of the Rules in support of their argument and the court finds substance in the same. As per Rule 18.7 and 18.8, the executive can be granted only one promotion and is not to be considered for any subsequent promotion regular or adhoc though he has completed the qualifying service with reference to the date of his adhoc promotion. He is not to be promoted

unless he is completely exonerated of the charges which are laid against him. Rule 18.4 and Rule 18.5 also refer to the consequences where the executive is acquitted in the criminal prosecution on the merits or on technical grounds. The Rules applicable on the subject do not entitle the petitioner for the relief as sought for by him in the writ petition. The Rule may work harsh against the employee due to the pendency of the criminal proceedings against him more so when the proceedings do not conclude within a reasonable time for one reason or another. The Court cannot grant the relief to the petitioner in view of the specific bar created by the Rules for granting further promotion to the petitioner in the situation he is presently placed.

8. It may be noticed that the petitioner has not challenged the relevant Rules which come in the way of the petitioner for consideration of further promotion. In the absence of challenge to the Rules by the petitioner in the writ petition qua the claim for promotion, the Court is not to obliterate the Rules of promotion which may be to the detriment of the petitioner.
9. In view of the Rules which govern the promotion of the Executive to which the petitioner belongs to and which debar the petitioner from further consideration zone of promotion, the Court cannot grant relief to the petitioner as prayed for in the writ petition.
10. The writ petition is, accordingly, dismissed. However, the respondents are at liberty to consider the case of the petitioner for further promotion if they intend to do so despite dismissal of the present writ petition.

(Puneet Gupta)
Judge

SRINAGAR:
05.02.2025
Pawan Chopra

Whether the Judgment is speaking : Yes/No
Whether the Judgment is reportable: Yes/No