

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

CWP-9889-2010

Date of decision: 16.10.2015

Arvinder Singh

.....Petitioner

Versus

Union of India and others

.....Respondents

**CORAM:- HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

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

Present: Mr. P.S. Bajwa Advocate for the petitioner.

Mr. Vivek Singla, Advocate for respondents No.1 and 2.

DARSHAN SINGH J.

The present Civil Writ Petition under Articles 226/227 of the Constitution of India has been filed by petitioner Arvinder Singh for issuance of an appropriate writ, direction or order, especially in the nature of certiorari, quashing/setting aside the order dated 03.12.2009 passed by learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'the Tribunal') for quashing the action of the respondents in contravention of Memorandum dated 16.06.2006, for

quashing the letters dated 19.05.2007 (Annexure P-11 before the Tribunal), dated 24.08.2007 (Annexure P-12 before the Tribunal), dated 11.09.2007 (Annexure P-14 before the Tribunal), dated 12.09.2007 (Annexure P-15 before the Tribunal) and dated 20.09.2007 (Annexure P-17 before the Tribunal) and for issuance of the appropriate writ, direction or order especially in the nature of Mandamus, directing the respondents to make the promotion of the petitioner to the post of Scientific/Technical Officer 'C' in accordance with the promotion process stipulated in Memorandum dated 16.06.2006 and accordingly, promote the petitioner to the aforesaid post with all the consequential benefits.

2. The petitioner was appointed as Coordinator vide letter dated 21.06.1985 by respondent No.2 to perform the technical functions like handling Electric Data Processing (EDP)/Information Technology (IT) Operations. He was promoted as Technical Assistant-II w.e.f. 01.01.1989, then as Technical Assistant-III w.e.f. 01.01.1992 and then as Technical Assistant-IV w.e.f. 01.01.1995. He was further promoted as Assistant Officer in 'E' Grade w.e.f. 01.07.2000 after taking into account his performance. Prior to his entry into service, the petitioner completed a computer course in COBOL programming and was awarded the certificate to that effect. With effect from 01.09.2006 the Semi Conductor Complex Limited was registered as a Society under the Societies Registration Act, 1856. The existing employees were to be appointed against the equivalent post by respondent No.2. They were required to

submit the 'Declaration of Election' before 30.06.2006. The petitioner submitted his 'Declaration of Election' dated 26.06.2006 to continue in service with respondent No.2. Respondent No.2 vide order dated 01.09.2006 designated the post of 'Assistant Officer E-I' as Scientific/Technical Assistant-'C'. According to Memorandum dated 16.06.2006, the next promotional post is Scientific/Technical Officer 'C' from amongst Scientific/Technical Assistant 'C' having five years experience with the promotion process comprising of Screening, Consideration of Confidential Record and Interview. The petitioner was fully eligible for the promotion to the post of Scientific/Technical Officer 'C' as he was promoted as Assistant Officer E-1 Grade w.e.f. 01.07.2000 and has almost 10 years of service to his credit against the minimum requirement of 5 years. Respondent No.2 issued the letter dated 19.5.2007 (Annexure P-11 before the Tribunal) to the effect that a written test would be held for promotion to the post in question. The syllabus of written test would be equivalent to ITI Certificate/Diploma. The said test was without any jurisdiction and contrary to the Memorandum of the Society. The said letter was followed by another letter dated 24.08.2007. The petitioner submitted a representation dated 03.09.2007 (Annexure P-13 before the Tribunal) protesting the holding of the written test and specifically stated that the same was not applicable to the petitioner. Respondent No.2 has exempted certain colleagues of the petitioner selectively from appearing in the written test. Only the petitioner and one

more Scientific/Technical Assistant 'C' have been directed to appear for the written test. Petitioner submitted the representation dated 17.09.2007. There was no response to the said representation. The petitioner filed CWP No.15236 of 2007, which was transferred to the learned Tribunal and was registered as T.A. No.5/CH/2009. It is further pleaded that two employees namely Vivek Singh Dadwal and Divya Behl have also done their Masters in Economics like the petitioner. They were exempted from written test and Vivek Dadwal was promoted to the post of Scientific/Technical Officer 'E'. The learned Tribunal dismissed the claim of the petitioner vide impugned order dated 03.12.2009. The said order has been challenged by the petitioner on the grounds that the action of the respondents was contrary to the Memorandum dated 16.06.2006. The insistence of the petitioner to undergo the written test for promotion to the post of Scientific/Technical Officer 'C' was violative of Articles 14 and 16 of the Constitution of India and the same is illegal. The respondents have tailor-made criteria to the sole disadvantage of the petitioner. The Tribunal has wrongly equated the 'Screening' with the written test, whereas screening is completely different from the written tests. The service condition of the petitioner cannot be changed retrospectively to his detriment. Hence, this writ petition.

