

Abhay Shanker Shukla Vs. SJVN Ltd. & Ors.

CWP No. 11366/2024

02.01.2025 Present: Mr. Ankush Dass Sood Sr. Advocate with Mr. Ankit Dhiman and Mr. Gourav Bhardwaj, Advocates, for the petitioner.

Ms. Devyani Sharma, Sr. Advocate with Mr. Basant Pal Thakur, Advocate, for respondents No.1 & 3 to 5.

Mr. Virbahadur Verma, Central Govt. Counsellor, for respondent No.2.

Mr. Anup Rattan, Sr. Advocate with Mr. Shagun Sharma, Advocate, for respondents No.6 & 7.

CMP No 18798/2024

Petitioner due for retirement on 30.06.2025, has filed this writ petition seeking promotion to the post of Executive Director (Finance) E9 level in respondent-SJVN Ltd. He has put-forth a grievance that despite being senior most in his stream of Finance, despite vacancy of Executive Director (Finance) E9 being available and despite Departmental Promotion Committee (DPC) having recommended his name for promotion, the respondents-SJVN Ltd. has till date not promoted him.

2. Learned Senior Counsel for the petitioner submits that:-

2(i) The petitioner was promoted to the post of Chief General Manager (Finance) E8 Level in the year 2015. Next promotional channel available to him is that of Executive Director (Finance) E9 Level.

2(ii) Department of Public Enterprises (DPE) issued an office memorandum on 22.07.2021 sanctioning 6 posts of Executive Directors E9 level (4 Technical, 1 HR and 1 Finance) in respondents-SJVN Ltd.

2(iii) The post of Executive Director (Finance) E9 level was occupied by one Sh. S.L. Sharma, who was to superannuate on 31.05.2024. Petitioner is next in the seniority list (Finance & Accounts) as on 01.03.2024 .

2(iv) Meeting of DPC was convened on 15.12.2023 for making promotions/recommending the names against anticipated vacancies of Executive Director E9 level for the year 2024. The DPC *inter-alia* recommended promoting the petitioner as Executive Director (Finance) E9 level against the vacancy that was to arise on the retirement of Sh. S.L. Sharma on 31.05.2024.

2(v) Sh. S.L. Sharma, retired on 31.05.2024 but the petitioner was not promoted as Executive Director (Finance) E9 level. CWP No. 10296/2024 instituted by the petitioner was withdrawn by him on 01.10.2024 with liberty to file fresh as the petition statedly required amendments.

The present petition was filed on 03.10.2024.

3(i) Learned Senior Counsel for the respondents-SJVN Ltd. admitted sanctioning of 6 posts of Executive Directors E9 level under office memorandum dated 22.07.2021 including

one for Finance stream. Learned Senior Counsel further admitted that the DPC convened on 15.12.2023 had recommended promoting the petitioner as Executive Director (Finance) E9 level. Learned Senior Counsel also admitted that Sh. S.L. Sharma had superannuated on 31.05.2024 from the post of Executive Director (Finance) E9 level and that petitioner is senior most Chief General Manager E8 level (Finance & Accounts). Learned Senior Counsel submitted that as on 31.05.2024, following Executive Directors E9 had retired:-

- “(i) V. Sankaranarayan (Civil)*
- (ii) S.L. Sharma (Finance)*
- (iii) Sahil Shamsheri (Electrical Mechanical)”*

3(ii) Learned Senior Counsel further submitted that DPC proceedings could not be acted upon in case of the petitioner for several reasons:- 6 posts were though created in E9 level vide office memorandum dated 22.07.2021, out of which one was in Finance Steam, but these posts were to be filled in by the three different policies being followed by respondents-SJVN Ltd. i.e. **(a)** SJVN promotion policy of executives **(b)** Deployment of manpower on Secondment Basis to the Subsidiaries/joint ventures of SJVNL and **(c)** Scheme of Special Incentive for the employees posted in Arunachal Pradesh. The above three policies were operative till 13.02.2024. On 13.02.2024, the DPE withdrew the Gratis

Promotion Provisions from NHPC Promotion Policy. These instructions were conveyed to respondents-SJVN Ltd. by the Ministry of Power on 18.03.2024. Portion of the office memorandum dated 13.02.2024, presently highlighted is as under:-

“OFFICE MEMORANDUM

Subject: Withdrawal of GRATIS promotion provisions from the NHPC promotion policy and immediately stopping Its Implementation-reg.

