

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 12059 of 2009 (O&M)

Date of decision: 08.04.2015

Sudesh Kumar

...Petitioner

Versus

Haryana Power Generation Corp. Ltd. and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S. Maanipur, Advocate for the petitioner.

Mr. Mohnish Sharma, Advocate
for the respondents.

Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of the order dated 29.10.2007 (Annexure P-5), whereby, the claim of the petitioner for promotion to the post of Turbine Operator was declined with effect from the date when his juniors were promoted.

2. It is contended that the petitioner joined as T-Mate on work charge basis on 21.04.1980. His services were regularized on 02.02.1989 and after attaining the age of superannuation, he retired on 30.09.2000. The learned counsel refers to the office order dated

12.06.2002 (Annexure P-1) and states that after his superannuation, the petitioner was given promotion on the next higher post as Plant Attendant w.e.f. 11.01.1985. The learned counsel further refers to the order dated 09.03.2004 (Annexure P-2), vide which the order dated 12.06.2002 was modified denying the salary w.e.f. 11.01.1985 for the post of Plant Attendant. It is further asserted that the persons junior to the petitioner were promoted as Turbine Operator in the month of October, 1986, whereas, the case of the petitioner for promotion was rejected.

3. The learned counsel cites **Roop Chand Vs. State of Haryana and another**, 2009(1) RSJ 337 and **Sunder Dass Vs. Haryana Power Generation Corporation Ltd and another**, 2012 (3) RSJ 617 of this Court.

4. On the other hand, the learned counsel for the respondents refers to Annexure R-2/1, the Recruitment and Promotion policy for Operation and Maintenance Wings of Hydel staff and submits the services of the petitioner were regularized to the post of Oil Greaser in the year 1989. The petitioner applied for the post of Fitter but he did not appear before the Screening Committee and he was marked absent in the selection list. The learned counsel further contends that as per policy 50% posts of Operators were to be filled up by promotion from Plant Attendants who passed Matric with 2 years I.T.I. as minimum qualification

having 12 years experience/service as Plant Attendant. The petitioner does not fulfill the conditions/parameters as laid down in the above said policy, therefore, the impugned order dated 29.10.2007 was rightly passed by the respondents. The learned counsel has further contended that the present writ petition is bad for non joinder of parties as the persons junior to him have not been impleaded as respondents.

5. I have heard the learned counsel for the parties and carefully perused the record.

6. It is not disputed that the petitioner was given promotion w.e.f. 11.01.1985 to the post of Plant Attendant after his retirement, vide Annexure P-1, and further after modification of the order, vide Annexure P-2, he was not given the benefits of retrospective promotion with effect from 11.01.1985 for the purpose of pay fixation. The petitioner joined the respondents as T-Mate on work charge basis on 21.04.1980 and retired on 30.09.2000. The above said benefit of promotion was given after his retirement. The persons junior to the petitioner were promoted as Turbine Operator in the month of October, 1986 and onwards, vide Annexure P-3/A. Once the petitioner was promoted from the retrospective date i.e. 11.01.1985, the consequent benefits given to the juniors, in the interregnum period cannot be denied to him. The persons junior to him were promoted as Turbine Operator. The petitioner being senior

qualifies for grant of the benefit of promotion and salary as Turbine Operator.

7. It is worthwhile to mention here that against the order dated 09.03.2004, the petitioner had filed Civil Writ Petition No. 12037 of 2005, vide which all the consequential benefits were granted to the petitioner. Once the respondents had promoted the petitioner from 11.01.1985 as Plant Attendant and the next promotion is to the Post of Turbine Operator. The other categories like Electrician, Fitter, Assistant Foreman have also been considered to be the feeder cadre, which is evident from the information supplied by the respondents under Right to Information Act (Annexure P-3/B).

8. It is pertinent to mention here that the persons junior to the petitioner had joined as Fitter/AFM on 14.05.1985 onwards, whereas, the petitioner was deemed to be promoted w.e.f. 11.01.1985, prior to them. The juniors were promoted as Turbine Operator/Auxiliary Operator w.e.f. 28.10.1986 onwards (Annexure P-3/A).

9. The sole defence taken by the respondents in the written statement is that the juniors to the petitioner were promoted as they were considered by the Selection Committee and that is why they became senior. This plea is not tenable especially when they have themselves granted retrospective promotion to the petitioner w.e.f.

11.01.1985 and when retrospective promotion is granted to the petitioner, he is senior to the Plant Attendants/Fitter, who were promoted and appointed after him and he is entitled to consider for promotion from the date when his juniors were considered and promoted.

10. So far as the argument raised by the learned counsel for the respondents that juniors were not impleaded as party is concerned, it is not necessary for the reason that all of them have since retired and the petitioner will not occupy any office and will get only the monetary benefits. The benefit granted to the petitioner will not entail reversion of any person junior to him.

11. In the light of above facts and circumstances, the present petition is allowed. The impugned order dated 29.10.2007 (Annexure P-5), whereby, the petitioner was deprived the benefit of promotion as Turbine Operator to the petitioner is, hereby set aside. The respondents are directed to consider the claim of the petitioner at par with his junior from the date of entitlement and release the salary and consequential benefits as Turbine Operator within four months from the date of receipt of a certified copy of this order.

08.04.2015

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(JITENDRA CHAUHAN)
JUDGE

Whether to be referred to reporter:

Yes / No