3. The present Civil Writ Petition has been contested by respondent No.2 by filing detailed written statement, wherein it was pleaded that the requisite norms for the promotion to the post of

Scientific/Technical Officer 'C' is Technical Assistant 'C' with five years of experience and the promotion process/criteria was "Screening + CR + Interview", which was meant only for cases having the required technical qualifications. With the change in the nature of responsibilities of the personnel of SCL Society from commercial activities to research functions, it was necessary that personnel were made to upgrade or develop skills and knowledge in order to be fit for the changed activities and to upgrade their skills in line with comparable levels in Indian Space Research Organization. Therefore, the specialized Expert Committee of ISRO/DOS Scientists devised a methodology of prescribing the written test for those employees who were not having the technical qualification of 3 year's Diploma or Graduation in Science. Thus, as a policy decision the written test for the categories of Scientific/Technical Personnel was prescribed. The petitioner was having the qualification of Bachelor of Arts and M.A. Economics, which was not the required technical qualification for the post concerned. All other pleas raised in the petition were controverted.

4. We have heard Mr. P.S. Bajwa Advocate, learned counsel for the petitioner, Mr. Vivek Singla, Advocate, learned counsel for respondents No.1 and 2 and have meticulously gone through the paper-book.

5. Initiating the arguments, learned counsel for the petitioner contended that the petitioner was fully eligible for promotion to the post

of Scientific/Technical Officer 'C' as he has rendered more than 5 years of service as Scientific/Technical Assistant 'C'. He contended that as per the Memorandum dated 16.06.2006 (Annexure P-10 before the Tribunal) issued by respondent No.2 for promotion to the post of Scientific/Technical Officer 'C' the eligibility conditions were five year's experience as Scientific/Technical Assistant 'C' and the promotion process criteria prescribed for Screening + Confidential Record + Interview. In the memorandum, it was nowhere provided that the eligible officials had to undergo the written test. He further contended that the action of the respondents prescribing the written test for the petitioner was violative of Articles 14 and 16 of the Constitution of India and was also discriminatory as Vikas Singh Dadwal and Diya Behl, who had also done their Masters in Economics, were exempted from the written test for promotion to the higher post.

6. He further contended that word "Screening" has been totally misinterpreted by the respondents and has been equated to the written test to the disadvantage of the petitioner. He contended that as per the recruitment and promotion system in ISRO Para No.3.3.2, the Screening Committee was required to consider the work report, ACRs and the recommendations of the Division/Group Head. It nowhere provides for holding the written test. Thus, he contended that the action of the respondents prescribing the written test was violative of the Memorandum dated 16.06.2006 and is also discriminatory. He contended

that the petitioner had undergone the computer course before joining the post of Coordinator and has technical knowledge. He has been performing the technical duties after his employment with respondents. Thus, he pleaded that the action of respondents is totally illegal and petitioner is entitled for promotion to the post of Scientific/Technical Officer 'C' in accordance with promotion process stipulated in Memorandum dated 16.06.2006 with all consequential benefits.

7. On the other hand, Mr. Vivek Singla, Advocate, learned counsel for the respondents contended that the petitioner was simply a Bachelor of Arts and M.A. Economics. He was not having any technical knowledge. The ISRO norms prescribed first class in Diploma and Graduation in Science. But as a special case, this condition was relaxed and accordingly all employees in SCL-respondent No.2, who had done Diploma in Science, irrespective of class, were considered as technically qualified and were exempted for appearing in written test. However, the petitioner and one other candidate were required to take the written test as they did not have the technical qualification for the post of Scientific/Technical Officer 'C' as per the norms. Thus, he pleaded that there was no question of any discrimination with the petitioner. He has not qualified for the written test. So, he was not entitled for the promotion to the post of Scientific/Technical Officer 'C'. Thus, he contended that the application of the petitioner has been rightly dismissed by the learned Tribunal.

8. We have duly considered the aforesaid contentions.

9. The petitioner is claiming the promotion to the post of Scientific/Technical Officer 'C' in accordance with the promotion process stipulated in Memorandum dated 16.06.2006. He has alleged that as per the aforesaid Memorandum, he is eligible to the next promotional post of Scientific/Technical Officer 'C' as he was having more than stipulated experience on the lower post of Scientific/Technical Assistant 'C'. The main dispute is the requirement of the written test for promotion to the post of Scientific/Technical Officer 'C', which was not specifically provided in the Memorandum dated 16.06.2016. The promotion process criteria was 'Screening + Confidential Reports (Records) + Interview'.