The undersigned is directed to refer to Ministry of Power's file no. 11/25/2023-NHPC containing 30 pages of notes on the above subject seeking opinion of DPE on grant of "gratis promotion to few officers of NHPC 3 months prior to their superannuation. The matter has been examined and following observations are made.

(i) DPE has not given any authority for non-vacancy based promotions to any CPSE. Since it amounts to giving benefit akin to creation of posts, DPE does not agree with "Gratis for grant of any promotion. As per DPE OM DPE/3(4)/08-Fin.dt. 28th November , 2014 creation of posts at all levels require approval of DPE Miniratna CPSEs.

(ii)-(vi) xxxxxxxxxxxx

(vii) Such ad hoc scheme of promotion like "Gratis" to be put on hold immediately. Before the Board approved such policy and implemented it, the concerned Govt. nominees of the Board was expected to bring it to the notice of concerned administrative Ministry for clarifications/directions and corrective action.

2. The e-file no. 11/25/2023-NHPC is returned to Ministry of Power.

3. This issues with the approval of Competent Authority.”

The office memorandum dated 13.02.2024 also directed to put on hold the 'Gratis' scheme of Promotion.

3(iii) According to respondents-SJVN Ltd., against 06 sanctioned posts of Executive Directors, 08 officials had been promoted to the said posts as on 22.07.2021. The number of Executive Directors E9 level went up to 9 in the year 2023. This was done as per approved and settled policies/schemes of promotion at the time. As on 31.05.2024 following persons were manning the post of Executive Directors E9 level:-

| Sr.No | Name | Stream | Date | Status |
|-------|------------------------------------|--------|---------|--|
| 1 | S. Maraswamy | Civil | 3.8.21 | Continuing |
| 2 | Manoj Kumar | E/M | 1.4.22 | Continuing |
| 3 | Pawan Verma | HR | 1.1.23 | Continuing |
| 4 | Rakesh Sehgal (Respondent No.6) | Civil | 1.11.23 | Called back and Mr. Sanjeev Gupta (Civil) promoted pursuant to the order dated 3-10-24 in CWP No. 10281/2024 . |
| 5 | C.S. Yadav (Respondent No.7) | HR | 1.1.24 | |

The DPC that took place on 15.12.2023 had also recommended name of respondent No.7-Sh. C.S Yadav for promotion to the post of Executive Director E9 (HR).

4(a) *Prima-facie* it appears that the petitioner's main grievance for the purpose of interim relief for his promotion as Executive Director (Finance) E9 concerns the promotion of

respondent No.7 to the post of Executive Director (HR) E9 level. According to the petitioner, there are 2 Executive Directors working in HR stream against 1 sanctioned post. Respondents-SJVN Ltd. has justified the promotion of respondent No.7 as Executive Director HR besides that of one Sh. Pawan Verma, who is also serving as Executive Director (HR):-

- Sh. Pawan Verma was promoted as Executive Director (HR) w.e.f. 01.01.2023 on proforma basis, since he was posted at STPL, a subsidiary of SJVNL.
- On account of deputation of Mr. Pawan Verma, the post of Executive Director HR occupied by him in respondents-SJVN Ltd. was treated as vacant as per the Secondment Policy. Consequently one Sh. Parveen Singh Negi was promoted as Executive Director (HR) E9 level w.e.f. 01.01.2023 against the aforesaid post.
- Sh. Parveen Singh Negi, superannuated on 31.10.2023. Resultantly, the post occupied by him as Executive Director HR became available.
- Subsequently Sh. Pawan Verma was transferred and posted at SJVN Green Energy Limited Delhi, a subsidiary of SJVN Ltd. The post occupied by Sh. Parveen Singh Negi, became vacant. Secondment Policy was operated and accordingly respondent No.7-Sh.C.S. Yadav was promoted as

Executive Director HR w.e.f. 01.01.2024 on the basis of recommendations of the DPC dated 15.12.2023.

