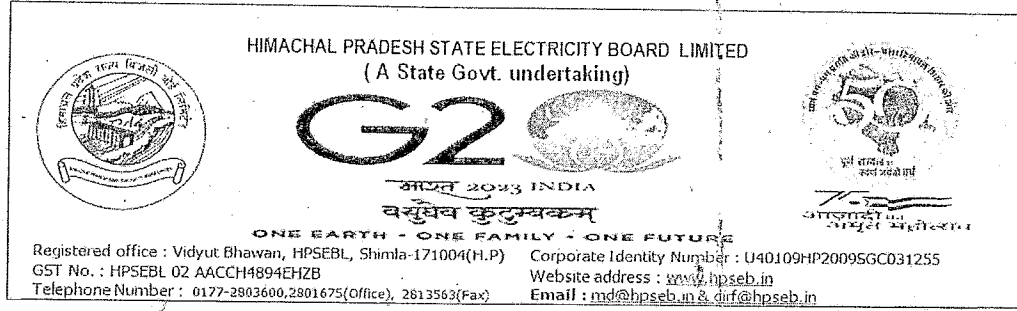




“ OFFICE ORDER ”

OFFICE ORDER NO. 02 /HPSEBL(SECTT.)/2024- Dated:- 13.2.2024

In continuation of this office order No.63 HPSEBL (SECTT.) /2022- dated 12/07/2022 and further endorsed vide No. HPSEBL (SECTT.)/HRD/2-12/2022-36960-68 dated 12/07/2022 , the Himachal Pradesh State Electricity Board Ltd. is pleased to provide similar treatment to Shri Amit Kumar , who was earlier appointed as Junior T/Mate (now T/Mate) on Contract Basis under ED, HPSEBL, Thalout vide above referred order, on the analogy and judgment dated 20-12-2021 passed by the Hon'ble High Court in CWP No.5056 of 2022 titled as Susheel Kumar VS HPSEBL and other which stands already implemented vide this office order No.46 dated 11/07/2022 (**Annexure-“A”**) with regard to Shri Amit Kumar is treated to have been appointed in service notionally from the date when his juniors came to be appointed from the same selection process, the monetary benefits will be payable to him only from the date when he has actually joined the department, the period between the notional appointment and the actual appointment shall count towards seniority and also increments and

his pay shall be fixed accordingly, In other words , the petitioner shall be entitled to salary , as he is being drawn by other similar situate persons who have been appointed in the same selection process from the date he joins or has joined service of the HPSEBL.

The further action qua, order by named shall be issued /initiated by the concerned Sr. Executive Engineer, ED, HPSEBL, Thalout being cadre controlling authority immediately at their own level , under intimation to this office.

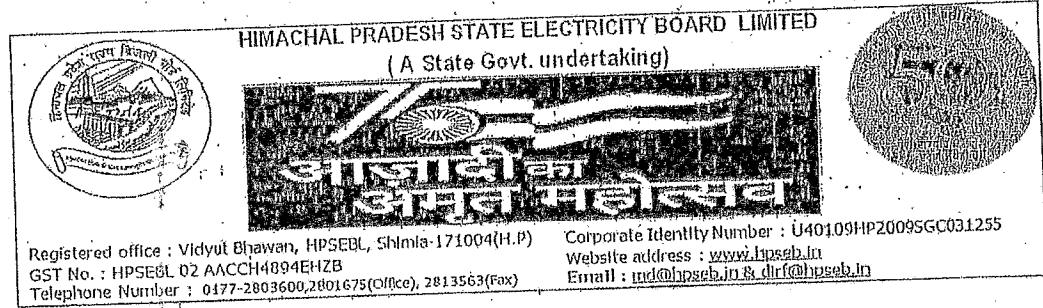
(MANOJ KUMAR) HAS
Executive Director (Personnel.),
H.P. State Elect. Board Ltd.
Vidyut Bhavan, Shimla-4 af Justs

NO. HPSEBL (SECTT.)/HRD/Court case /2024-76804-13
Copy forwarded for information and necessary action to:-

Dated:- 13-2-24

- 1) The Chief Engineer(OP) ,HPSEBL, Mandi Zone Mandi
- 2) The Chief Accounts Officer HPSEBL Shimla.
- 3) The Resident Audit Officer, HPSEBL Shimla.
- 4) The Superintending Engineer(OP) Circle, HPSEBL, Kullu .
- 5) The Superintending Engineer (IT), HPSEBL, Shimla for uploading the same in the official website of HPSEBL.
- 6) Shri Rajpal Singh Thakur SC-Cum-LA HPSEBL for appraisal of the Hon'ble High Court against CWP No.4804/2023- titled Gurpreet Singh VS HPSEBL
- 7) The Under Secretary(FTE) and Section Officer(FTE-II) in the Board Secretariat.
- 8) The Sr, Executive Engineer, ED, HPSEBL, Thalout for taking necessary action.
- 9) Guard file in this office.