10. There is no dispute that the Scientific/Technical Officer is required to perform the technical duties. It is also not disputed that the SCL Society is a research and development unit, whereas erstwhile SCL Company was a manufacturing firm. The nature of responsibilities of the personnel of SCL Society has undergone a change from commercial activities to research functions. So, the personnels employed with the respondents were required to upgrade or develop their skill and knowledge in order to be fit for the changed activities of the organization and upgrade their skill in line with the comparable levels in the ISRO from time to time. Consequently, the Specialised Expert Committee was constituted, which prescribed the written test for various categories of scientific/technical employees for further promotion. It was found that

many of the Technical Assistants did not possess the technical diploma qualification, for whom the methodology of prescribing the written test was prescribed vide Communication dated 11.05.2007 issued by the ISRO Head Quarters, Directorate of Quality and Reliability, the relevant portion of the said communication reads as under:-

- a) Technicians/Draftsmen with ITI qualifications irrespective of the class obtained or those who have undergone SCL training and Technical Assistants up to scale of pay of Rs.5500-175-9000 inducted with Diploma will be given practical trade test followed by interview.*
- b) Technicians and Technical Assistants, presently in the scale of pay of Rs.5500-175-9000 and are not covered under above will have to qualify in the preliminary written test that will have syllabus equivalent to ITI certificate or Diploma in line with the CCMS Scheme of ISRO for the post of Technicians and Technical Assistants. The terms of Reference of the CCMS of ISRO may be extended to SCL in this case.*
- c) Scientific/Technical Assistant 'C' having Diploma/graduation in Science will be screened and interviewed in line with the practices followed in ISRO/DOS. And those who do not possess the requisite qualifications will have to qualify in a written test conducted that will have syllabus equivalent to the Diploma/Graduation in the relevant field.*

11. Clause 'C' reproduced above, clearly prescribed that the Scientific/Technical Assistants 'C' having Diploma/Graduation in Science will be screened and interviewed in the line with the practice following in ISRO/DOS and those who do not possess the requisite qualification will have to qualify in a written test conducted that will have syllabus equivalent to the Diploma/Graduation in the relevant field.

Thus, in that document the condition of the written test was introduced. It is not disputed that the petitioner is having the degree of Master in Economics. He is not having any Diploma/Graduation in the field of Science. The computer course undergone by him cannot be equated with Diploma/Graduation in Science.

12. The conditions prescribed in Memorandum dated 16.06.2006 were the general terms. It cannot be stated that the said terms and conditions could not be subjected to any change to meet out the exigencies and requirements of service from time to time. It is not disputed that the screening is one of the eligibility for promotion even as per the Memorandum but later on in view of the guidelines issued by the ISRO a reasonable classification has been carved out keeping in view the nature of the requirement of the job and it was decided that the Scientific/Technical Assistant 'C' having Diploma/Graduation in Science will be screened and interviewed and those who do not possess the aforesaid requisite qualification, will have to qualify in the written test. Admittedly, the petitioner was not having the requisite technical qualification i.e. Diploma/Graduation in Science, so he was required to undergo the written test.

13. There can be no question of any discrimination with the petitioner in prescribing this condition as the same is applicable to all the employees of the SCL Society, who do not possess the technical qualification of Diploma/Graduation in Science. As already mentioned

the said decision is based on the reasonable qualification i.e. the Scientific/Technical Assistant 'C' having the Diploma/Graduation in Science and who do not possess the said requisite qualification. This policy decision is also not being applied retrospectively, rather it is being applied prospectively. So, no fault can be found if the respondents have decided to screen the eligible candidates for promotion to the post of Scientific/Technical officer 'C' by way of written test, who do not have the requisite Diploma/Graduation in Science. There can be no bar to introduce such procedure by the respondents in order to upgrade the skill and knowledge of the personnel who seek promotion to the higher post.

14. We have no reason to differ with the observations of the learned Tribunal that judicial interference is not warranted unless the action is proved to be arbitrary. In the instant case, we do not find that this action of the respondents prescribing the written test for promotion to the post of Scientific/Technical Officer 'C' for the personnel having no qualification of Diploma or Graduation in Science, cannot be stated to be arbitrary or discriminatory as it is applicable to all such employees of the respondents. Mere eligibility of the petitioner for promotion will not make him entitled to the promotion unless the process for promotion is initiated at the relevant time and he fulfills the criteria prescribed for the promotion to the post of Scientific/Technical Officer 'C'. The condition of clearing the written test has been introduced for the officials having no Diploma/Graduation in Science seeking promotion. So, it cannot be

stated that this policy decision is retrospective in operation.

15. Thus, keeping in view our aforesaid discussion, we do not find any legal infirmity/impropriety in the impugned order dated 03.12.2009 passed by the learned Tribunal, Communications dated 11.05.2007, dated 19.05.2007 (Annexure P-11 before the Tribunal), dated 24.08.2007 (Annexure P-12 before the Tribunal), dated 11.09.2007 (Annexure P-14 before the Tribunal), dated 12.09.2007 (Annexure P-15 before the Tribunal) and dated 20.09.2007 (Annexure P-17 before the Tribunal) and the action of respondents No.1 & 2.

16. Consequently, the present writ petition is devoid of merits and is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

16.10.2015
sunil yadav