

202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12350-2010(O&M)

Date of decision : 02.07.2015

Roshan Lal

.....Petitioner

versus

Uttar Hayrana Bijli Vitran Nigam Ltd. & Ors. Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. R.S.Tacoria, Advocate for the petitioner.
Mr.R.S.Kundu, Advocate for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By way of this petition the petitioner has challenged the action of the respondents in denying him the benefit of ACP and increments on the ground that he did not pass the type test.

The petitioner was appointed as a Class-IV employee on 27.03.1981. On 10.03.1997 he was promoted as LDC. This was done in view of memo No. CH.37/Reg-114 dated 10.05.1989 had laid down the following conditions:-

"2. Class-IV employees are required to satisfy two conditions independently i.e.(i) passing the Matriculation Examination (ii) 5 years service, then they would be eligible for the promotion/appointment to the post of LDCs/MRs. Total period of 5 years is to be taken into account irrespective of passing the matric examination."

However, in his promotion order another condition was imposed

viz. that he would have to pass the typing test. Since the petitioner did not pass the type test he was denied the benefit of increments and ACP.

The precise argument of the learned counsel for the petitioner is that this condition of passing of typing test, being extraneous to the policy of promotion, could not have been imposed upon him. Learned counsel for the respondents, however, argues that after the letter dated 10.05.1989(supra), respondents issued another notification dated 19.10.1990 and as per that notification there was a stipulation that a promoted official would have to pass the type test. Learned counsel for the petitioner has drawn the attention of the Court to the head note of this notification and the same is quoted hereinbelow:-

*“No. 82/Reg-29 ¼L-I. In exercise of powers conferred under clause(c) of Section-79 of Electricity (Supply) Act, 1948 and all other enabling powers in this behalf, the Haryana State Elecy. Board is pleased to make the following Revised Recruitment and Promotion Policy in respect of Ministerial Service(Head Office Cadre):-
.....”*

He has further relied upon clause 8 of this notification which is also quoted herein below:-

“The above notification is in partial modification of the O/O No. 891/ENG/G-26/L-17 dated 7.10.78 and supersedes all previous Rules/Regulations, Orders and instructions issued by the Board from time to time relating to Recruitment and Promotion Policy in resect of categories detailed in this notification.”

As per learned counsel a reading of the above two extracts makes it clear that this notification is applicable only to staff at the head office and is not applicable to the employees like the petitioner who are members of the field staff and as regards the field staff he has

relied upon a decision of this Court in **Uttar Haryana Bijli Vitran Nigam Ltd. v. Phool Chand, LPA No. 1711 of 2011** decided on 27th August, 2013. In that case this Court had held that while the condition of passing of type test was applicable to direct recruits, it was not applicable to promotees.

In my opinion the argument of leaned counsel for the petitioner has to prevail. A perusal of the provisions of the policy of 19.10.1990 quoted above clearly reveals that they were intended only for the staff in the ministerial cadre. Clause 8 of the said policy specifically states so.

Consequently it has to be held that the condition imposed in the promotion order of the petitioner regarding passing of the type test is illegal. The same is hereby quashed. In the circumstances the respondents are directed to work out the benefits which are now payable to the petitioner and release them to him within a period of three months from the date of receipt of a certified copy of this order failing which the petitioner would be entitled to claim the same with interest at the rate of 8% p.a. from the date/s the amount/s fell due till the date of payment.

Petition stands disposed of in the above terms.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

July 02, 2015
sunita

(AJAY TEWARI)
JUDGE