(MANOJ KUMAR)HAS
Executive Director (Personnel)
H.P. State Elect. Board Ltd,
Vidyut Bhavan, Shimla-4. af Justs



OFFICE ORDER NO. 46 /HPSEBL(SECTT.)/2022-

Dated:- 11-7-2022

In pursuance of the judgement on the 20th Day of December, 2021 passed by the Hon'ble High Court Shimla against CWP 5056 of 2020 titled Shri Susheel Kumar VS HPSEBL and Others, Himachal Pradesh State Electricity Board Limited is pleased to order as under:-

- 1) To implement of the decision of Hon'ble High Court in its letter and spirit as passed on 20-12-2021 (Annexure-"A") as per legal opinion of the Legal Cell of the HPSEBL with regard to period between notional appointment and the actual appointment shall count towards seniority and also increments and his pay shall be fixed accordingly. In other words, the petitioner shall be entitled to salary, as is being drawn by other similar situate persons more particularly, respondent No. 3 who have been appointed in the same selection process from the date he joins or has joined services.

The further action qua, order for implement the above judgement as passed by the Hon'ble High Court shall be issued/initiated by the concerned Sr. Executive Engineer, ED, HPSEBL, Kaza being cadre controlling authority at his own level, immediately, under intimation to this office.

IT IS ORDERED THAT THE ORDER DATED 20-12-2021

BY: MANOJ KUMAR (IT-1)

BY: MANOJ KUMAR (IT-1)

BY: MANOJ KUMAR (IT-1)

(MANOJ KUMAR) HAS

Executive Director (Personnel.),

H.P. State Elect. Board Ltd.

Vidyut Bhawan, Shimla-4 *at 11/7/22*

11/7/22

11/7/22

11/7/22

NO. HPSEBL (SECTT.)/HRD/Court case Susheel Kumar VS HPSEBL/2022-33028-44 Dated: 11-7-2022

Copy forwarded for information and necessary action to:-

- 1) The Additional Chief Secretary(MPP & Power), to the GOHP Shimla-2
- 2) The Chief Engineer(OP) South, HPSEBL, Shimla
- 3) The Chief Accounts Officer HPSEBL Shimla.
- 4) The Resident Audit Officer, HPSEBL Shimla.
- 5) The Superintending Engineer(OP) Circle, HPSEBL, Rampur Bushar.
- 6) The Superintending Engineer (IT), HPSEBL, Shimla for uploading the same in the official website of HPSEBL.
- 7) The Joint Secretary-cum-PS/Special PSs/Sr. PSs/ PSs. to the Chairman /Managing Director / Directors and Executive Director (Per.) in the Board Secretariat .
- 8) The Under Secretary(FTE) and Section Officer(FTE-II) in the Board Secretariat.
- 9) The Sr. Executive Engineer, ED, HPSEBL, Kaza for taking necessary action, however photo copy of judgement dated 20-12-2021 is enclosed as passed by the Hon'ble High Court Shimla against CWP No. 5056 of 2020 titled Shri Susheel Kumar VS HPSEBL and other for taking necessary action.

- 10) The Company Secretary in this office. The aforesaid proposal has been approved by the WTDs of the HPSEBL against agenda item No. 106,10
- 11) Guard file in this office.

(MANOJ KUMAR)HAS
Executive Director (Personnel)
H.P. State Elect. Board Ltd,
Vidyut Bhawan, Shimla-4. at Just



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 20th DAY OF DECEMBER, 2021

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUNAN

&

HON'BLE MR. JUSTICE CHANDER BHUSAN BARONALIA

CIVIL WRIT PETITION NO. 5056 of 2020

Between:

SUSHEEL KUMAR SON OF RAMESH KUMAR AGED ABOUT
15 YEARS R/O VILLAGE THANRUIEN, POST OFFICE
KIANI, TEHSIL AND DISTRICT CHAMBA, H.P.