It has been submitted for the respondents-SJVN Ltd. that Gratis Policy had been withdrawn on 13.02.2024 as communicated to the SJVNL on 18.03.2024; Number of the Executive Directors E9 level had to be kept at the sanctioned strength of 6. Its stand is that even though respondent No.7 is Executive Director belonging to HR stream and 2 Executive Directors E9 belonging to HR stream, are now in place against the sanctioned strength of 1 in that stream, respondent No.7 had been promoted under the Secondment Policy which has not been withdrawn and hence even though Gratis policy had been withdrawn the promotion given to respondent No.7 was required to be protected. Respondent No.7 could not have been reverted to the post of Chief General Manager E8 level. It is broadly for this reason that the petitioner could not be promoted to the post of Executive Director (Finance) E9 level. As on 31.05.2024, there was only one sanctioned post of Executive Director E9 level available with SJVN Ltd. for which there is contest between two officials i.e. present petitioner and the petitioner in CWP No. 11365/2024 who belongs to Electrical Mechanical stream.

4(b) This application has been heard for two days even though in-depth submissions of learned counsel for the

parties including learned Senior Counsel for respondent No.7 are yet to be heard. At this stage, *prima facie* it appears that when competent authority on 22.07.2021 had sanctioned specific number of posts of Executive Directors E9 that too stream wise then the posts were also required to be filled up on that basis. Post of Executive Director (Finance) E9 occupied by Sh. S.L. Sharma had become vacant on 31.05.2024. Petitioner was next in line for promotion and belongs to Finance stream. DPC had already recommended his name on 15.12.2023 for promotion to the post that was to become available on superannuation of Sh. S.L. Sharma. Petitioner was not promoted as Executive Director (Finance). The facts as have come on record, the justifications given by the respondents-SJVN Ltd. qua making different promotions to the posts of Executive Director E9 as also for protecting all these promotions in the manner, have *prima-facie* resulted in breach of the stream wise sanctioned strength of posts, fixed under office memorandum dated 22.07.2021 inasmuch as against one sanctioned post of ED HR, presently there are two officials manning two posts of ED HR.

4(c) At this stage, learned Senior Counsel for the respondents-SJVN Ltd. submitted that though at the time of filing reply to the writ petition, there was only one post of Executive Director E9 level available with the respondents,

however, one Sh. Sanjeev Gupta posted as Executive Director (Civil) E9 level has now opted for deputation and is currently serving as Member (Civil) Narmada Control Authority Indore, hence, the post of Executive Director E9 occupied by him is also available. That there are presently two posts of Executive Director E9 available in respondent-SJVNL.

4(d) Since name of the petitioner has already been recommended for promotion to the post of Executive Director (Finance) E9 level by the DPC in its recommendations dated 15.12.2023, since the competent authority under office memorandum dated 22.07.2021 had sanctioned 6 posts of Executive Directors E9 level specifically earmarking one post for Executive Director (Finance), and presently there is no Executive Director in place for the Finance stream, therefore, at this stage, it will be appropriate to direct the respondents SJVN Ltd. to promote the petitioner as Executive Director (Finance) E9 level under the one of the available two vacancies. Ordered accordingly. Necessary order in this regard be passed within one week from today and be placed on record on the next date of listing.

5. It is clarified that the above order has been passed in view of the facts noticed above and *prima-facie* observations made at this stage, while considering the

application for grant of interim relief. This order shall not be construed as final opinion/adjudication on any of the points observed herein & involved in the matter. Further, this order shall not in any manner affect the rights and contentions of any of the parties including respondents-SJNVL, respondent No.7 and the petitioner. All rights and contentions of the parties are left open for adjudication in the main matter.

List on 10.01.2025.

Jyotsna Rewal Dua
Judge

2nd January, 2025 (rohit)