...PETITIONER

(BY MR. KULBHUSHAN KHAJURIA, ADVOCATE)

AND

1. HPSEBL, VIDYUT BHAVAN, CHAURA MAIDAN,
SHIMLA, H.P. THROUGH ITS EXECUTIVE DIRECTOR
(PERSONNEL)
2. CHIEF ENGINEER (OPERATIONS) NORTH ZONE
HPSEB LIMITED DHARAMSHALA, DISTRICT KANGRA,
H.P., HIMACHAL PRADESH.
3. SH. GOPAL KRISHAN SON OF SH. DHEER MAL
RESIDENT OF VILLAGE CHEEDI, POST OFFICE

TEBBAN, TENSIL KARSOG, DISTRICT MANDI, H.P.
171011 (SC-UR) SR. NO. 655 IN SELECTION LIST.

...RESPONDENTS

(BY MR. ASHOK SHARMA, ADVOCATE GENERAL WITH MR.
RAJINDER DOGRA, SENIOR ADDITIONAL ADVOCATE GENERAL,
MR. SHIV PAL MANHANS AND MR. HIMANSHU MISRA, ADDL.
A.GS, FOR THE RESPONDENTS-STATE)

_____ This petition coming on for admission
this day, the Court passed the following:

O R D E R

The respondent-Board advertised 605
posts of Junior State Vide notification No. 1
of 2018 dated 17.7.2018. The petitioner
participated in the selection process under the
category of SC(UR) and was awarded 67.03 marks
excluding marks for experience and non
employment. Aggrieved thereby, the petitioner
has filed the instant petition for the grant of
following substantive relief(s):

"i) That the respondent-Board may kindly be directed to award 2.5 marks for experience and 2.5 marks for non employment to the petitioner and accordingly re-draw the selection list under the category of SC (UR).

ii) That the respondent Board may kindly be directed to offer the post of Junior T-mate to the petitioner because after considering his experience and non employment certificate, the petitioner would be higher in merit than the last selected candidate i.e. respondent No. 3 under the category of SC (UR).

iii) That the appointment of respondent No. 3 under the category of SC (UR) may kindly be quashed and set aside."

2. On 6.11.2020, a formal notice of the petition was issued and the standing counsel Mr. Tara Singh Chauhan, Advocate has put in appearance on behalf of respondents-Board. The matter thereafter came up for consideration on 16.9.2021, on which date learned counsel for the respondents-Board stated that the grievance

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of the petitioner was being redressed, inasmuch as the entire records of the selection process were being re-assessed and looked into by a committee constituted for the said purpose and the same is likely to submit its report within a period of two weeks.

3. Thereafter, the case came up for consideration on 30.9.2021 and the Court was informed that the committee had submitted its report and the same was pending consideration before the Board of Directors of the respondent-Board. Later on, Code of Conduct came to be imposed on account of elections. Consequently, much progress could not be achieved even though the petitioner was in the zone of consideration.

4. It is eventually on 29.11.2021 that the Court was informed that the petitioner

stands appointed but unfortunately his appointment has not been made from the date when other candidates more particularly, respondent No. 3, have been appointed from the same selection process.

5. We have heard learned counsel for the parties and gone through the material placed on record.

6. It is more than settled that if a candidate has been wrongly excluded from the process of the appointment on account of illegal and arbitrary action on behalf of the State, then he is entitled to notional seniority from the date, the similarly situated persons have been appointed.

7. Reference in this regard can conveniently be made to a recent judgment of the Hon'ble Supreme Court in C. Jayachandran

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7. Reference in this regard can conveniently be made to a recent judgment of the Hon'ble Supreme Court in C. Jayachandran

Vs. State of Kerala and ors., (2020) 5 SCC 230,

wherein it was observed as under:

"35. The earlier writ petition filed by the appellant was allowed on 11th September, 2010. The Division Bench of the High Court has directed to re-cast the seniority amongst the seven shortlisted candidates. The appellant was one of them. The challenge to the said order by three affected candidates remained unsuccessful when SLP was dismissed by this Court on 8th October, 2010. The SLP was filed by the candidates who were granted benefit of moderation of marks. Once the direction of the Division Bench has attained finality, the appellant was entitled to seniority as per the select list to be revised as per merit of the candidates. In terms of Rule 6(2), the seniority is to be determined by the serial order in which the name appeared in the appointment order. The argument of learned counsel appearing for respondent No. 3, that the appellant was not appointed by the same appointment order, therefore, the

appellant cannot claim seniority is not tenable. The appellant was entitled to be appointed along with other three candidates but because of the action of the High Court in adopting moderation of marks, the appellant was excluded from appointment. The exclusion of appellant from appointment was on account of an illegal act by the High Court which has been so found by the judgment dated 13th September, 2010. Since the select list has to be revised, the appellant would be deemed to be the part of the appointment along with other candidates in the same select list. As the actual date of appointment was on 24th February, 2011, the appellant cannot actually be treated to be appointed on 30th March, 2009 but is entitled to notional appointment from that date and consequential seniority.

15. In Sanjay Dhar, a three-judge bench of this court held as under:

"16. For the foregoing reasons the appeal is allowed. The judgment under appeal is set aside. It is directed that the appellant shall be deemed to have been appointed along with other appointees under the appointment order dated 6-3-1995 and assigned a place of seniority consistently with his placement in the order of merit in the select list

prepared by J&K PSC and later forwarded to the Law Department."

37. In Lakshmana Rao Yadavalli, this Court held as under:

"13. For the reasons recorded in Lakshmana Rao Yadavalli v. State of A.P. [Set out in paras 1 to 13, above.] the present appeals are allowed and it is directed that the High Court as well as the respondent State will do the needful for giving appointment to the appellant with retrospective effect from the date on which she ought to have been appointed, however, she shall not be paid salary for the period during which she has not worked as a District and Sessions Judge. We are sure that the respondents will do the needful for the appointment of the appellant at an early date."

8. This, otherwise has been consistent view of this Court in Balak Ram Vs. State of H.P., 2015(1) SLC 504, Poonam Kumari Vs. State of H.P. & anr., 2015(4) HP LR 327 and Monica Sharma Vs. Dr. V.S. Parmar University of Horticulture and Forestry, Nauni & ors., 2015(5) ILR H.P. 491.

9. Further, it is equally settled that the candidate who is wrongly not appointed is to be given

benefit of notional seniority, from the date he should have been appointed. Reference in this regard can conveniently be made to the following judgments of the Hon'ble Supreme Court:

- (i) (2020) 5 SCC 230, titled as, Jyachandran vs. State of Kerala;
- (ii) (2000) 8 SCC 182, titled as, "Sanjay Dhar vs. J & K Public Service Commission";
- (iii) (2014) 2 SCC 158, titled as, Sasidhar Reddy Sura vs. State of A.P.;
- (iv) (2014) 13 SCC 393, titled as "Lakshmana Rao Yaddavalli vs. State of A.P.;
- (v) (2008) 7 SCC 728, titled as "Balwant Singh Narwal vs. State of Haryana and;
- (vi) (1996) 8 SCC 637, titled as, "Pilla Sitaram Patrudu vs. Union of India.

10. Similar reiteration of law can be found in the judgments of a Division Bench of this Court, in which one of us (Hon'ble Mr. Justice Tarlok Singh Chauhan) was a member in CWP No. 1364 of 2015, titled as "Poonam Kumari versus State of H.P. and others", decided on 27.7.2015 and CWP No. 3139 of 2009, titled as

"Smt. Neetu versus State of H.P. and others",
decided on 19.6.2014,

11. In view of the aforesaid observations, we deem it proper to dispose of the petition with the following directions:

i) Respondents are directed to treat the petitioner to have been appointed in service notionally from the date when his juniors came to be appointed from the same selection process.

ii) However, the monetary benefits will be payable to the petitioner only from the date when he has actually joined the department.

iii) The period between notional appointment and the actual appointment shall count towards seniority and also increments and his pay shall be fixed accordingly. In other words, the petitioner shall be entitled to salary, as is being

drawn by other similar situated persons, more particularly, respondent No. 3, who have been appointed in the same selection process from the date he joins or has joined services.

12. In view of the aforesaid directions, the instant petition is allowed. Pending application(s), if any, are also disposed of.

(Tarlok Singh Chauhan)
Judge

(Chander Bhusan Barowalia,)
Judge

December 20, 2021
Patna